

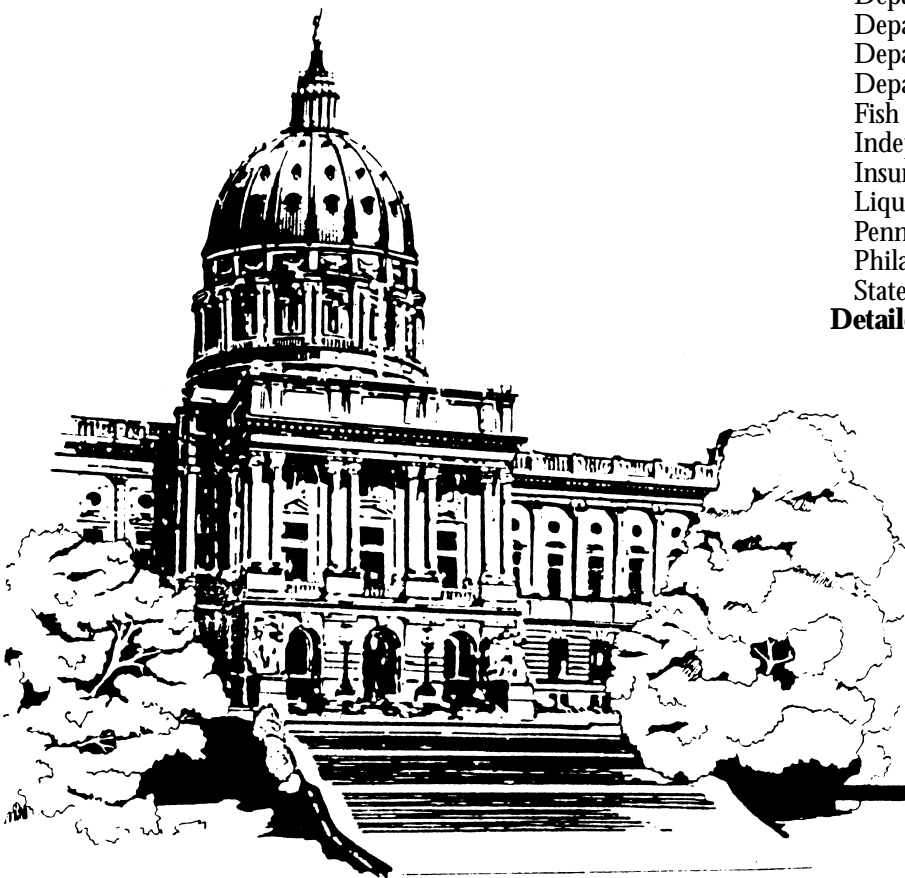
# PENNSYLVANIA BULLETIN

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**Agencies in this issue:**

The Governor  
The General Assembly  
The Courts  
Delaware River Basin Commission  
Department of Agriculture  
Department of Banking  
Department of Environmental Protection  
Department of General Services  
Department of Health  
Department of Public Welfare  
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Fish and Boat Commission  
Independent Regulatory Review Commission  
Insurance Department  
Liquor Control Board  
Pennsylvania Public Utility Commission  
Philadelphia Regional Port Authority  
State Board of Medicine

**Detailed list of contents appears inside.**



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**No. 357, August 2004**

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## ***Pennsylvania Bulletin***

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

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

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

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

## **Adoption, Amendment or Repeal of Regulations**

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

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

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

*Bulletin* before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

## **Citation to the *Pennsylvania Bulletin***

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

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

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### Printing Format

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

### Fiscal Notes

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

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

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# 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 2004.

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**THE GOVERNOR**  
**Title 4—ADMINISTRATION**

**PART I. GOVERNOR'S OFFICE**

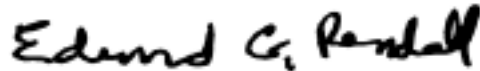
**[4 PA. CODE CH. 6]**

**[EXECUTIVE ORDER 2004-3, REVISION NO. 1]**

**Pennsylvania Business Tax Reform Commission**

July 1, 2004

By virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, hereby revise Section 5 of Executive Order 2004-3, page 2, as follows:



*Governor*

**Fiscal Note:** GOV 04-9. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART I. GOVERNOR'S OFFICE**

**CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES**

**Subchapter L. PENNSYLVANIA BUSINESS TAX REFORM COMMISSION**

**§ 6.195. Reports.**

The Pennsylvania Business Tax Reform Commission will prepare a written report for submission to the Governor and the General Assembly, as required by § 6.192(b) (relating to tasks), on or before November 30, 2004.

[Pa.B. Doc. No. 04-1536. Filed for public inspection August 20, 2004, 9:00 a.m.]

—

# THE GENERAL ASSEMBLY

## Recent Actions during the 2004 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2004 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
<b>2004 GENERAL ACTS ENACTED—ACT 074 through 095</b>					
074	Jul 15	HB1117	PN4319	60 days	Crimes Code (18 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—railroad protection, railroad vandalism, interference with transportation facilities and railroad civil immunity
075	Jul 15	HB1130	PN4139	60 days	Vehicle Code (75 Pa.C.S.)—learners' permits, drivers of emergency vehicles, Child Passenger Restraint Fund, oral hazard warnings and civil immunity for lenders of child passenger restraint systems
076	Jul 15	HB1912	PN4143	60 days	Vehicle Code (75 Pa.C.S.)—person with disability plate and placard, physical examinations, reports on mental or physical disabilities or disorders and determination of incompetency
077	Jul 15	HB1996	PN4282	60 days	Procurement (62 Pa.C.S.)—cooperative purchasing, legislative reports and guaranteed energy savings and contracts
078	Jul 15	HB2230	PN3040	immediately	Emergency Medical Services Act—support of emergency medical services
079	Jul 15	HB2351	PN3279	60 days	Borough Code—retirement benefits of employees transferred to wastewater authorities
080	Jul 15	HB2433	PN4246	immediately	Volunteer Fire Company and Volunteer Ambulance Service Grant Act—award of grants, expenses incurred by Pennsylvania Emergency Management Agency and allocation of appropriated funds
081	Jul 15	HB2467	PN3519	60 days	Municipal Pension Plan Funding Standard and Recovery Act—contents of actuarial valuation report
<i>(Editor's Note: Listings for Acts 82—94 supercede the listing published at 34 Pa.B. 4103 and 4104 (August 7, 2004).)</i>					
082	Jul 15	SB0157	PN1766	immediately*	Public School Code of 1949—firefighter and emergency service training as creditable high school courses, education empowerment districts and credit card marketing on college or university campus
083	Jul 15	SB0508	PN1727	60 days	Municipal Claim and Tax Lien Law—redemption of property and challenging foreclosure sales
084	Jul 15	SB0679	PN1549	60 days	Controlled Substance, Drug, Device and Cosmetic Act—possession or transporting of liquefied ammonia gas, possession of certain precursors and chemicals used in manufacture of controlled substances and clandestine drug laboratories
085	Jul 15	SB0769	PN1654	90 days	Elderly Immunization Act—enactment
086	Jul 15	SB0971	PN1340	60 days	Public Employee Pension Forfeiture Act—definition of “crimes related to public office or public employment”
087	Jul 15	SB0979	PN1779	immediately	Judicial Code (42 Pa.C.S.)—child victims and witnesses

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
088	Jul 15	SB1039	PN1791	immediately	Public Officers (65 Pa.C.S.)—definition of "agency"
089	Jul 15	SB1092	PN1557	60 days	Fred Jaindl Memorial Highway—designation
090	Jul 15	SB1095	PN1565	60 days	Chuck Mattei Interchange—designation
091	Jul 15	SB1100	PN1573	60 days	General County Assessment Law—valuation of property
092	Jul 15	SB1139	PN1784	immediately	Pennsylvania Construction Code Act—application of act, adoption of regulations, administration and enforcement, changes in Uniform Construction Code and exemptions
093	Jul 15	SB1184	PN1734	60 days	Project 70 lands—release and imposition of restrictions on land in Scranton, Lackawanna County
094	Jul 16	HB2654	PN4249	immediately*	General Local Government Code (53 Pa.C.S.)—parking authorities and taxicabs and limousines in cities of the first class
095	Jul 20	HB0147	PN4323	immediately	Tax Reform Code of 1971—film production tax credit
<b>2004 APPROPRIATION ACTS ENACTED—ACT 037A through 039A</b>					
037A	Jul 15	HB2534	PN4301	immediately	Drexel University—instruction and student aid
038A	Jul 15	HB2554	PN4313	immediately	Franklin Institute Science Museum—maintenance expenses
039A	Jul 15	HB2590	PN4317	immediately	Lake Erie College of Osteopathic Medicine—instruction in Doctor of Osteopathy program
<b>2004 VETOES OF BILLS—VETO 004</b>					
004	Jul 21	HB2758	PN4224		General Local Government Code (53 Pa.C.S.)—fire company reduction and closure provisions for cities of the first class

\* denotes an effective date with exceptions

#### Effective Dates of Statutes

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

#### Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, State Records Center Building, 1825 Stanley Drive, Harrisburg, PA 17103, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,  
Director  
Legislative Reference Bureau

[Pa.B. Doc. No. 04-1537. Filed for public inspection August 20, 2004, 9:00 a.m.]

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

#### Establishment of the Minor Judiciary Interest on Trust Accounts Program; No. 209; Magisterial Doc. No. 1

##### Order

*Per Curiam:*

*And Now*, this 3rd day of August, 2004, it is hereby ordered pursuant to Article V, Section 10, of the Constitution of Pennsylvania that:

1. To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise with respect to the rules adopted hereby, the immediate adoption of such rules is hereby found to be required in the interests of justice.

2. The Interest on Trust Account Program for the Minor Judiciary hereafter referred to as MJ-IOTA Program is hereby established by amending Pennsylvania Code Title 204, Chapter 81 with the addition of paragraphs (a)—(e) as set forth in Annex A.

3. The MJ-IOTA Program shall be administered by the IOLTA Board of the Supreme Court of Pennsylvania.

4. The IOLTA Board shall, to the extent consistent with the provisions of this Order and the rules adopted by the IOLTA Board, administer the MJ-IOTA Program to the extent practicable as a supplement to the IOLTA program administered by the IOLTA Board pursuant to Rule of Professional Conduct 1.15, and shall draft for review and approval of the Supreme Court regulations regarding the handling of funds by judiciary affected by this Order.

5. This Order, and the code changes promulgated hereby, shall take effect on the 3rd day of August, 2004.

##### Annex A

#### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter C. MINOR JUDICIARY INTEREST ON TRUST ACCOUNTS

Sec.  
81.301. Minor Judiciary Interest on Trust Accounts Program.

#### § 81.301. Minor Judiciary Interest on Trust Accounts Program.

(a) All qualified funds received by a judge, magistrate or district justice (hereinafter judicial official) in the administration of his/her duties shall be placed in a Minor Judiciary Interest on Trust Account (MJ-IOTA) Account. This rule does not change existing practices with

respect to funds (other than qualified funds) received by a judicial official in the administration of his/her duties.

(b) Qualified funds are monies received by a judicial official in a custodial capacity that, in the good faith judgment of the judicial official, are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of earning interest to benefit the owner of the funds.

(c) A MJ-IOTA is an unsegregated interest-bearing account with a depository institution for the deposit of qualified funds maintained by a judicial official. An account shall not be considered an MJ-IOTA Account unless the depository institution at which the account is maintained shall:

(1) Remit monthly any interest earned on the account to the IOLTA Board, or if that is not possible, remit the interest earned at least quarterly.

(2) Transmit to the IOLTA Board with each remittance a statement showing at least the name of the account, account number, service charges or fees deducted, if any, the amount of interest remitted from the account, and if available, the average daily collected balance in the account for the period reported.

(3) Compute the rate of interest paid on MJ-IOTA Accounts at no less than the highest rate of interest generally available from the depository institution to non-MJ-IOTA depositors when MJ-IOTA Accounts meet or exceed the same minimum balance or other account eligibility qualifications as other non-MJ-IOTA depositors. In no event shall the rate of interest payable on MJ-IOTA accounts be less than the rate paid by the depository institution on negotiable order of withdrawal accounts or super negotiable order of withdrawal accounts.

(4) The accounts must be collateralized by the assets of the banks in accordance with Act 72 of 1971.

(d) The MJ-IOTA Program shall be administered by the IOLTA Board. Disbursement and allocation of MJ-IOTA funds shall be subject to the prior approval of the Supreme Court. A copy of the IOLTA Board's proposed annual budget will be provided to the Court, designating the uses to which MJ-IOTA Funds are recommended. The IOLTA Board shall submit to the Supreme Court a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the MJ-IOTA Program.

Interest earned on MJ-IOTA Accounts may be used only for the following purposes:

(1) educational legal clinical programs and internships administered by law schools located in Pennsylvania, with emphasis given to providing grants to these programs such that the total funding they receive from the IOLTA Board is relatively stable and reasonably predictable from year to year in accordance with the allocation plan approved by the Court:

(2) delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(3) administration and development of the MJ-IOTA program in Pennsylvania.

(e) The IOLTA Board shall hold the beneficial interest in MJ-IOTA Funds. Monies received in the MJ-IOTA program are not state or federal funds and are not subject to Article VI of the Act of April 9, 1929 (P. L. 177, No. 175) known as the Administrative Code of 1929, or the Act of June 29, 1976 (P. L. 469, No. 117).

[Pa.B. Doc. No. 04-1538. Filed for public inspection August 20, 2004, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BUCKS COUNTY Expungement Orders

#### Administrative Order No. 49

And now, this 23rd day of July, 2004, it is hereby ordered that all Expungement Orders granted upon Petition by the Bucks County District Attorney shall apply to each offense charged under the Case Number to which the Expungement Order refers.

This Order shall apply to all Expungement Orders entered from January 1, 2004 until further Order of this court.

*By the Court*

DAVID W. HECKLER,  
*President Judge*

[Pa.B. Doc. No. 04-1539. Filed for public inspection August 20, 2004, 9:00 a.m.]

### CARBON COUNTY Pretrial Services Plan; No. 051 MI 96

#### Administrative Order 20-2004

And Now, this 4th day of August, 2004, in order to modify policy and procedure for the Carbon County Pretrial Services Plan, it is hereby

*Ordered and Decried* that, effective thirty days after publication in the *Pennsylvania Bulletin*, the Court hereby *Revises* its Pretrial Services Plan that follows.

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

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order and Rule in the Clerk of Court's Office.

*By the Court*

RICHARD W. WEBB,  
*President Judge*

#### **Purpose**

To establish policy and procedure governing the administration of Carbon County's Pretrial Services Program.

#### **Applicability**

To the Carbon County Court of Common Pleas, the Minor Judiciary, the Carbon County Adult Probation/Parole Department and the Carbon County Correctional Facility.

#### **Definitions**

As utilized in this document, the following definitions shall apply:

1. *Arrest*: The apprehension, legal custody, seizure or restraint of an offender by a law enforcement official.

2. *Bail*: The security or other guarantee required and given for release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond.

3. *Bail Authority*: The district justice, magistrate, Philadelphia bail commissioner, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke or deny bail.

4. *Bail Bond*: A document executed by a defendant, and when applicable, one or more sureties, whereby, the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

5. *Bail Report*: A concise document provided to the issuing authority that includes socioeconomic data, prior criminal record, demographic data and other background information on the defendant.

6. *Central Repository*: The central location for the collection, compilation, maintenance and dissemination of criminal history record information.

7. *Classificational Levels*: The placement of offenders by a correctional system signifying differential care and handling of offenders by assigning a level of supervision according to the risk they may present to the community, the needs of the offender and the availability of resources in the community. This multi-dimensional process goes beyond management of the offenders for the convenience of the agency and involves determination of the degree of supervision necessary, as well as, the offender's resocialization requirements.

8. *Clerk of Courts*: The official in each judicial district who has the responsibility and function under state or local law to maintain the official criminal court file and docket, without regard to that person's official title.

9. *Collateral Contact*: Communication by telephone with the offender or communication in a manner with another person having regular contact with the offender, such as local law enforcement official or treatment specialist.

10. *Common Pleas Court*: Trial courts of original, general jurisdiction.

11. *Commonwealth Law Enforcement Assistance Network (CLEAN)*: A computer system maintained by the Pennsylvania State Police to store information on offenses throughout the Commonwealth.

12. *Community Supervision*: Regular and systematic control and guidance provided to offenders, who are placed under the jurisdiction of the department on pre-trial services supervision.

13. *Conditions of Bail Release*: A written listing of prescribed conditions, which the offender agrees to follow while under pretrial supervision.

14. *Contraband*: Any item that the offender is not permitted to possess under the conditions of supervision, including any item whose possession is forbidden by Federal, State or local law.

15. *Control and Surveillance*: The monitoring of offender behavior in the community, to ensure compliance with court-imposed sanctions of release and to promote law-abiding behavior.

16. *Criminal History Record Information*: Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding.

17. *Criminal Justice Agency*: Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function.

18. *Defendant*: The party against whom a civil or criminal action is brought.

19. *Detainer*: An internal administrative mechanism to assure that an inmate subject to an unexpired term of confinement will not be released from custody until the jurisdiction asserting violations of supervision has had an opportunity to act by taking the inmate into custody or by making a revocation determination.

20. *Disposition*: Information indicating that criminal proceedings have been concluded.

21. *Dissemination*: The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency, which maintains the information.

22. *Exigent Circumstances*: Includes, but is not limited to, suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used. Exigent circumstances always exist with respect to a vehicle.

23. *Issuing Authority*: Any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a district justice.

24. *Major Violations*: Inappropriate behavior by the offender, which does pose a serious threat to himself, others, property or the community.

25. *Management Information Systems*: Automated or manually collected data and records utilized for planning, research and evaluation.

26. *Minor Violations*: Inappropriate behavior by the offender, which does not pose a serious threat to himself, others, property or the community.

27. *National Crime Information Center (NCIC)*: A computerized system run by the Federal Bureau of Investigation in order to track offenses throughout the United States.

28. *New Criminal Offense Violation*: A violation of the conditions of release, which violation is for a new criminal arrest or conviction.

29. *Offenders*: Those individuals who have committed a criminal act and have been placed under the jurisdiction of the department for supervisory purposes.

30. *Offense Tracking Number (OTN)*: A number given by a court to each specific case.

31. *Originating Agency Identifier (ORI)*: A number given to each agency by the Pennsylvania State Police in order to track those agencies submitting information to the central repository.

32. *Personal Contact*: Face-to-face contact with the offender, either in a formal office setting or in the community.

33. *Personal Search*: A warrantless search of an offender's person, including, but not limited to, the offender's clothing and any personal property which is in the possession, within the reach or under the control of the offender.

34. *Praecipe*: An original writ commanding the defendant to do the act required. Also, an order addressed to the clerk of court, requesting the issuance of a particular writ.

35. *Pretrial Services Program*: A program designed to monitor the activity of criminal offenders released on bail status under certain court imposed conditions, pending final disposition of the criminal charges.

36. *Prima Facie*: Literally, "on its face." Evidence is said to be prima facie when, standing alone, it amounts to the degree of proof needed to make a particular finding.

37. *Property Search*: A warrantless search of real property, vehicle or personal property, which is in the possession or under the control of the offender.

38. *Real Property*: Any residence or business property of the offender, including all portions of property to which the offender has access.

39. *Release On Recognizance (ROR)*: Release conditioned only upon the defendant's written agreement to appear when required and to comply with the conditions of the bail bond in Rule 526(A).

40. *Release on Nonmonetary Conditions*: Release conditioned upon the defendant's agreement to comply with any nonmonetary conditions, as set forth in Rule 527, which the bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond.

41. *Release on Unsecured Bail Bond*: Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited.

42. *Release on Nominal Bail*: Release conditioned upon the defendant's depositing a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as \$1.00, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.

43. *Release on a Monetary Condition:* Release conditioned upon the defendant's compliance with a monetary condition imposed pursuant to Rule 528. The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond.

44. *Security:* Shall include cash, certified check, money order, personal check or guaranteed arrest bond or bail bond certificate.

45. *Surety:* A person, who agrees to be responsible for another's debts or obligations.

46. *Technical Violation:* A violation of the conditions of release, which violation is other than a new criminal arrest or conviction.

47. *Warrant:* A legal document issued by the Court or the adult probation/parole department that authorizes a law enforcement agency or other legal authority to apprehend an offender and commit him to prison.

48. *Workload Formula:* An administrative strategy for the analysis of quantifiable objectives and time factors for an employee performing their functions over a specific time period. Employees have a relatively fixed amount of total time available to complete job tasks in an identifiable time frame.

#### **Authority and Policy Statement**

*Authority:* This policy statement has been developed pursuant to and in accordance with statutory requirements, local rules established by the Carbon County Adult Probation/Parole Department and through the formal adoption by the Carbon County Court of Common Pleas through administrative court order.

*Policy Statement:* The Carbon County Adult Probation/Parole Department and Carbon County Court of Common Pleas recognizes that defendant's placed on bail must be held accountable to the conditions of release imposed by the issuing authority, whereby the active community supervision will ensure public safety and the appearance of the defendant at court hearings. Additionally, non-adversarial information shall be provided to the court for bail consideration and sentencing decisions.

*Principles and Approach to Pretrial Services:* Pretrial release programs do not release defendants, judges alone are responsible for setting and releasing individuals on bail. Pretrial programs are responsible for providing accurate information and assessments to the court or issuing authority that assist judges in an appropriate bail determination. Furthermore, defendants are presumed innocent and entitled to be treated as such at the point of pretrial intervention.

#### **Pretrial Services Program**

*Goals and Objectives:* The Carbon County Pretrial Services Program is designed to accomplish the following:

1. To maximize the release of defendants on non-financial conditions by identifying those defendants most likely to appear in court.
2. To help facilitate judicial release decisions by providing the courts with factual information about the defendants in the timeliest manner possible.
3. To monitor released pretrial arrestees to ensure compliance with the conditions of release imposed by the court for the benefit of public safety.
4. To establish a process that would improve the release from detention appropriate pretrial detainees who may respond to an alternative form of supervision and treatment.

5. To identify, assess and refer drug/alcohol dependent offenders accused of non-violent offenses to appropriate community based treatment facilities.

6. To promote pretrial arrestee accountability through community supervision and treatment.

7. To provide non-adversarial information to the court for bail consideration and sentencing decisions.

*Duties and Powers of the Carbon County Pretrial Services Program:* Pursuant to 42 Pennsylvania Rules of Criminal Procedure, Rule 530, the Carbon County Court of Common Pleas, by local rule (See Administrative Court Order No. 9-2004), shall establish and designate the Carbon County Adult Probation/Parole Department as the agency responsible for the administration of the pretrial services project. The department shall be responsible for the following:

1. To gather information about defendants relevant to bail decisions.
2. To make recommendations to the bail authority concerning the types of release and the conditions of release on bail for individual defendants.
3. To supervise defendants when so designated by the bail authority.
4. To make reasonable rules and regulations to implement the bail agency's functions.

*Target Population:* Under the local rules of criminal procedure adopted by the Carbon County Court of Common Pleas, the following defendant's shall be automatically referred to the Carbon County Pretrial Services Program for supervision and monitoring:

1. Defendants or surety, who post the full amount of the monetary condition as imposed by the court, judge or issuing authority (See 42 Pennsylvania Rules of Criminal Procedure, Rule 528).
2. When the judge, court or issuing authority so orders, a sum of money not to exceed ten percent (10%) of the amount of bail set is posted by the defendant or surety (See 42 Pennsylvania Rules of Criminal Procedure, Rule 528).
3. When the judge, court or issuing authority imposes nonmonetary conditions of release on bail and reporting requirements are imposed for pretrial intervention (See 42 Pennsylvania Rules of Criminal Procedure, Rule 526 and 527).

*Ineligible Offenders:* The following defendants shall be declared ineligible for participation in the pretrial services program, unless otherwise court ordered:

1. Defendants afforded bail for indirect criminal contempt.
2. Fugitives from Justice.
3. Probation, Parole and intermediate punishment violators.
4. Bail posted by a licensed bondsman.
5. Defendants who post realty as bail.

*Referral Process:* When an offender posts bail, the offender and/or surety shall be provided a copy of the Notice to Appear correspondence by the issuing authority, the Clerk of Court's Office and/or prison officials. The defendant and surety shall report to the Carbon County Adult Probation/Parole Office on the next available working day (See Page 30 of this Policy Statement).



### **Workload Management**

*Goals and Objectives of Workload Management:* A workload approach to pretrial services management is designed to address the following:

1. To provide information and data for budget justification and support.
2. To enable an agency to adequately allocate its resources.
3. To enhance agency accountability.

*Pretrial Services Workload Formula:* A workload formula shall be developed and applied to the allocation of tasks to full-time pretrial service personnel. This formula shall be reviewed on an annual basis.

*Reporting:* Pretrial service personnel shall report directly to the Chief Adult Probation/Parole Officer or supervisor. The supervisor shall conduct caseload reviews from an administrative and case management perspective.

*Assignment of Work Tasks:* All work associated with pretrial services shall be allocated to the Pretrial Services Officer through a workload formula that shall consider the following factors:

1. Legal requirements of adult offenders.
2. Supervision levels based on a departmental classification system.
3. Geographic location of adult offenders for purposes of computing travel time.
4. Training, investigative and administrative tasks required.

*Identification of Workload Factors:* To develop an effective workload formula, the following factors shall be considered:

1. Identification of pretrial services/diversion duties and responsibilities.
2. Measurement of an assigned task to final completion.
3. Development of a classification system for pretrial service offenders.
4. Translation of task assignments into specific time factors that can be analyzed in a quantitative manner.

*Implementation:* The workload formula shall be implemented as follows:

1. The Pretrial Services Officer shall be assigned all pretrial diversion offenders, unless a conflict of interest exists. The employee will be responsible for the offender from initial intake to final disposition. Also, the employee will be responsible for all other functions associated with the operation of a pretrial services program. Adjustments or modifications to this formula can only be accomplished by the Chief Adult Probation/Parole Officer or the Court.

### **Conflict of Interest**

*Departmental Policy:* Any situation when a staff member has competing professional or personal obligations or personal or financial interests that would make it difficult for him or her to fulfill his or her duties fairly. A conflict of interest may occur under the following circumstances:

1. A staff member's private interest differs from his or her professional obligations to the court.
2. Professional actions or decisions occur that an independent observer might reasonably question.

3. A conflict depends upon situation and not the character or actions of the individual.

4. A family member, friend, associate or any other individual that is closely connected with an employee of the department.

*Duty to Disclose:* An officer that has a foreseeable conflict of interest with a potential offender must advise his or her immediate supervisor. The supervisor will investigate the conflict and if necessary, reassign the case. In those circumstances when an offender is closely related or associated with a departmental employee, then the court will be notified and the case referred to the Pennsylvania Board of Probation and Parole or a neighboring county for possible supervision.

*Gift Policy:* See Article 49 of the Common Pleas Court of Carbon County Personnel Policy and Procedure Manual for Court Employees.

*Disciplinary Process:* Any violation of this section may result in disciplinary action, including termination.

### **Intake Process**

*Initial Interview:* When a defendant is referred for pretrial services intervention, the following documentation shall be completed by the intake officer:

1. Offender facesheet.
2. Conditions of bail.
3. Surety responsibility form, if applicable.
4. Bail Information Sheet.
5. Release of information form, if applicable.
6. Photograph of the defendant.

*Offender Facesheet:* The intake officer shall gather all demographic information concerning the defendant and all other bail information using this departmental form.

*Conditions of Bail Release:* The intake officer shall review the standard conditions of bail release and any other special conditions imposed by the issuing authority or court (See Pages 31 & 32 of this Policy Statement).

*Purpose of Imposing Conditions:* Conditions of the pretrial services program shall serve three purposes:

1. To ensure the appearance of the offender as required by the bond.
2. To assist the offender during the pre-verdict phase.
3. To protect the safety and security of the community.

*Authority to Impose Conditions of Bail:* The issuing authority or court shall attach such reasonable conditions of bail, which are least restrictive in nature, and in accordance with 42 Pennsylvania Rules of Criminal Procedure, Rule 526, 527 and 528.

*Modification of Bail Order:* The issuing authority or judge of common pleas may modify the bail order in accordance with 42 Pennsylvania Rules of Criminal Procedure, Rule 529.

*Electronic Monitoring Condition:* Any defendant placed in the pretrial services program with a special condition of electronic monitoring imposed by the issuing authority or court shall comply with all rules and regulations of the electronic monitoring program, including payment of all daily monitoring fees as established by the court.

*Surety Responsibility Form:* The surety of the bail bond should execute this form in the presence of the defendant and the intake officer. However, if the surety is unavail-

able at the time of the initial intake, then the form shall be forwarded to the surety for completion (See Page 33 of this policy statement).

*Bail Information Sheet:* The intake officer shall gather specific information concerning the defendant's prior criminal history and health issues (See Page 34 of this policy statement).

*Notice to Appear and Monitoring:* Defendants shall be provided written notification by the issuing authority for all scheduled hearings. The pretrial services officer shall inform all program participants of all scheduled hearings at the time of initial intake interview. During the course of pretrial supervision, the assigned officer shall continue to monitor court-scheduled hearings and provide appropriate levels of notification to the defendant for appearance.

*Monitoring Court Appearance Rates:* In order to determine the effectiveness of the pretrial service program, the Chief Adult Probation/Parole Officer shall monitor and gather statistical information concerning court appearance rates for all program participants.

### **Classificational Levels**

*Method of Supervision:* There shall be three (3) levels of classification established by the agency. Assignment criteria for each classification level shall be developed and documented in the offender case record to ensure conformity and equity to all offenders. The department shall adopt the following classification levels:

1. *Intensive Supervision Level and Contact Requirements:* The pretrial services officer shall maintain four (4) face-to-face contacts and two (2) collateral contacts monthly with the offender. Various reasons may exist for this classification level, which may include, but are not limited to the following:

- a. The instant offense was a crime against a person of a violent or sexual nature.
- b. The offender has a severe history of mental/emotional disorders or displays chronic alcohol or drug abuse.
- c. The offender has an extensive history of delinquent and criminal behavior.
- d. The offender is delinquent and not conforming to the prescribed conditions of bail release.
- e. Officer impressions of the offender based on prior contacts, experience, training or professionalism.
- f. The most serious offense in the criminal complaint is a felony.

2. *Maximum Supervision Level and Contact Requirements:* The pretrial services officer shall maintain two (2) face-to-face contacts and two (2) collateral contacts monthly with the offender. Various reasons may exist for this classification level, which may include, but are not limited to the following:

- a. The instant offense was against a person.
- b. The offender has a moderate history of delinquent behavior.
- c. The offender has a moderate history of mental/emotional disorders or alcohol/drug abuse.
- d. The offender is delinquent and not conforming to the prescribed conditions of bail release.
- e. Officer impressions of the offender based on prior contacts, experience, training or professionalism.

f. The most serious offense in the criminal complaint is a misdemeanor.

g. After a plea negotiation and signed stipulation, the felony offenses were reduced to misdemeanors.

3. *Close Supervision Level and Contact Requirements:* The pretrial services officer shall maintain one (1) face-to-face contact and one (1) collateral contact monthly with the offender. Various reasons may exist for this classification level, which may include, but are not limited to the following:

- a. The instant offense was against a property rather than a person.
- b. The offender is a first-time adult offender with no prior history of delinquent or criminal behavior.
- c. The offender has no history of mental/emotional disorders or alcohol/drug abuse.
- d. The offender is conforming to the prescribed conditions of release.
- e. Officer impressions of the offender based on prior contacts, experience, training or professionalism.
- f. The offender was placed on ROR or unsecured bond.
- g. After a plea negotiation and signed stipulation, the felony offenses were reduced to misdemeanors or the defendant was referred to the ARD Program.

*Administrative Supervision Level-Contact Requirements:* There shall be four (4) levels of classification established for administrative cases. Assignment criteria for each classification level shall be developed and documented in the offender case record to ensure conformity and equity to all offenders. The department shall adopt the following administrative classificational levels:

1. *Administrative Intensive Supervision Level and Contact Requirements:* The pretrial services officer shall maintain four (4) personal contacts and two (2) collateral contacts monthly with the offender. Various reasons may exist for this classificational level, which may include, but are not limited to the following:

- a. See this policy statement for intensive supervision level and contact requirements.
- b. The defendant resides outside Carbon County, is incarcerated or has been admitted to an inpatient treatment facility.
- c. Officer impressions of the offender based on prior contacts, experience, training or professionalism.

2. *Administrative Maximum Supervision Level and Contact Requirements:* The pretrial services officer shall maintain two (2) personal contacts and two (2) collateral contacts monthly with the offender. Various reasons may exist for this classificational level, which may include, but are not limited to the following:

- a. See this policy statement for maximum supervision level and contact requirements.
- b. The defendant resides outside Carbon County, is incarcerated or has been admitted to an inpatient treatment facility.
- c. Officer impressions of the offender based on prior contacts, experience, training or professionalism.

3. *Administrative Close:* The pretrial services officer shall maintain one (1) personal contact and one (1) collateral contact monthly with the offender. Various reasons may exist for this classificational level, which may include, but are not limited to the following:

a. See this policy statement for close supervision level and contact requirements.

b. The defendant resides outside Carbon County, is incarcerated or has been admitted to an inpatient treatment facility.

c. Officer impressions of the offender based on prior contacts, experience, training or professionalism.

*Administrative Jail:* The pretrial services officer shall maintain contact with the institution housing the defendant and verify a minimum release date.

*Administrative Reporting Schedules:* When an offender resides outside the jurisdiction of the department and is not being supervised by another department, then the following types of administrative reporting schedules shall be acceptable:

1. *Mail-in Reporting:* An offender placed on this reporting schedule shall maintain contact with the assigned officer in accordance with departmental requirements. The assigned officer shall provide the offender with a sufficient amount of mail-in forms upon placement on this type of reporting schedule.

2. *Phone-in reporting:* An offender placed on this reporting schedule shall maintain contact with the assigned officer in accordance with departmental requirements.

#### **Offender Contact Requirements**

*Documentation of Contacts:* The assigned officer shall document all personal and collateral contacts in the offender's case record.

*Office Contacts:* The department recognizes that certain circumstances may exist that prevents an officer from maintaining face-to-face contacts with an offender in the field. Therefore, special provisions exist for officers to schedule offenders for office appointments on a random basis. However, the department discourages officers from frequently relying on this method of supervision to replace community-based contacts since an after-hours work schedule is available for officers to contact offenders.

*Collateral Contacts—Law Enforcement Authorities:* The department mandates that officers maintain collateral contacts with local law enforcement authorities to enhance community supervision. This type of contact is an excellent source of information concerning the offender's adjustment in the community. The frequency of law enforcement collateral contacts shall be established based on the minimum requirements of the classification level assigned to the offender.

*Initial Field Contact:* The initial contact with the offender shall take place at the offender's residence within ten (10) scheduled field days from receipt of the case. The purpose of the initial field contact is to verify the residence, obtain a layout of the residence, verify all occupants of the residence, determine whether the possibility exists that weapons or illegal contraband could exist within the residence and determine whether the residence is a suitable environment for the offender's successful community adjustment.

#### **Portable Breath Testers, Urine Collection and Drug Testing Procedure**

*Authority to Drug Test:* The Carbon County Court of Common Pleas has established, as a general condition of bail, that it shall be a violation of supervision to possess/control/consume/sell narcotics, dangerous drugs or other controlled substances without a valid prescription. Therefore, drug testing of offenders should be unannounced, unless otherwise Court ordered, or depending on indi-

vidual needs as determined by the assigned officer. Scheduled urine screens with the Carbon-Monroe-Pike Commission are permissible under this policy statement.

#### **Assessment and Screening**

*Assessment and Initial Interview:* During the initial intake phase, the officer shall interview the offender and gather information concerning the offender's present and past history of substance abuse. The officer shall also consider the following when assessing an offender's substance abuse history:

1. Risk/Needs Assessment
2. Bail Information Sheet or Bail Report
3. Presentence Investigation
4. Prior criminal history record
5. Police reports

*Referral Process:* During the assessment and screening phase, the assigned officer shall identify whether the offender has a substance abuse problem. A treatment plan shall be developed and the offender referred to the Carbon-Monroe-Pike Drug/Alcohol Commission for either urine screening or counseling, if court ordered.

#### **Portable Breath Testers**

*Breathalyzers:* Offenders suspected of alcohol consumption in violation of their conditions of release shall be tested using any of the following methods:

1. Use of the agency breathalyzer.
2. Collection of a urine sample to be tested by a laboratory.

#### **Offender Urine Collection & Testing Requirements**

*Collection of the Urine Sample:* In order to ensure that the sample has not been adulterated, the officer must observe the offender purge into the collection container. Furthermore, if collecting the sample at the offender's residence, the officer should conduct a thorough search of the collection area prior to securing the sample.

*Drug-Free Urine Samples:* An officer who observes an offender attempting to use drug-free urine for the purpose of evading or causing deceitful results in a test for the presence of drugs shall confiscate all items and refer the matter to appropriate law enforcement officials for criminal prosecution (See 18 Pa.C.S.A. § 7509).

#### **Minimum Urine Collection Guidelines**

When it is determined that the offender has a substance abuse problem or the instant offense is drug-related, then the following minimum urine collection guidelines shall apply to all offenders placed under the supervision of the department:

1. *Intensive Supervision:* Offenders placed on this level of supervision shall have a minimum of four urine samples collected monthly.
2. *Maximum Supervision:* Offenders placed on this level of supervision shall have a minimum of two samples collected monthly.
3. *Close Supervision:* Offenders placed on this level of supervision shall have a minimum of one sample collected monthly.

*Administrative Cases:* Although this section of the policy statement is not compulsory, the department recognizes that offenders placed on this level of supervision and reside outside the jurisdiction of the department are difficult to contact. Therefore, when court ordered, the

officer shall attempt to coordinate with a facility in the offender's jurisdiction to collect and tests urine samples.

*Random Urine Collection:* Offenders not suspected of substance abuse or are unfamiliar to the department or officer shall be subject to random urine screens, which means that the officer shall secure one sample every three months.

#### **Response to Positive Urine Screens**

*Discussion:* Offenders under the supervision of the department must be held accountable when they test positive for illegal substances or alcohol. If offenders can violate the rules and regulations of release and fail to observe other requirements of supervision without any consequences, then none of the goals of community supervision, such as public protection, treatment and punishment can be achieved.

*Positive Urine Screen:* When an offender tests positive for an illegal substance, the officer shall consider the following sanctions:

1. Issue a written violation and complete an offender admission report.
2. Refer the offender for drug/alcohol treatment.
3. Increase the frequency of the offender urine schedule.
4. File a petition to revoke supervision.

*Termination from Urine Screens:* When an offender has successfully completed drug/alcohol treatment, then the offender may be terminated from a urine screen schedule. Further collection of random urine samples shall be at the discretion of the officer.

#### **Other Violation Process**

*Failure To Report After Placement in Program:* An offender, so ordered by the court, to report to the Carbon County Adult Probation/Parole Office for participation in the Pretrial Services Program and fails to do so, shall be subject to the following procedure:

1. The Pretrial Services Officer shall send certified and regular mailings to the offender's last known address scheduling an intake appointment.
2. Failure by the defendant to report for the intake appointment shall result in the issuance of a warrant for the offender's arrest and the filing of a Petition to Revoke Bail.

*Investigation of Technical Violations:* The assigned officer shall investigate all technical violations of the prescribed conditions of supervision within five working days. All witnesses, victims, police officers or interested parties involved with the alleged violations shall be contacted and interviewed by the officer. All relevant documentation shall be obtained and recorded in the offender's case record. Written violations reports shall be signed by the offender within ten working days after initial contact with the offender and submitted to the Chief Adult Probation/Parole Officer for review and approval.

*Investigation of New Criminal Offense Violation:* When an offender is arrested for new criminal charges, the assigned officer shall obtain the criminal complaint and affidavit of probable cause from the arresting agency. Typically, a bail revocation hearing shall be scheduled after a Primia Facia case has been established by the Minor Judiciary.

*Levels of Review:* The department, the Court or issuing authority shall prescribe the levels of review and decision making process for violations of the conditions of release as follows:

1. *First Level:* At this level, when infrequent or isolated minor violations of supervision occur, then the following initial violation process shall be utilized:

a. *Verbal Reprimand:* The assigned field officer can resolve infrequent or isolated minor violations of supervision with direct consultation with the offender. All verbal reprimands shall be documented in the offender case record.

2. *Second Level:* At this level, when continued minor violations of supervision occur or a major violation occurs, then the following violation process shall be utilized:

a. *Written Reprimand:* The assigned field officer can resolve repeated minor violations or a major violation of supervision with direct consultation with the offender through a written violation report. All violation reports shall be placed in the offender case record, a copy provided to the offender and the original submitted to the Chief for review.

3. *Third Level:* At this level, when frequent and repeated minor violations or major violations of supervision occur, then the following violation process shall be utilized:

a. *Administrative Conference:* Frequent and repeated minor or major violations of supervision shall result with direct consultation with the Chief Adult Probation/Parole Officer, the assigned officer and the offender. The original administrative conference report shall be retained in the offender's case record with a copy furnished to the offender.

4. *Fourth Level:* At this level, when frequent and repeated minor or major violations of supervision occurs, and the offender's has not conformed to the conditions of release and has not made an adequate adjustment in the community, then the following violation process shall be utilized:

a. *Arrest Warrant:* Repeated violations of supervision for minor or major violations will result in the issuance of an arrest warrant pursuant to this policy statement.

b. *Revocation Petition:* Repeated violations of supervision for minor or major violations will result in the filing of a revocation petition with the Clerk of Courts Office or notification with the appropriate Magisterial District.

*Progression of Review:* Generally, progressive levels of review shall not be required in situations where the offender's actions or violations of supervision pose a serious threat to himself, property, others or the community.

*Minor Violations of Supervision:* The following is a list of minor violations of supervision:

1. Failure to report to the assigned pretrial services officer as directed.
2. Change of residence without knowledge of the pretrial services officer.
3. New arrest for a summary offense.
4. Leaving the Commonwealth of Pennsylvania.
5. Failure to report to a treatment agency for counseling or urine testing.
6. Any other violation, which does not pose a serious threat to the offender, property, others or the community.

*Major Violations of Supervision:* The following is a list of major violations of supervision:

1. New arrest for Misdemeanor or Felony offenses.
2. Possession of controlled substances or drug paraphernalia.
3. Positive urine screen.
4. Failure to appear for court scheduled hearing.
5. Alcohol possession or consumption, when applicable.
6. Intimidation or retaliation against witnesses or victims.
7. Any other violation, which poses a serious threat to the offender, property, others or the community.
8. Violation of any specific condition imposed on the offender by the court or issuing authority.
9. Relocating from the approved residence and the offender is considered an absconder.
10. Repeated minor and major violations.
11. Failure to permit officer access to residence
12. Possession of weapons, if applicable.

*Officer Recommendations:* Officers completing and presenting written violation reports to the Chief Adult Probation/Parole Officer shall include appropriate recommendations for corrective action or case disposition.

*Annual Review:* The Court and the department shall conduct an annual assessment of all categorized violations of supervision.

#### ***Investigation of Detected Program Violations***

The assigned officer or on-call officer shall investigate all violations of the pretrial services program immediately after detection. All relevant information and documentation concerning violations shall be obtained with all persons involved being interviewed, if applicable. Upon determination of the specific violation, the officer shall follow the violation process as described in this policy statement.

#### ***Investigation of Program Violations (After Normal Business Hours)***

Response to program violations after normal business hours shall occur as follows:

1. *On-Call Schedule:* The Chief Adult Probation/Parole Officer shall prepare and post an on-call schedule. All Adult Probation/Parole Officers will be scheduled and rotated on a weekly basis and shall be responsible for the following:

- a. The on-call officer must wear the digitized pager at all times. Failure to respond to a page will result in appropriate disciplinary action.
- b. The on-call officer will be responsible for the pager. If the pager is damaged or lost, the cost of the pager may be assessed to the officer if negligence is determined.
- c. Modifications to the on-call schedule are permitted. Prior arrangements shall be made with the Chief to ensure proper coverage.

2. *Home Electronic Monitoring Violations:* In the event that an electronic monitoring violation occurs, the following procedures shall be utilized:

- a. The central monitoring station has been provided a procedure to notify the Carbon County Communications Center for program violations.

b. The Carbon County Communications Center shall be provided all officer pager numbers and personal telephone numbers.

c. An intermediate punishment program manual will be provided to all officers as a reference guide. All telephone numbers will be available within the manual.

d. When the pretrial services on-call officer is notified of a program violation, the officer shall respond to the page immediately. If the violation is for home electronic monitoring, the officer shall contact the central monitoring station to determine the nature of the violation. If the monitoring center cannot correct the problem, then the officer shall contact the offender to resolve the problem. If the problem cannot be rectified over the telephone, then, the on-call officer must respond to the residence to investigate the violation. However, before conducting the field investigation, the officer shall contact the back-up on-call officer for authorization and then contact the general supervision on-call officer for possible assistance. The pretrial services on-call officer shall not conduct a field investigation alone and without proper authorization from a supervisor.

*Supervisor Unavailable After Hours:* When the primary on-call officer receives an after-hours page concerning a program violation and the secondary on-call officer or other supervisor cannot be contacted, then the primary on-call officer shall rely on experience, judgment and this policy statement when conducting a field investigation or detaining an offender. Authorization shall be implied under these circumstances.

*Violations at Minor Judiciary Level:* If an offender placed under pretrial services violates any conditions of the program, and the defendant has not had a preliminary hearing, then the officer shall notify the appropriate magistrate and inform the court of the nature of the violations.

#### ***Search and Seizure***

*Authority to Conduct Search and Seizure:* As a standard condition of the pretrial services program, all adult probation/parole officers are in a supervisory relationship with their offenders. The purpose of this supervision is to assist the offenders in their rehabilitation and to protect the community. Therefore, pretrial offenders shall be subject to searches of their property, person or vehicle at the request of the officer.

*Reasonable Suspicion Standard:* An adult probation/parole officer may conduct a search if there is reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision. The following factors, where applicable, may be taken into account:

1. The observations of the officer.
2. Information provided by others.
3. The activities of the offender.
4. Information provided by the offender.
5. The experience of the officers with the offender.
6. The experience of the officers in similar circumstances.
7. The prior criminal and supervisory history of the offender.
8. The need to verify compliance with the conditions of supervision.

*Other Circumstances for Search:* An officer may conduct a search under the following circumstances:

1. When an offender is transported or taken into custody;
2. A property search may be conducted by any officer if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

*Supervisor Approval:* Prior approval from a supervisor to conduct a property search shall be obtained absent exigent circumstances. No prior approval shall be required for a personal search. Exigent circumstances shall include, but not limited to:

1. Officer safety.
2. Strong suspicion that the contraband might be destroyed.
3. The offender may be in possession of a weapon.
4. The property is a vehicle.
5. A supervisor is unavailable for approval.

*Written Report:* A report of every property search conducted without supervisor approval shall be prepared by the officer and filed in the offender's record. The exigent circumstances shall be stated in the report.

#### **Arrest Process**

*Authority to Arrest Offenders in a Pretrial Services Program:* Pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 536, the Carbon County Adult Probation/Parole Office is the recognized bail agency for the Common Pleas Court and shall have the authority to arrest offenders in violation of the conditions of bail ((See Administrative Court Order No. 17-2001),

*Use of Force Model:* See Administrative Court Order 20-2003.

*Factors Determining Arrest of an Offender:* The following factors should be considered by the officer when considering to arrest a pretrial service offender:

1. The risk the offender poses to the community.
2. The offender was arrested for a new criminal offense.
3. The offender has continued to use illegal substances.
4. The offender has repeatedly committed minor and/or major violations.
5. The offender has absconded from supervision.
6. The offender has engaged in conduct, which threatened the safety and well being of the community and others.
7. The offender has not followed through on his/her treatment plan.
8. The offender possessed or controlled weapons or firearms.
9. The offender had contact with the victim, witnesses or other family members of the victim.
10. Other factors, in the opinion of the officer, that poses a threat to the community.

#### **Arrest Planning**

*Planned Field Arrest:* Prior to effectuating any arrest, the arrest team shall consult with his/her immediate supervisor and consider the following:

1. The offender's propensity for violence.
2. The offender's criminal history, including the instant offense on supervision.
3. Availability of law enforcement personnel for assistance.
4. Lay-out of dwelling, including number of residents or significant others, whom may be present.
5. Task assignments to officers participating in the arrest.
6. There shall be no less than four officers present for a planned arrest.

*Planned Office Arrest:* When offenders are arrested in the department, the following shall be considered when making an office arrest:

1. The offender shall be arrested inside the office setting, and not in the hallway.
2. All agency personnel present shall be notified by the assigned officer that the offender is going to be arrested.
3. The Sheriff's Department shall be notified of any arrest, regardless of the availability of deputy sheriffs.
4. Typically, the Sheriff's Department shall transport the offender to prison, however, if Deputy Sheriff's are unavailable, then two adult probation officers shall transport the offender to prison.
5. Conduct a systematic search of the offender prior to leaving the office.

*Field Arrest:* When offenders are arrested in the field, the following procedure shall be considered:

1. Consult with an immediate supervisor in order to properly plan the arrest.
2. Notify the local police department that an arrest is being made in their jurisdiction and request assistance, if available.
3. See Arrest Planning of the policy statement.

*Request for Law Enforcement Assistance:* County adult probation/parole officers may lawfully request assistance of local law enforcement personnel other than another adult probation officer, to arrest an offender for technical violations without a warrant or court order {See Commonwealth v Lyons, 555 A.2d 920, 382 Pa.Super 438, 1989 and P.S. § 309.1}. Absence of adult probation officer at time local law enforcement personnel effectuated warrantless arrest for technical violation did not render arrest illegal where arrest was made pursuant to adult probation officer's request {See 16 P.S. § 1216; 61 P.S. § 309.1; 42 Pa.C.S.A. § 8952 and 42 Pa.C.S.A. § 8953}.

*Sheriff's Department Jurisdiction:* Deputy Sheriff's have express authority to assist adult probation officers in effecting warrantless arrest for violators, even though outside their own jurisdiction {See Commonwealth v Lyons, 555 A.2d 920, 382 Pa.Super 438, 1989 and 61 P.S. § 1216; 61 P.S. § 309.1; 42 Pa.C.S.A. § 8952 and 42 Pa.C.S.A. § 8953}.

*Petition to Revoke Bail:* When a determination is made that the defendant is no longer amenable to supervision, then a Petition to Revoke Bail shall be completed and filed with the Clerk of Courts Office (See Page 35 of this Policy Statement).

*Warrant for Arrest:* When a determination is made that the defendant is no longer amenable to supervision and considered a risk to the community, then a warrant for arrest shall be executed (See Page 35 of this Policy Statement).

*Detainers:* When an offender is incarcerated on unrelated criminal offenses that occurred while on bail supervision, then a detainer may be lodged against the defendant (See Page 36 of this Policy Statement).

*Supervisor Approval:* All Petitions to Revoke Bail and Warrant for Arrest must be reviewed and approved by a supervisor prior to submission to the court.

*Critical Incident Report:* See Administrative Court Order 20-2003.

### **Bail Reports**

*Primary Purpose:* The primary purpose of the bail report is:

1. To provide the issuing authority or court with timely, relevant and accurate information concerning the offender,
2. To collect information necessary for making a bail determination.

*New Admissions:* The pretrial officer shall contact the Carbon County Prison daily for all new prison admissions and obtain all identifying information from prison administration on the inmate.

*Timetables for Completion:* The pretrial services officer shall conduct a timely interview with the defendant at the earliest time possible after the arrest and commitment to prison. Ideally, the officer should conduct the initial interview within twenty-four (24) hours of detention on weekdays and seventy-two (72) hours of detention on weekends.

*Universal Screening:* Except in those cases where the court has no jurisdiction to effect release, all defendants in custody shall be interviewed, regardless of the nature of the instant offense. The following exceptions shall apply:

1. Indirect criminal contempt (PFA Violators).
2. Bench Warrants for Failure to Appear or Domestic Relations.
3. Probation/Parole violators.
4. Fugitives From Justice.

*Agency Resources and Assignment of Reports:* The agency has created a specialized unit that processes and completes all bail reports through the pretrial services division. The Chief shall assign all bail reports to the pretrial services officer. However, whenever time constraints prohibit, or resources are limited, the Chief or other staff personnel may assist in the preparation of these reports. Also, universal-screening practices may be adjusted to maximize the impact of pretrial intervention when workloads may prohibit such screening procedures.

*Necessary Documentation From Issuing Authority or Magistrate:* When an offender is incarcerated and a bail interview is required, the pretrial services officer shall obtain a copy of the criminal complaint, affidavit of probable cause and the bail piece from the appropriate Magistrate.

*Criminal History Records:* Once the pretrial services officer obtains the identifying information from prison officials, the officer shall immediately notify the Carbon County Communications Center to obtain a criminal

history on the offender through the Commonwealth Law Enforcement Assistance Network (CLEAN) as follows:

1. Complete a request for criminal history form as developed by the 911 Communications Center and submit the form to the center with the department's Originating Agency Identifier (ORI).

2. Once the agency is operational with the Justice Network (JNET), then the officer will be able to generate his or her own criminal history for Pennsylvania.

3. However, until operational, if the offender has an out-of-state criminal history, then the officer shall request from the 911 Communications Center a criminal history through National Crime Information Center (NCIC).

*Initial Interview and Collection of Information:* The pretrial services officer shall conduct a structured interview with the defendant, either face-to-face or by video conferencing. The officer shall gather information from the defendant using the following areas of discussion:

1. Criminal history information
2. Employment history
3. Marital information
4. Financial information
5. Medical/Health Information
6. Military Information
7. Family History
8. Community and Neighborhood Information
9. Educational Information
10. Identifying Information

*Questions Concerning the Alleged Incident:* Pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 530 (B), the representative of the adult probation/parole office who obtains information from the defendant shall both orally and in writing, advise the offender that anything said may be used against the defendant. The interview process shall not include any questions or discussions concerning the alleged incident. Such questions may impede the program's ability to conduct impartial inquiry.

*Training:* The Chief shall determine appropriate levels of training in the preparation of investigative reports, which shall include specialized training involving interviewing skills and techniques or report writing.

*Interview of the Defendant:* The pretrial services officer shall interview the defendant in accordance with this policy statement. The writer of the report must plan the interview before it actually begins. This approach will make the interview more effective, efficient and structured, which should reduce the risk of requiring an additional interview. Before the interview begins, the investigator should inform the defendant of the nature and purpose of the interview and the report. During the interview, the investigator should develop an interview sequence, which would make the offender more willing to communicate. The sequence should be a statement that introduces the topic, questions that elicit the information and probes that clarify or elaborate on the information obtained from the question. The investigator shall record all information obtained from the defendant.

*Video Conferencing:* The interviewer shall coordinate with prison officials to conduct the interview using video conferencing.

*Content of the Bail Report:* The following information shall be gathered and included in the body of the report:

1. *Identifying Information (Cover Sheet):*
  - a. Date of Report, Name, Aliases, address, age, date of birth and social security number
  - b. Sex, Race and Citizenship
  - c. Education and Marital status
  - d. FBI , SID and OTN Numbers
  - e. Docket Number, Criminal Offenses, Gradation, Statutory Citation and Custody Status
  - f. Name of Judge, Bail Amount, Offense, Arrest and Commitment Dates
  - g. Detainers or other pending charges, Co-defendants
  - h. Height, Weight, Eye Color, Hair Color, Marks, Scars or Tattoos
  - i. Prior record history summary
2. *Criminal History:*
  - a. All prior juvenile arrests or adult arrests shall be verified in writing. Exceptions shall be permitted for telephonic verification when time constraints prohibit the acquisition of written documentation.
  - b. Obtain criminal records from rap sheets from state and federal repositories, District Attorney's File, Clerk of Courts Office, other probation offices, local police departments, local magistrates, previous presentence reports, and internal management information systems.
  - c. List of previous juvenile arrest/adjudications (information must include docket number, offense date, place of arrest, arresting agency, offense, disposition date, sentence date and disposition).
  - d. List of previous adult convictions (information must include docket number, offense date, place of arrest, arresting agency, offense, disposition date, sentence date and disposition).
  - e. Military arrests (information must include, docket number, offense date, place of arrest, arresting agency, offense, disposition date, sentence date and disposition).
  - f. Previous probation and parole supervision (information must include revocations and failure to appear history).
  - g. Detainers or pending charges presently lodged against the defendant.
3. *Family History:*
  - a. Name, address, age and telephone number of biological parents or stepparents.
  - b. Name, address, age and telephone number of all siblings or stepsiblings.
  - c. Early developmental influences, such as physical, mental or sexual abuse which may have a significant impact on the defendant's present behavior or personality.
  - d. Attitudes of the defendant towards his relationship with his family, including discipline, affection or rejection.
  - e. Whom defendant was reared, if other than parents.
  - f. Relationships with all family members and extent of family solidarity.
  - g. Interview with adult family members, who reside with the defendant, concerning defendant's suitability to reside at the residence, if released from prison.

h. Other significant information provided by the defendant.

#### 4. *Marital Status:*

- a. Present marital status, including common law (include date, place, name, address, age, and telephone number of spouse or paramour).
- b. List name, age and address of all children produced by the defendant, including the name of the other biological parent.
- c. Previous marriages (including date, place, name of previous spouse). If divorced, cite reasons for the separation.
- d. Domestic violence history, including the filing of a protection from abuse order, (only when the instant offense involves a victim of domestic violence).
- e. Interview with spouse or adult children, if they reside with the defendant.
- f. Other significant information provided by the defendant.

#### 5. *Home and Neighborhood:*

- a. Description of home or residence and physical verification of same, when offender resides in Carbon County. When a defendant resides outside Carbon County, then the investigator must verify the residence telephonically.
- b. List all prior residences, length of residency and with whom the defendant resided.
- c. Description of defendant's ties to the area, if any (including family or friends).
- d. Other significant information provided by the defendant.

#### 6. *Health:*

- a. Defendant's general medical condition or health problems, current or previous.
- b. Drug and alcohol related history (including frequency of use; age when first started experimentation; prior treatment; prior criminal activity related to drug/alcohol problems).
- c. Mental Health related history (including social adjustment; prior mental health treatment; reasons for admission; discharge diagnosis).
- d. Assaultive Conduct (including any prior convictions or arrests for assaultive behavior, impressions of the investigator as to the risk the offender poses to the community).
- e. Sexual Conduct (including any prior convictions or arrests for sexual assaultive behavior, impressions of the investigator as to the risk the offender poses to the community).
- f. Other significant information provided by the defendant.

#### 7. *Employment:*

- a. List current employer (information must include name, address, position, wages, and dates of employment).
- b. Interview current employer for verification purposes (information must include, name, address, position, wages, dates of employment and risk of losing position).



c. If the defendant objects to the investigator interviewing their employer, then the investigator shall not conduct the interview, but include that information in the body of the report.

d. Only include a list of previous employers for a period of five years (information must include, name, address, position, address, wages, dates of employment and reason for leaving).

e. List all skills, interests and abilities.

f. List attendance at vocational or technical schools and certificates.

g. List other sources of income (including disability, retirement, public assistance).

h. Other significant information provided by the defendant.

#### 8. *Education:*

a. Highest grade achieved.

b. Post high school education.

c. Age left school and reason.

d. Other significant information provided by the defendant.

#### 9. *Military Record:*

a. Branch of military service, serial number and dates of enlistment and discharge.

b. Highest grade or rank achieved.

c. Type of discharge.

d. Other significant information provided by the defendant.

#### 10. *Financial Status:*

a. Assets: Statement of financial assets and general standard of living (Houses, vehicles, property, accounts, investments, stocks, bonds, etc.)

b. Financial obligations (Including mortgage, household expenses, child support, court costs).

c. Other significant information provided by the defendant.

#### 11. *Sources of Information:*

a. Cite all sources of information.

#### 12. *Official Version (Affidavit of Probable Cause):*

a. A copy of the criminal complaint shall be included in the body of the report.

#### 13. *Supervision Plan:*

a. In all cases, the interviewer shall identify problematic areas with the offender and recommend special conditions to the issuing authority or judge for inclusion in the bail piece.

#### 14. *Signature Page:*

a. Signature of investigator and date.

b. Signature of approval by Chief or supervisor and date.

#### 15. *Assessment Tool:*

a. An assessment tool has been developed by the department and shall be completed on every offender and included in the body of the bail report.

*Report Formats:* All information shall be prepared using report formats adopted by the court and the agency.

1. *Bail Report Format:* This format focuses on a topic outline and prepared in a narrative form, outlining key factors.

*Report Writing:* The report shall be prepared in a clear, thorough and concise manner, writing in the active voice. The investigator shall distinctly label what are opinions, conclusions and facts and cite and identify the source, with all information being verified. The investigator shall use wording that everyone understands and describe people, things and events in operational terms.

*Uncooperative Defendant:* During the interview phase, if a defendant fails to cooperate with the investigator, then the investigator shall notify the issuing authority that the defendant has failed to cooperate during the interview process.

*Verification of Information:* The defendant shall be informed that the interview is designed to obtain information concerning bail consideration and that all information gathered will be verified. The investigator shall verify the following information:

1. Prior Criminal Record History

2. Defendant's Address

3. Family ties to the area (interview adult occupants of the residence).

4. Employment or schooling (interview employer or school officials, when applicable).

*Purpose of Verification:* The rationale for verification is based on the following:

1. It allows the interviewer an opportunity to confirm the accuracy of the information gathered.

2. It may serve as a notification to family or friends of the arrest.

3. It may provide useful information to the court concerning serious health problems or drug/alcohol dependency problems that may require immediate attention by the court of prison personnel.

4. It adds credibility to the interview information.

*Address Verification:* The investigator shall verify the offender's residence using the following standards:

1. When an offender resides in Carbon County, the officer must physically inspect and verify the residence to determine whether the offender can reside there if released from custody.

2. The officer must attempt to gain entrance and interview a resident, however, if the officer cannot gain entrance, then this information shall be included in the body of the bail report.

3. Telephonic interview with a resident is acceptable if the officer cannot gain access to the residence.

4. When an offender resides outside of Carbon County, then telephonic verification is required, however, if the officer cannot contact a resident, then this information shall be included in the body of the bail report.

5. If the offender resides alone, then the officer must contact the landlord or family member. If the officer cannot contact the landlord or family member, then this information shall be included in the body of the bail report.

6. The officer shall only include the defendant's prior addresses within the past three (3) years.

*Objectivity:* The investigator shall remain objective when preparing the report. The writer shall avoid and

eliminate previous experiences, stereotypes, prejudices and biases when completing the report.

*Documentation:* During the investigative phase, the investigator shall document all information and maintain accurate records.

*Review of the Report:* Prior to submission of the report to the appropriate issuing authority, the Chief or supervisor shall review all bail reports for investigative conduct, report preparation, content and accuracy.

*Submission of the Report:* The completed bail report shall be submitted to the following parties in advance of the scheduled preliminary hearing:

1. The issuing authority (Magistrate).
2. The District Attorney's Office.
3. Defense Counsel or defendant, if unrepresented.

*Confidentiality of Bail Report:* Pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 530(C), all bail reports shall be declared confidential and not of public record.

*Confidentiality During the Investigative Process:* The issue of confidentiality shall extend beyond the courtroom and shall permeate the entire investigative process. From initial receipt, to final disposition, the investigator shall take the necessary safeguards to ensure that the process shall remain confidential and that no information shall be disclosed, unless in accordance with this policy section.

*Disclosure to Other Interested Parties:* Pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 530(C), the bail report shall be disclosed to the following interested parties:

1. Defense Counsel and/or the defendant, if unrepresented,
2. The issuing authority or judge setting the bail,
3. The attorney for the Commonwealth,
4. Probation Department preparing a presentence investigation,
5. Other interested parties, provided the defendant has signed a release of information form indicating such disclosure.

### **Criminal History Procedure**

*Criminal Justice Agencies:* The Carbon County Adult Probation/Parole Department is recognized as a criminal justice agency in the Commonwealth of Pennsylvania (See 18 Pa.C.S. § 9102).

*Criminal History Records Information Security, Access and Training:* All criminal history record information compiled on a criminal defendant shall be stored in the appropriate offender case folder. All offender case folders shall be stored in a secure area within the department, such as, locked filed cabinets. All agency personnel shall have access to this information and shall receive appropriate levels of training concerning this policy statement.

*Right of Access and Review:* Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information. Any individual or legal representative requesting to review his or her criminal history record information shall submit proper identification to the department for the review. Any individual or legal representative that challenges the accuracy of the criminal history record information must specify which portion of the record is incorrect and specify what the corrected

version should be. The burden is on the defendant to prove any inaccuracies. The appellate courts have ruled "... information concerning prior convictions in the report is presumed to be valid, which presumption can only be rebutted by the defense, and need not be supported by evidence from the Commonwealth unless and until a challenge is voiced" [See 18 Pa.C.S. § 9151 and Commonwealth v. Charles, 339 Pa. Super. 284, 296, 488 A.2d 1126, 1132 (1985)]. However, the Carbon County Adult Probation/Parole Department agency shall not provide any individual or his legal representative with any criminal history documentation supporting the offender's criminal history record information. The individual shall be referred to the Pennsylvania State Police to secure and complete a "Request for Criminal Record Check," which fee shall be paid by the offender (See 18 Pa.C.S.A. § 9152).

*Compiling Criminal History Record Information:* Whenever the pretrial services officer initiates an investigation into the offender's criminal background, the investigator shall:

1. Obtain a FBI and Pennsylvania criminal rap sheet (through NCIC and CLEAN) from the Carbon County Communications Center by providing the agency with the department's ORI number, which can be obtained from the Chief Adult Probation/Parole Officer. The investigator shall provide the communications center with the following information on the defendant:
  - a. Offender's last, first and middle name, if available.
  - b. Date of Birth.
  - c. Social Security Number.
2. Run own criminal history once JNET connectivity is established.
3. Review the District Attorney's Office file on the offender for possible criminal history record information.
4. Review the department's management information systems for possible criminal history record information contained in an offender's case folder.
5. Review juvenile court records.
6. Interview the defendant concerning any prior juvenile or adult arrests, convictions or adjudications.

*Juvenile Record:* Whenever the investigator initiates an investigation into the calculation of the offender's criminal background, the investigator shall:

1. Review local juvenile court records.
2. If the offender discloses a juvenile record in another jurisdiction, then the investigator shall contact the appropriate jurisdiction for juvenile arrest records.
3. Interview the defendant concerning any prior juvenile or adult arrests, convictions or adjudications.

*Verification of Criminal History Record Information:* The investigator shall obtain and verify all prior adult criminal convictions and juvenile arrests/adjudications, when time constraints permit, as follows:

1. Obtain written documentation from the jurisdiction requesting the following information:
  - a. Arresting agency and location
  - b. Date of the offense
  - c. Criminal charges with gradation, OTN number and Docket Number
  - d. Date of disposition (e.g. guilty plea, found guilty)

e. Date of sentence and disposition type (probation, incarceration)

f. Order of Court (guilty plea, sentencing)

g. Previous presentence investigations

2. The department recognizes, that in some instances, time constraints will prohibit the acquisition of written documentation; therefore, the pretrial investigator can verify the above-mentioned information using telephonic means.

3. Facsimile transmissions of documentation are acceptable.

*Incomplete Prior Records:* The investigator shall not record and utilize any criminal history record information that cannot be verified through written or oral methods, unless the defendant discloses such information and does not contest the accuracy of the record.

*Dissemination of Criminal History Record Information to Non-Criminal Justice Agencies:* All inquiries from non-criminal justice agencies shall be referred to the Carbon County Clerk of Courts Office.

*Telephonic Requests for Criminal History Record Information:* When a telephonic inquiry is made by a criminal justice agency for criminal history record information, and the source of the inquiry is unfamiliar to the department, then a written request, on agency letterhead, must be submitted to the department before any information shall be disseminated.

*Secondary Dissemination of Criminal History Records (Rap Sheets):* Any criminal history records (rap sheets) received by the department through a formal inquiry from the Carbon County Communications Center is prohibited from being secondarily disclosed to any criminal justice or non-criminal justice agency.

*Training:* The Chief Adult Probation/Parole Officer shall provide appropriate levels of training concerning this policy section.

*Misuse of Criminal History Records:* Any departmental employee who violates this policy statement and who obtains a criminal history record from the Carbon County Communications Center or through JNET, other than for work-related purposes, shall be subject to disciplinary action, including termination.

*Destruction of Criminal History Records:* All criminal history records, if printed through JNET, shall be shredded after use and not stored in the offender's folder.

*Dissemination Log:* When the officer provides a copy of a criminal history record to another criminal justice agency, then a dissemination log must be completed and attached to the offender's folder. The log shall contain the date, agency requesting the information, the offender's name and case number and the person who released the information.

### **Nominal Bail Requirements**

*Minimum Bail Amount Requirements:* Whenever the issuing authority establishes nominal bail, the following minimum bail amount shall be used to determine participation in the Carbon County Pretrial Services Program.

1. *Minimum Bail Amount Requirement:* Whenever an offender is afforded bail in the sum of \$2,500.00 or less (\$250.00/cash percentage or less), then the offender will not be considered for pretrial service intervention, unless otherwise court ordered.

### **Case Records**

*Offender Case Record Information:* Once all intake paperwork is completed and received by agency clerical staff, then the following case record information shall be prepared and completed for filing and distribution:

1. *Offender Face Sheet:* All sections of the offender face sheet shall be completed and distributed to the pretrial services officer, along with the digital photograph of the offender.

2. *Case Record Folders:* All case record folders opened by the department shall be assigned an identification file number. This number shall be created based on a numerical sequential catalog system. Clerical staff shall maintain a record of the assigned case record folder numbers for easy identification and retention. All active folders shall be placed in the active file cabinets in alphabetical order.

3. *Case Record Folder Labels:* Colored coded labels will be attached to every folder. The label information shall include the offenders name, the assigned identification file number and the docket number, if available. Colors assigned to the case record folders are as follows:

- |                             |              |
|-----------------------------|--------------|
| a. ARD Offenders:           | Pink label   |
| b. Parole Offenders:        | Yellow label |
| c. Probation Offenders:     | Blue label   |
| d. Intermediate Punishment: | Green Label  |
| e. Pretrial Services:       | White Label  |

*Distribution of Case Folder Documents:* Clerical staff will be responsible for all copies and the distribution of case folder documentation to the pretrial services officer and other court related agencies.

*Security of Case Records:* All case records not being utilized by agency personnel shall be maintained in a secure location. Active case records shall be directly supervised and controlled by the assigned officer.

*Privacy of Case Folders:* Information contained in the offender case folder is strictly prohibited from disclosure to third parties, unless the offender signs a "Consent to Obtain and Release Information Form" stating what specific information is to be disclosed. Agency personnel are exempt from this policy, however, any employee witnessed removing or disclosing case record information without proper authorization and breaching offender confidentiality shall be subject to disciplinary action, including termination.

1. *Exceptions to this Section:* The following entity will have unlimited access to the offender case folder:

- a. Carbon County Court of Common Pleas
- b. Carbon County District Attorney's Office

*Limited Access:* The following agencies shall have limited access to the offender case folder:

1. The Carbon County Children and Youth Services.
2. Other probation/parole agencies.
3. Military personnel conducting background investigations.
4. Law Enforcement Agencies.
5. Defense counsel.
6. Other court-related offices.

*Confidential Information:* Agencies that have limited access will not be entitled to review any treatment documentation, such as mental health or drug/alcohol reports.

*Record Review:* The Chief Adult Probation/Parole Officer shall review the case record maintenance procedure on an annual basis.

*Discharged Offenders:* When a case record has been terminated, agency clerical staff shall inspect and purge the offender case folder from all duplicated documents. Records of discharged offenders shall be maintained in accordance with procedures adopted by the Court, the agency and the Archives Department. All inactive case folders shall be removed from the office and retained in the Archives Department for microfilming. Destruction of all inactive case folders shall be in accordance with policy and procedure adopted by the Courts, the Archive's Department or statute.

#### **Termination Criteria**

*Termination Criteria:* The following criteria shall be utilized to determine when an offender shall be terminated from the program:

1. Final disposition of the criminal charges (when the offender was sentenced to ARD, probation, parole, intermediate punishment, fine, probation without verdict or partial or total confinement).
2. Charges were dismissed, withdrawn or Nol Prossed.
3. Bail was revoked and the offender was remanded to prison.
4. A Rule 586 was negotiated (See 42 Pa. Rules of Criminal Procedure Rule 586).
5. The offender was sentenced on another matter and is currently under supervision by the department.
6. Bail reduction to ROR or Unsecured Bond, unless otherwise court ordered.
7. The defendant failed to appear for a court appearance.

#### **Petitions To Reduce Bail**

*Petitions to Reduce Bail:* If referred by the court for investigation, the pretrial services officer shall be given at least twenty-four (24) hours notice of presentation of a petition by the defendant to reduce bail in all criminal matters. Defense counsel and the District Attorney shall make an effort to agree on an appropriate amount of bail and any special conditions. If an agreement cannot be reached on the petition, the Court shall schedule a hearing.

*Investigation of the Petition To Reduce Bail:* The pretrial services officer shall interview and obtain the position of the assigned District Attorney on bail reduction. If the District Attorney opposes the petition, then the pretrial services officer shall interview the defendant and verify the contents of the petition. A bail recommendation shall be prepared, which shall include any special conditions. The Chief shall review the recommendation and forward the recommendation to the Court. The pretrial

services officer may be required to testify at any subsequent bail reduction hearings.

*Time Constraints for Investigation:* When the pretrial services officer receives a petition for bail reduction, the officer must complete his investigation and submit a recommendation to the court no later than five (5) working days from receipt of the petition. A supervisor can only make exceptions to this requirement.

#### **Management Information Systems**

*Database Management:* The Chief Adult Probation/Parole Officer shall maintain caseload statistical information in a database system for all defendants placed in the pretrial services program, as well as, maintain a roster of all bail reports completed by the pretrial services officer.

#### **Performance Standards**

*Pretrial Services Performance Standards:* The pretrial services officer shall adhere to all performance standards established by the department pursuant to the supervision of all pretrial offenders placed under the jurisdiction of the department and pursuant to the completion and submission of the bail report.

#### **Disciplinary Process**

*Violations of this Policy Statement:* Any violations of this policy statement could result in disciplinary action, including termination (See Article 41 of the Common Pleas of Carbon County Personnel Policy and Procedure Manual for Court Employees).

#### **SURETY AND DEFENDANT RESPONSIBILITIES:**

##### **NOTICE TO APPEAR**

Under the local rules of criminal procedure adopted by the Carbon County Court of Common Pleas, pursuant to the requirements of 42 Pennsylvania. Rules of Criminal Procedure, Rule 526, 527 and 528, you have posted the full amount of bail or ten percent (10%) cash bail of the total amount of bail set by the issuing authority. As a specific requirement of this bail bond, the surety and the defendant are required to appear at the Carbon County Adult Probation/Parole Department, 1st Floor Courthouse Building, Jim Thorpe, Pennsylvania, on the next available working day. Business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday.

As surety on this bail bond, you and the defendant have an absolute responsibility to report to the department for the proper completion of all essential documentation concerning the defendant's and surety's responsibilities for the bail bond. There are standard conditions of bail and other standard forms that must be completed by the defendant and surety. Failure to comply with these instructions may result in the forfeiture of the full sum of the bail bond and the issuance of a warrant for the defendant's arrest and commitment to the Carbon County Correctional Facility.

If there are any questions concerning these instructions, please contact the Carbon County Adult Probation/Parole Department at (570) 325-4226.

Sincerely,  
 Ronald S. Kokinda  
 Chief Adult Probation/Parole Officer

CARBON COUNTY COURT OF COMMON PLEAS  
ADULT PROBATION/PAROLE DEPARTMENT  
PRETRIAL SERVICES PROGRAM  
JIM THORPE, PENNSYLVANIA 18229  
OFFICE: (570) 325-4226 EMERGENCY: (570) 325-9123  
BUSINESS HOURS: 8:30 A.M. to 4:30 P.M.

"CONDITIONS OF BAIL SUPERVISION"

NAME: \_\_\_\_\_ CASE NUMBER(S): \_\_\_\_\_

In this judicial district as provided by local rule of court, the judge or issuing authority has ordered your participation in the Carbon County Pretrial Services Program effective \_\_\_\_\_. You will be under the supervision of the Carbon County Adult Probation/Parole Department, Pretrial Services Division, until such time as you are legally discharged by the court or until final disposition of your criminal proceedings. During this period of supervision, certain conditions of bail have been imposed pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 526, 527 and 528. Also, during this period of supervision, the department has the authority, in the event of any of the following violation(s) of the conditions of your bail release, issue a warrant for your arrest and remand you to prison pending a bail revocation hearing pursuant to the requirements of 42 Pennsylvania Rules of Criminal Procedure, Rule 536. If the court determines at the revocation hearing that you violated the conditions of bail, the court may forfeit your bail money and remand you to prison pending final disposition of the charges.

YOU SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:

1. You shall appear before the issuing authority or court at all times required until full and final disposition of the criminal proceedings.
2. Your address of \_\_\_\_\_ is your approved residence. You must give written notice to your assigned pretrial services officer of any change of address within forty-eight (48) hours of the date of such change.
3. You shall report in person or writing and permit your pretrial services officer to visit you at your residence, place of employment or any other specified location.
4. You will refrain from the violation of all Municipal, County, State and Federal criminal statutes, as well as provisions of the Vehicle Code and the Liquor Code. You must notify your pretrial services officer of any arrest or citation within seventy-two (72) hours of occurrence.
5. You will abstain from the unlawful possession, or sale of, narcotics, drug paraphernalia and dangerous drugs, and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device and Cosmetic Act, without a valid prescription. Also, you will submit to random urinalysis screening as requested by your pretrial services officer.
6. You will remain in the Commonwealth of Pennsylvania unless your pretrial services officer prior to such travel has granted permission.
7. You will report to any treatment agency recommended by the court, issuing authority or your pretrial services officer and follow all directives and recommendations made by the treatment facility.
8. You shall not have any contact with victims, witnesses or their family members, unless otherwise court ordered.
9. You will submit to searches of your property, residence or person when requested by your pretrial services officer when there is reasonable suspicion to believe that you have violated the terms and conditions of the bail bond.
10. You shall comply with any specific requirement or special conditions of release, which may be reasonably imposed by the issuing authority of court:

VIOLATION PROCESS

Upon a breach of a condition of bail, the department has the authority to issue a warrant for your arrest and remand you to prison pending a bail revocation hearing pursuant to 42 Pennsylvania Rules of Criminal Procedure, Rule 536. At the hearing, the issuing authority or court may declare the bond forfeited and make a record thereof. Upon such declaration, written notice of such forfeiture shall be given to the surety, or when there is no surety, such notice shall be provided to the defendant. Also, the issuing authority or court may remand you to prison pending final disposition of the criminal proceedings.

OFFENDER GRIEVANCE PROCEDURE

A client grievance procedure has been developed to assist you if you believe you have a legitimate complaint concerning an administrative decision, action, policy or regulation of the department. If you believe that you have a valid complaint concerning your supervision while on bail, you must attempt to resolve the situation with your assigned officer. If your attempt to resolve the situation is unsuccessful, then you must submit a written request within ten (10) days to the Chief for review. Your complaint will be processed by the Chief Adult Probation/Parole Officer within ten (10) days of receipt. The Chief may rule on your complaint with or without the benefit of a formal hearing. If a hearing is held, it would be convenient to all parties involved. The decision of the Chief shall be final.

THE COURTS

ACKNOWLEDGEMENT

I, hereby acknowledge that I have read, or have been read to me, the aforementioned conditions of my supervision. I fully understand all conditions of bail and agree to follow and comply with all directives of the department, the court, the issuing authority and my assigned officer. Finally, I fully understand the penalties and consequences involved should I, in any manner, violate the conditions of bail.

OFFENDER'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ DATE: \_\_\_\_\_

SURETY: \_\_\_\_\_ DATE: \_\_\_\_\_

SURETY RESPONSIBILITIES

As surety on this bail bond, I have read and fully understand the following:

- 1. If the defendant fails to appear at any court hearing, I as surety can be held responsible and forfeit the full amount of bail set.
- 2. Certain conditions are placed on the defendant at the time of bail release. These conditions are mandatory and any violation could result in bail revocation. If bail is revoked by the appropriate authority, the defendant could be returned to prison and all bail money posted will be retained by the county.
- 3. I will report any change in the defendant's status, address, telephone number, employment or court hearings to the Carbon County Adult Probation/Parole Department immediately.
- 4. In the event that a defendant is in non-compliance status with the conditions of bail release, I understand that I cannot withdraw the defendant's bail. It is the responsibility of the Carbon County Adult Probation/Parole Department to petition the court for bail revocation.

Defendant's Signature	Date
Surety's Signature	Date
Witness's Signature	Date

Bail Information Sheet

Offender's Name: \_\_\_\_\_ Date: \_\_\_\_\_

- 1. Have you ever been arrested as a juvenile ?  Yes  No  
If yes, for what? \_\_\_\_\_
- 2. Have you ever been arrested as an adult ?  Yes  No  
If yes, for what? \_\_\_\_\_
- 3. Do you have any alcohol problems?  None  Occasional Usage  Frequent Usage  
Date of Last Use: \_\_\_\_\_  
Frequency of Use: \_\_\_\_\_
- 4. Do you have any drug problems?  None  Occasional Usage  Frequent Usage  
Substances Used: \_\_\_\_\_  
Date of Last Use: \_\_\_\_\_  
Frequency of Use: \_\_\_\_\_
- 5. Do you have any mental health problems?  Yes  No
- 6. Have you ever failed to appear for any prior court appearances?  Yes  No

Adult Probation Officer Signature	Date
Offender's Signature	Date

IN THE COURT OF COMMON PLEAS CARBON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA

VS

NO(S):

PETITION FOR REVOCATION OF BAIL

TO THE HONORABLE: \_\_\_\_\_

The petition of \_\_\_\_\_, of the Carbon County Adult Probation/Parole Department respectfully represents as follows:

1. That said defendant was afforded bail by the Honorable \_\_\_\_\_ as follows:

Date: \_\_\_\_\_ Offense(s): \_\_\_\_\_ Bail Amount: \_\_\_\_\_

2. That said defendant was placed on pretrial services supervision on \_\_\_\_\_.

3. That said defendant has violated the conditions of bail in the following respects:

WHEREFORE, the Carbon County Adult Probation/Parole Department respectfully requests:

- 1. ( ) The Honorable Court issue a bench warrant for the apprehension of the defendant.
2. ( ) The Honorable Court set a hearing and that the accused be required to answer to the violations.

The averments of this petition are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Adult Probation Officer

Date

Supervisor

ORDER OF COURT

NOW, this \_\_\_\_\_, 20 \_\_\_\_\_, upon consideration of the foregoing petition, IT IS HEREBY ORDERED AND DECREED as follows:

1. The CLERK OF COURTS is directed to issue a bench warrant for the defendant named in the foregoing petition and that the Bail Authority (Adult Probation Office), Sheriff and/or proper legal authority is directed to apprehend said defendant and commit him/her to the Carbon County Prison pending a bail revocation hearing.

2. A copy of the attached petition and Order of Court shall be served upon the defendant and copies shall be provided to the defendant's attorney of record, the District Attorney of Carbon County and the Adult Probation Office.

3. A bail revocation hearing shall be held in Courtroom # \_\_\_\_\_, Carbon County Courthouse, Jim Thorpe, Pennsylvania, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, @ \_\_\_\_\_ a.m./p.m.. Failure to attend said hearing may result in the issuance of a bench warrant for your apprehension and forfeiture of bail.

4. A bail revocation hearing using video conferencing at the Carbon County Prison, Nesquehoning, Pennsylvania, shall be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, @ \_\_\_\_\_ a.m./p.m.

BY THE COURT:

P.J.

WARRANT TO COMMIT AND DETAIN

PRE-TRIAL SERVICES

To the Sheriff, Superintendent, Keeper or Warden of the Prison or House of Correction, or any Officer of the Courts of the Commonwealth, Municipal Court, Police Department, Constable, etc.—GREETINGS:

By virtue of the authority given to me by this Court of Common Pleas of Carbon County as the Bail Authority for the County of Carbon and as authorized under the Pennsylvania Rules of Criminal Procedure, Rule 536, you are hereby authorized and directed to commit and detain for violations of bail:

Offender's Name

Term Number(s)

until his/her case shall be heard or there shall be an Order by the appropriate authority to release him/her.

\_\_\_\_\_  
Adult Probation/Parole Officer

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

[Pa.B. Doc. No. 04-1540. Filed for public inspection August 20, 2004, 9:00 a.m.]

\_\_\_\_\_

**FAYETTE COUNTY**  
**Local Rule 204; No. 1674 of 2004 6D**

**Order**

*And Now*, this 29th day of July, 2004, pursuant to Pennsylvania Rule of Civil Procedure 239, it is hereby ordered that Local Rule 204 is rescinded.

The Prothonotary is directed as follows:

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

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

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

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

*By the Court*

CONRAD B. CAPUZZI,  
*President Judge*

[Pa.B. Doc. No. 04-1541. Filed for public inspection August 20, 2004, 9:00 a.m.]

\_\_\_\_\_



# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CH. 104]

#### Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) deletes Subchapter C (relating to sheep and lamb marketing program) and adds Subchapter F (relating to wine marketing and research program) to read as set forth in Annex A.

#### *Statutory Authority*

Sections 4501—4513 of 3 Pa.C.S. (relating to Agricultural Commodities Marketing Act) (act) provides the legal authority for this final-form rulemaking. Both the Sheep and Lamb Marketing Program (Sheep Program) and the Wine Marketing and Research Program (Wine Program) are agricultural commodity programs established under authority of the act. Section 4511 of the act (relating to rules and regulations) authorizes the Department to promulgate regulations necessary to enforce a marketing program established under its authority.

#### *Purpose*

This final-form rulemaking deletes Subchapter C. Since the Sheep Program was terminated some time ago, Subchapter C serves no purpose.

This final-form rulemaking also affirms the obligations of affected wine producers with respect to the Wine Program, provides a mechanism for accounting and payment of producer charges and establishes a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

#### *Background*

The act authorizes the establishment of an agricultural commodity marketing program through a referendum among affected producers of the agricultural commodity involved. The Wine Program was established through a referendum among persons who produce or sell wine under authority of a limited winery license issued in accordance with the Liquor Code (47 P. S. §§ 1-101—8-803).

The production of wine is closely regulated. Holders of limited winery licenses are required to report their wine production and sales to the Liquor Control Board. This production information assists the Wine Program in calculating the producer charges owed it by each affected wine producer. The producer charges are 15¢ per gallon of wine sold within a particular January 1—December 31 marketing season.

The final-form rulemaking emphasizes the obligation of an affected wine producer to account for and pay the appropriate producer charges to the Wine Program and provide that program a mechanism by which to pursue collection of unpaid producer charges.

#### *Need for the Final-Form Rulemaking*

The final-form rulemaking is necessary for the operation of the Wine Program and makes extensive use of language from existing regulations for other act-based

agricultural commodity marketing programs. The Department is satisfied of the need for the final-form rulemaking.

#### *Comments*

Notice of proposed rulemaking was published at 34 Pa.B. 561 (January 31, 2004) and provided for a 30-day public comment period. The only formal written comments received with respect to the proposed rulemaking were offered by the Independent Regulatory Review Commission (IRRC). The Department's response to these comments follows.

*Comment 1:* IRRC observed that proposed § 104.71 (relating to scope) states that persons who produce and sell wine under authority of a limited winery license will be required to pay producer charges to the Wine Program, and recommended that the final-form rulemaking include a reference to the provision of the Liquor Code addressing limited wineries (47 P. S. § 5-505.2).

*Response:* The Department has implemented this recommendation in the final-form rulemaking.

*Comment 2:* IRRC recommended that the terms "ACMA," "marketing contract" "PLCB" and be deleted from § 104.72 (relating to definitions), since these terms are not used elsewhere in regulations. This same recommendation had been made informally by *Pennsylvania Bulletin* staff when the proposed rulemaking was submitted for publication.

*Response:* The Department has implemented this recommendation in the final-form rulemaking.

*Comment 3:* IRRC asked the Department to either explain or delete the phrase "or other time period designated by the Program" in proposed § 104.75(a)(2) (relating to accounting and payment).

*Response:* The referenced phrase has been deleted from the final-form rulemaking.

*Comment 4:* With respect to proposed § 104.75(e), IRRC offered the following:

This subsection requires producers to pay a penalty for nonpayment of producer charges "of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charge as is practicable." We note in the Vegetable Marketing and Research Program and the Peach and Nectarine Research Program the maximum fine levied is \$500. Why has the Department chosen to implement a much higher fine for this Program? The preamble should include the Department's reasoning for the fines in this subsection.

*Response:* The object of the subsection is to allow for a penalty that would, in most cases, effectively double the amount of money a delinquent producer would have to pay the Wine Program. This penalty amount is tempered by the \$5,000 ceiling in the final-form rulemaking. The Department and the Wine Program Board considered the upward civil penalty limits imposed by the commodity marketing programs described in the comment, but felt that the \$5,000 figure is more appropriate for the Wine Program, and that this figure would help provide an incentive for compliance with the accounting and payment provisions of the final-form rulemaking.

*Fiscal Impact*

*Commonwealth:* The final-form rulemaking imposes no costs and has no fiscal impact on the Commonwealth.

*Political Subdivisions:* The final-form rulemaking imposes no costs and has no fiscal impact on political subdivisions.

*Private Sector:* The final-form rulemaking imposes no costs and has no adverse fiscal impact upon the private sector. Although the final-form rulemaking references the 15¢ per gallon producer charge, the charge has been established through a referendum among affected producers, in accordance with the act. The final-form rulemaking repeats this existing obligation, but does not create it. The final-form rulemaking will help to fully fund the research and marketing efforts of the Wine Program. Although this is expected to have a favorable economic impact upon this Commonwealth's wine production industry, this benefit is not readily quantifiable.

*General Public:* The final-form rulemaking imposes no costs and has no adverse fiscal impact upon the general public.

*Paperwork Requirements*

The final-form rulemaking will not appreciably increase the paperwork burden of the Department, other government units or affected wine producers.

*Sunset Date*

There is no sunset date for the final-form rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Market Development, Pennsylvania Wine Marketing and Research Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Kyle Nagurny, (717) 787-2376.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 561, to IRRC and the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 15, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The modifications that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 561.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 104, are amended by deleting §§ 104.21—104.30 and by adding §§ 104.71—104.75 to read as set forth in Annex A.

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

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

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

DENNIS C WOLFF,  
*Secretary*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)

**Fiscal Note:** Fiscal Note 2-142 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 7. AGRICULTURE****PART IV. BUREAU OF MARKET DEVELOPMENT****CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS****Subchapter C. (Reserved)****§§ 104.21—104.30. (Reserved).****Subchapter F. WINE MARKETING AND RESEARCH PROGRAM**

Sec.	
104.71.	Scope.
104.72.	Definitions.
104.73.	Producer charges.
104.74.	Responsibility for payment of producer charge.
104.75.	Accounting and payment.

**§ 104.71. Scope.**

This subchapter establishes the procedures by which persons who produce or sell wine under authority of a limited winery license issued under authority of section 505.2 of the Liquor Code (47 P. S. § 5-505.2) shall account for and pay producer charges owed the Program.

**§ 104.72. Definitions.**

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

*Board*—The persons appointed by the Secretary from among those producers whose commodities are subject to the marketing and research program set forth in this subchapter.

*Department*—The Department of Agriculture of the Commonwealth.

*Limited winery*—The holder of a limited winery license issued under authority of the Liquor Code (47 P. S. §§ 1-101—8-803).

*Marketing season*—

(i) The initial marketing season for purposes of this subchapter shall be from July 1, 2001, through December 31, 2001.

(ii) Thereafter, the marketing season shall be the period beginning January 1 of any year and extending through December 31 of the same year.

*Person*—An individual, partnership, firm, corporation, association or any other business unit.

*Producer*—A person who produces or sells wine under authority of a limited winery license during a particular marketing season.

*Program*—The Pennsylvania Wine Marketing and Research Program.

*Secretary*—The Secretary of the Department.

**§ 104.73. Producer charges.**

The producer charges owed the Program shall be 15¢ per gallon of wine sold within a given marketing season, except in-State winery-to-winery sales in bond. In-State winery-to-winery sales in bond are exempt from charges. The producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

**§ 104.74. Responsibility for payment of producer charge.**

It is the responsibility of the producer to pay the appropriate producer charge owed the Program within the time period set forth in § 104.75(b) (relating to accounting and payment) and in the manner set forth in § 104.75(a).

**§ 104.75. Accounting and payment.**

(a) *Annual production statement.* The Program will provide a producer with annual production statement forms with which to verify the quantity of wine that it has produced within a particular marketing season. The producer shall provide the following information on the annual production statement and submit the form in accordance with this section.

- (1) The name and address of the producer.
- (2) The number of gallons of wine sold within the marketing season.
- (3) A calculation of the amount of producer charges owed the Program by the producer.

(b) *Deadlines.* The payment of the producer charges shall be postmarked and mailed, or actually delivered to the Program, by the first day of February immediately following the previous marketing season.

(c) *Form of payment.* Payments of producer charges shall be by check or money order made payable to the "PA Wine Marketing and Research Program."

(d) *Address.* Payments of producer charges shall be mailed or delivered to:

Department of Agriculture  
 Bureau of Market Development  
 Attn: Pennsylvania Wine Marketing and Research

Program  
 2301 North Cameron Street  
 Harrisburg, Pennsylvania 17110-9408.

(e) *Penalty for failure to account or pay.* Producers who fail to mail or deliver the required producer charges owed the Program within 30 days of the due date, as described in subsection (b), shall be required to pay a penalty of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking the imposition of a penalty, plus payment of producer charges due the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

[Pa.B. Doc. No. 04-1542. Filed for public inspection August 20, 2004, 9:00 a.m.]

**DEPARTMENT OF AGRICULTURE  
 [7 PA. CODE CH. 130d]**

**Application of Soil and Groundwater Contaminated with Agricultural Chemicals to Agricultural Lands**

The Department of Agriculture (Department), under the specific authority of section 904(d) of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. § 6026.904(d)), adopts Chapter 130d (relating to application of soil and groundwater contaminated with agricultural chemicals to agricultural lands) to read as set forth in Annex A.

*Authority*

The Department has the power and authority to promulgate and adopt this final-form rulemaking. This authority is established under section 904(d) of the act. Section 904(d) of the act delineates the duties of the Department and directs the Department to "... promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands." The final-form rulemaking is required to "... provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application."

*Need for the Final-Form Rulemaking*

The act requires the Department to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. The Department takes very seriously its duty to protect the health and safety of the general public and to preserve the quality and productivity of agricultural lands in this Commonwealth. The final-form rulemaking is intended to address the safety of the application of soil and groundwater contaminated agricultural chemicals and to protect and

assure the productivity and viability of the agricultural lands to which media is applied. The act and regulations provide for an alternative approach, other than incineration or landfill disposal, to dispose of soil and groundwater contaminated with agricultural chemicals taken from an agricultural chemical facility being remediated under the act.

In addition, the Department of Environmental Protection, under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), has regulations in place concerning the land application of residual waste in 25 Pa. Code Chapter 291 (relating to land application of residual waste) including regulations specifically regarding application to agricultural land in 25 Pa. Code Chapter 291, Subchapter D (relating to additional requirements for the agricultural utilization of residual waste). "Residual waste" as defined by the Solid Waste Management Act includes agricultural waste. The act does not exempt the application of soil and groundwater contaminated with agricultural chemicals to agricultural lands from the regulations promulgated under the Solid Waste Management Act. Therefore, the Department has endeavored to assure the final-form rulemaking is consistent with the residual waste regulations pertaining to application of residual waste to agricultural land.

In the interest of carrying out its statutory duties and providing a safe alternative use for soil and groundwater contaminated with agricultural chemicals the Department has promulgated this final-form rulemaking. The final-form rulemaking is to establish safe standards, criteria and procedures for the application of the contaminated media to agricultural lands.

#### *Comments*

Notice of proposed rulemaking was published at 32 Pa.B. 1965 (April 20, 2002) and provided for a 30-day public comment period. The Department received numerous comments regarding the proposed rulemaking and made extensive revisions to the proposed rulemaking based on the comments. Therefore, the Department decided to distribute the revised rulemaking to all commentators for their review prior to submitting the revised rulemaking into the final-form rulemaking process. The Department received no additional comments.

Comments were received from the Independent Regulatory Review Commission (IRRC); the Honorable Raymond Bunt, Jr., Majority Chairperson, Agriculture and Rural Affairs Committee; the Honorable Peter J. Daley, Democratic Chairperson, Agriculture and Rural Affairs Committee; members and representatives of the regulated community, Syngenta Crop Protection, CropLife America and DuPont Crop Protection, who submitted their comments through the office of the Honorable Raymond Bunt, Jr.; and the Chesapeake Bay Foundation. The Department thanks all of those who commented on the final-form rulemaking. The comments were insightful and helped the Department to clarify, simplify and streamline the final-form rulemaking and develop a final-form rulemaking that meets the parameters of the act.

A comment and response document is available upon request from the contact person listed in this preamble.

#### *Fiscal Impact*

##### *Commonwealth*

The final-form rulemaking will impose substantial costs and have a fiscal impact upon the Commonwealth. The final-form rulemaking will add a new program and increase the regulatory workload of the Department. The

final-form rulemaking will require additional manpower for proper, meticulous and timely review of complex land application proposals and for inspections during land application and follow-up inspections after the land application is complete. In addition, denials may lead to appeals and further regulatory costs for the Department.

#### *Political Subdivisions*

The final-form rulemaking will impose costs and have a fiscal impact upon political subdivisions to the extent they become involved in regulating, through imposition of additional regulatory requirements such as ordinances and public meetings, an activity—the application of soil and groundwater contaminated with agricultural chemicals from an agricultural chemical facility to agricultural land—which was not allowed prior to the enactment of the act and the acceptance of this final-form rulemaking. The final-form rulemaking however, do not require involvement of, or regulation by, political subdivisions.

#### *Private Sector*

The final-form rulemaking only affects private sector persons who choose to land apply soil and groundwater taken from an agricultural chemical facility being remediated under the act and contaminated with agricultural chemicals to agricultural land. For members of the private sector that elect to follow this approach, the final-form rulemaking will impose substantial costs primarily related to the testing requirements for soil and groundwater contaminated with agricultural chemicals prior to their application to agricultural land. However, these costs are no more prohibitive than the cost of other means of disposal of that contaminated media, such as landfill disposal or incineration, both of which have less potential to harm the environment or productive agricultural land.

#### *General Public*

The final-form rulemaking will impose no additional costs and have no fiscal impact on the general public.

#### *Paperwork Requirements*

The final-form rulemaking will result in an appreciable increase in paperwork. The Department will be required to review complex land application proposals and records generated as a result of the land application of soil and groundwater contaminated with agricultural chemicals. The Department has been required to generate a land application proposal setting forth a general outline for the applicant.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Vance Wagner, (717) 787-4843.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 10, 2002, the Department submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1965, to IRRC and the Chairpersons of the House Agricultural and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the 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 June 23, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 24, 2004, and approved the final-form rulemaking.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The modifications that were made to the final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1965.

(4) Prior to final submittal of the final-form rulemaking, a draft of the final-form rulemaking and comment and response document were sent to persons who commented during the proposed stage of rulemaking and were given 10 days to submit additional comments.

(5) The modifications that were made to the final-form rulemaking in response to additional comments received do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1965.

(6) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 130d, are amended by adding §§ 130d.1—130d.5, 130d.21—130d.30, 130d.31—130d.33, 130d.41—130d.48, 130d.51, 130d.52, 130d.61 and 130d.62 to read as set forth in Annex A

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

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

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

DENNIS C WOLFF,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3652 (July 10, 2004).)*

**Fiscal Note:** 2-116. (1) General Fund; (2) Implementing Year 2003-04 is \$0; (3) 1st Succeeding Year 2004-05 is \$50,000; 2nd Succeeding Year 2005-06 is \$53,000; 3rd Succeeding Year 2006-07 is \$55,000; 4th Succeeding Year 2007-08 is \$57,000; 5th Succeeding Year 2008-09 is \$60,000; (4) 2002-03 Program—N/A; 2001-02 Program—

N/A; 2000-01 Program—N/A; (7) General Government Operations—Department of Agriculture; (8) recommends adoption.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V. BUREAU OF PLANT INDUSTRY**

**CHAPTER 130d. APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LANDS**

**Subch.**

- A. GENERAL PROVISIONS
- B. LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND
- C. LAND APPLICATION PROPOSAL REVIEW PROCEDURES
- D. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND
- E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX
- F. CLOSURE

**Subchapter A. GENERAL PROVISIONS**

**Sec.**

- 130d.1. Definitions.
- 130d.2. Scope.
- 130d.3. Continuing authority.
- 130d.4. Retained recordkeeping.
- 130d.5. Public notice by applicant.

**§ 130d.1. Definitions.**

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

*Act*—The Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

*Active ingredient*—

(i) In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest.

(ii) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof.

(iii) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(iv) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

*Agricultural chemical*—A substance defined as a fertilizer, under 3 Pa.C.S. § 6702 (relating to definitions), or a substance defined as a plant amendment, plant-amending ingredient, soil amendment or soil-amending ingredient under 3 Pa.C.S. § 6902 (relating to definitions) or a substance regulated under the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60).

*Agricultural chemical facility*—A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by the North American Industry Classification System (NAICS) in NAICS 325320 where agricultural chemicals are manufactured.

*Agricultural land or farmland*—Land in this Commonwealth that is currently being utilized for the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

*Animal*—All vertebrate and invertebrate species, including man and other mammals, birds, fish and shellfish.

*Application site*—The farmland area approved to receive an application of soil or groundwater contaminated with agricultural chemicals and delineated in the applicant's land application proposal containing and detailing the exact location of the farmland upon which the soil or groundwater contaminated with the agricultural chemicals is to be applied, including the property boundaries of the farmland and each field upon which the contaminated soil or groundwater will be applied.

*Applicator*—A certified applicator, private applicator, commercial applicator, public applicator or pesticide application technician.

(i) *Certified applicator.* An individual who is certified under section 16.1, 17 or 17.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.36a, 111.37 and 111.37a) as competent to use or supervise the use or application of any pesticide.

(ii) *Private applicator.* A certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

(iii) *Commercial applicator.*

(A) A certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide on the property or premises of another, or on easements granted under State law.

(B) An applicator who uses or supervises the use of any restricted use pesticide on property owned or rented by him or his employer, when not for purposes of producing an agricultural product.

(C) The Secretary may by regulation deem certain types of applicators using any pesticide on their own property or that of their employer as commercial applicators.

(iv) *Public applicator.* A certified applicator who applies pesticides as an employee of the State or its instrumentalities or any local agency.

(v) *Pesticide application technician.* An individual employed by a commercial applicator or governmental agency who, having met the competency requirements of section 16.1 of the Pennsylvania Pesticide Control Act of 1973 is registered by the Secretary to apply pesticides under the direct supervision of a certified applicator.

*Background*—The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

*Cleanup or remediation*—To clean up, mitigate, correct, abate, minimize, eliminate, control or prevent a release of a regulated substance into the environment in order to protect the present or future public health, safety, welfare or the environment, including preliminary actions to study or assess the release.

*Contaminated media*—Soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities.

*DEP*—The Department of Environmental Protection of the Commonwealth.

*Defoliant*—Any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

*Department*—The Department of Agriculture of the Commonwealth.

*Desiccant*—Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

*Environment*—Includes water, air, land and all plants and man and other animals living therein, and the interrelationships which exist among these.

*Environmental protection acts*—Includes:

(i) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(ii) The Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4001.101—4001.1904).

(iii) The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

(iv) The Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.906).

(v) The act of July 13, 1988 (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law.

(vi) The Air Pollution Control Act (35 P. S. §§ 4001—4015).

(vii) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31).

(viii) The Noncoal Surface Mining Conservation and Reclamation Act (35 P. S. §§ 3301—3326).

(ix) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(x) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

(xi) The Nutrient Management Act (3 P. S. §§ 1701—1718).

(xii) Sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act).

(xiii) The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

(xiv) The Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

(xv) The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

(xvi) Sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act).

(xvii) Other State or Federal statutes relating to environmental protection or the protection of public health.

*Equipment*—

(i) Any type of ground, water or aerial equipment or contrivance using motorized, mechanical or pressurized power and used to apply any agricultural chemical.

(ii) The term does not include any pressurized hand-sized household apparatus used to apply any agricultural chemical or any equipment or contrivance of which the person who is applying the agricultural chemical is the source of power or energy in pesticide application.

*General use pesticides*—A pesticide not classified as a restricted use pesticide.

*Groundwater*—Water below the land surface in a zone of saturation.

*HAL*—Health Advisory Levels published by the United States Environmental Protection Agency for particular substances.

*Habitats of concern*—A habitat defined as one of the following:

- (i) Typical wetlands with identifiable function and value, except for exceptional value wetlands as defined in 25 Pa. Code § 105.17 (relating to wetlands).
- (ii) Breeding areas for species of concern.
- (iii) Migratory stopover areas for species of concern.
- (iv) Wintering areas for species of concern.
- (v) Habitat for State endangered plant and animal species.
- (vi) Areas otherwise designated as critical or of concern by the Game Commission, the Fish and Boat Commission or the Department of Conservation and Natural Resources.

*Incorporation*—Plowing or injecting contaminated media to a depth of at least 6 inches and in a manner that ensures a uniform mixture of top soil and contaminated media.

*Label*—The written, printed or graphic matter on, or attached to the agricultural chemical or device or any of its containers or wrappers.

*Labeling*—Pertaining to agricultural chemicals, the term means all labels and other written, printed or graphic matter which includes one of the following:

- (i) That which accompanies the pesticide, agricultural chemical or device at any time.
- (ii) To which reference is made on the label or in literature accompanying the agricultural chemical, except to current official publications of the United States Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Departments of Health and Human Services and Education, State experiment stations, State agricultural colleges and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of agricultural chemicals.

*Land application proposal*—An application for permission to apply soil and groundwater contaminated with agricultural chemicals, generated as a result of remediation activities carried out at an agricultural chemical facility, to agricultural land.

*MCL*—Maximum contaminant level established for drinking water by DEP.

*Person*—An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, State Government, political subdivisions and Commonwealth instrumentalities.

*Pesticide*—A substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

*Plant regulator*—

(i) A substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(ii) The term does not include any of those nutrient mixtures or soil amendments, commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants and not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

*Prime farmland*—Those lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands), and which have been historically used for cropland.

*Secretary*—The Secretary of the Department.

*Tank mix or spray mix*—A mixture of one or more agricultural chemicals which is diluted with water prior to the time of application.

*Treatment*—The term shall have the same meaning as given to this term in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

*Under the direct supervision of a certified commercial or public applicator*—Unless otherwise prescribed by labeling, the term means application by a registered pesticide application technician acting under the instructions and control of a certified applicator who is available if needed, even though the certified applicator is not physically present at the time and place the pesticide is applied, or application by a crew of noncertified or nonregistered employees working under the instruction and control of a certified commercial or public applicator who is physically present at the job site.

*Unreasonable adverse effects on the environment*—Any unreasonable risk to man, animal or the environment, taking into account the economic, social and environmental costs and benefits for the use of any agricultural chemical.

**§ 130d.2. Scope.**

(a) The Department has the powers and the duties set forth under section 904(d) of the act (35 P. S. § 6026.904(d)).

(b) This chapter specifies general procedures and rules for persons who solicit and receive approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land.

(c) This chapter applies only to the application of soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities, at agricultural chemical facilities and applied to agricultural lands. The Department has no power to issue final approval for the land application of soil or groundwater generated as the result of remediation activities as follows:

- (1) That are contaminated with chemicals or substances other than agricultural chemicals.
- (2) That were not undertaken at an agricultural chemical facility.

(3) Where the contaminated soil or groundwater will be applied to land other than agricultural land.

(d) The applicant is responsible for obtaining any additional permits or approvals necessary for management of waste that contains agricultural chemicals and other chemicals or substances. The applicant shall submit an affidavit attesting to the fact that either no contaminants other than the agricultural chemicals tested for and set forth in its application are present in the soil or groundwater it seeks to apply to the agricultural land or if other contaminants exist, an affidavit stating what those contaminants are and attesting to the fact the applicant has received all permits or approvals necessary for the application of those contaminants to agricultural land. If the permits or approvals are obtained prior to submission of the land application proposal, the permits or approvals, or both, shall be attached to the land application proposal.

**§ 130d.3. Continuing authority.**

(a) Nothing in this chapter may be construed to amend, modify, repeal or otherwise alter any provision of any act cited and the regulations pertaining thereto, relating to civil and criminal penalties or enforcement actions and remedies available to the Department or in any way to amend, modify, repeal or alter the authority of the Department to take appropriate civil and criminal action under those statutes.

(b) Nothing in this chapter may be construed to place any duty, responsibility or liability on the Department for contaminants in soil or groundwater other than agricultural chemicals that were tested for and approved by the Department. The applicant is solely responsible for all duties and liability related to all contaminants other than the agricultural chemicals tested for, set forth in the applicant's land application proposal and approved by the Department.

**§ 130d.4. Retained recordkeeping.**

(a) *General.* An applicant receiving permission to apply soil or groundwater contaminated with agricultural chemicals to agricultural land, shall maintain records in accordance with recordkeeping provisions of section 35 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.55) and in accordance with the appropriate recordkeeping provisions of §§ 128.11, 128.24, 128.35, 128.53, 128.65 and 128.88. In addition, an approved applicant shall keep the following records:

(1) The daily operation records required by § 130d.46 (relating to daily operational records).

(2) The annual operation report required by § 130d.48 (relating to annual operational report).

(3) The final report required by § 130d.62 (relating to final report).

(4) The right of entry agreement required by § 130d.27(b) (relating to right of entry and agreement with landowner).

(b) *Inspection and audit.* All records and documents shall be available for inspection or audit at reasonable times (such as regular operating hours of the Department) by the Department or its authorized agents.

(c) *Retention time period.* All records, reports and documents shall be retained by the person responsible for the application of the soil and groundwater for 5 years after the date on which the site closure plan and final report were approved by the Department.

**§ 130d.5. Public notice by applicant.**

The applicant shall comply with the notice requirements established by section 25.1 of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.45a) and §§ 128.81—128.89 (relating to prior notification) and § 128.112 (relating to notification of hypersensitive individuals).

**Subchapter B. LAND APPLICATION PROPOSAL REQUIREMENTS FOR PERMISSION TO APPLY SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND**

Sec.

130d.21. General requirements for land application proposal form.  
130d.22. Chemical analysis of waste and sampling techniques and protocol.

130d.23. Waste sampling plan.

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130d.25. Maps and related information.

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130d.28. Identification of interest.

130d.29. Compliance information.

130d.30. Environmental assessment.

**§ 130d.21. General requirements for land application proposal form.**

(a) *Submittal.* Land application proposals shall be submitted in writing, on forms provided by the Department. Persons submitting land application proposals shall submit them to the Department at the address which appears on the land application proposal form developed by the Department.

(b) *Documentation.* Each land application proposal shall include and have attached thereto, information, maps, plans, specifications, designs, analyses, test reports and other data as may be required by the Department to determine compliance with this chapter. The Department will notify the applicant in writing requesting any additional information.

(c) *Affirmation of chemical analysis of waste and sampling techniques and protocol and the waste sampling plan.* The chemical analysis of waste and sampling techniques and protocol and the waste sampling plan, required by §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall be supported by an affidavit, signed by the applicant, affirming that all known and likely agricultural chemicals, nutrients and constituents at the remediation site were tested for and the tests were performed in accordance with this chapter and the applicant's land application proposal.

(d) *Affirmation of compliance with all applicable laws, rules and ordinances.* The applicant shall submit a signed affidavit, affirming it has received the proper permits and approvals and that the removal, storage, handling and application of the contaminated soil or groundwater is in compliance with applicable laws, regulations and ordinances.

(e) *Affirmation of operation plan.* The operating plan shall be signed by the applicant and the appropriate applicator verifying that the techniques, methods and rates of application set forth in the operating plan will be followed.

**§ 130d.22. Chemical analysis of waste and sampling techniques and protocol.**

(a) *General criteria.* A person who seeks to apply soil or groundwater, generated as a result of remediation activities at an agricultural chemical facility, to agricultural



land shall perform a detailed analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site and the application site. A verified copy of the sampling techniques and results shall be submitted to the Department as part of the land application proposal.

(b) *Analysis and testing of the soil or groundwater, or both, at the agricultural chemical facility site.* The analysis and testing at the agricultural chemical facility site shall fully characterize the physical properties and chemical composition of each type of agricultural chemical that was held, stored, blended, formulated, sold, distributed, manufactured or generated by the agricultural chemical facility and shall be done in accordance with subsections (d) and (e)(1) and (2). The substances tested for shall be predicated on the manufacturing processes and business carried on at the agricultural chemical facility site being remediated and records obtained from that agricultural chemical facility or facilities on that site. The types of agricultural chemicals likely to be contained in the soil and groundwater shall be gleaned from information available regarding the agricultural chemical facility site at which the remediation activities are taking place including the following:

(1) Records, including sales records, memorandums, invoices and historical data, of the type of products manufactured, held, stored, formulated, sold, distributed, produced or used.

(2) Material safety data sheets or similar sources that may help characterize the types of agricultural chemicals and waste generated.

(3) Notices of past spills, violations or contamination if applicable.

(4) Information regarding any agricultural chemical byproduct or agricultural chemical produced during or as a result of the manufacturing processes, mixing, storage or distribution of materials.

(c) *Analysis and testing of soil at the proposed application site.* The analysis and testing at the proposed application site shall cover soil samples taken from the proposed application site and shall be done in accordance with subsections (d) and (e)(3). The soil samples taken from the proposed application site shall be tested for each agricultural chemical, nutrient or constituent found in the soil or groundwater, or both, at the agricultural chemical facility site that is proposed to be applied to the application site. In addition, the proposed application site analysis shall delineate the soil types found within the proposed application area. The testing and analysis of the soil at the proposed application site, at minimum, shall include:

(1) A chemical, nutrient and constituent analysis of each 15-acre field or plot upon which a soil pile or quantity of groundwater from the remediated agricultural chemical facility site is to be applied.

(2) Testing for all agricultural chemicals, the by-products or derivatives thereof, and each agricultural chemical, nutrient or constituent that was found to be present in the contaminated soil or groundwater, or both, at the agricultural chemical facility being remediated which are to be applied at the proposed application site.

(3) Documentation of the soil types found within the proposed application area.

(d) *Approved laboratory.* Soil or groundwater samples, or both, from each soil pile or quantity of groundwater taken from the agriculture chemical facility site being remediated and sought to be applied to agricultural land

and soil samples taken from the application site shall be tested on a parts per million basis and shall be submitted for analysis to a laboratory compliant with the United States Environmental Protection Agency's (EPA) Good Laboratory Practices (GLP) Program. A list of EPA GLP compliant laboratories is available on the Department's website. A copy of the test results shall be submitted to the Department as part of the land application proposal and to the owner of the agricultural land on which the contaminated soil and groundwater is sought to be applied.

(e) *Sampling techniques.* Sampling techniques shall be consistent with the sampling procedures set forth in the *Pennsylvania Agronomy Guide* which are set forth herein.

(1) *Soil pile samples from the agricultural chemical facility remediation site.* Sampling of soil piles from an agricultural chemical facility remediation site shall consist of one representative sample from each soil pile proposed to be land applied. A representative sample shall consist of 15 core samples from each soil pile at the remediation site which is proposed to be land applied to an agricultural site. A soil pile shall contain no more than 36,000 cubic yards of soil, which represents the cubic yards of soil contained in 15 acres of land at a 6-inch depth and is consistent with the standards established in the *Pennsylvania Agronomy Guide*. Multiple soil piles require multiple samples. Samples shall be collected and recorded in the following manner:

(i) Fifteen core samples shall be collected from each soil pile proposed to be land applied.

(ii) Each core sample shall be collected from a depth of at least 4 to 6 inches.

(iii) The core samples taken from each soil pile shall be mixed in order to acquire a representative sample from that particular soil pile.

(iv) Roots, stones and other debris not representative of the substrate being sampled and proposed for land application shall be removed from the core samples.

(v) The mixed sample from each soil pile shall be placed in a clean unused container and marked in a manner delineating the particular soil pile from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil samples will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with the requirements of this chapter, and submit the sample or samples to an approved laboratory.

(2) *Water samples from the agricultural chemical facility remediation site.* Where groundwater from an agricultural chemical facility remediation site is proposed to be applied to agricultural land, the applicant shall collect 1 pint of water from the remediation site for every 2,000 gallons of water sought to be land applied or utilized as tank mix. Samples shall be collected and recorded in the following manner:

(i) Samples shall be collected from random and mixed points and depths throughout the remediation site to assure a true and representative sampling of the water contaminated with agricultural chemicals at the remediation site.

(ii) Samples shall be collected in clean unused glass bottles and kept chilled during and prior to delivery to an approved laboratory.

(iii) Samples shall be marked in a manner delineating the particular site location and depth from which the sample was taken.

(iv) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for, in compliance with this chapter, and submit the sample or samples to an approved laboratory.

(3) *Soil samples from the proposed application site.* Sampling of soil from the proposed application site shall consist of one representative sample per every 15 acres of land upon which the soil contaminated with agricultural chemicals from the agricultural chemical facility is proposed to be land applied. Samples shall be collected and recorded in the following manner:

(i) A representative sample shall consist of 15 core samples collected from 15 different areas per 15-acre plot (one core sample taken from each acre on that plot) of land area proposed to receive soil or water, or both, contaminated with agricultural chemicals from an agricultural chemical facility being remediated under the act.

(ii) Core samples shall be collected from a depth of at least 4 to 6 inches.

(iii) The 15 core samples collected from each 15-acre plot shall be thoroughly mixed to get a representative sample from that 15-acre plot.

(iv) Roots, stones and other debris not representative of the field plot being sampled shall be removed from the core samples.

(v) The mixed sample from each 15-acre plot shall be placed in a clean, unused container and marked in a manner delineating the particular 15-acre plot from which the sample was taken. The sample container shall be compliant with the standards established by the approved laboratory to which the soil sample will be submitted for testing.

(vi) The applicant shall complete the required report form, set forth the agricultural chemicals to be tested for and submit the sample or samples to an approved laboratory.

#### § 130d.23. Waste sampling plan.

The applicant shall develop a waste sampling plan. The waste sampling plan shall be attached to and made part of the land application proposal submitted to the Department. The waste sampling plan shall encompass the sampling techniques utilized for the soil or groundwater from the agricultural chemical facility site and the application site. The waste sampling plan shall cover each agricultural chemical, nutrient or constituent proposed to be applied to the agricultural land. The waste sampling plan shall take into account and be consistent with the chemical analysis and testing protocol required by § 130d.22 (relating to chemical analysis of waste and sampling techniques and protocol). At a minimum, the plan shall include:

(1) *Quality assurance and quality control procedures.* The plan shall ensure an accurate and representative sampling of the contaminated soil or groundwater, or both, the person seeks to apply to agricultural land and an accurate and representative sampling from each field or plot at the application site upon which the contaminated media will be placed. The plan shall set forth the following:

(i) The type of chemicals, nutrients and constituents for which each soil pile or quantity of groundwater was

tested and analyzed and the rationale for the selection of those chemicals, nutrients and constituents.

(ii) The name and address of the approved laboratory that was used to test for the chemicals, nutrients and constituents.

(iii) The method utilized for labeling and managing the soil piles and quantities of groundwater to assure they are applied at the proper rates and to the proper areas once they reach the application site, since individual soil piles and quantities of groundwater may contain different types and concentrations of chemicals, nutrients and constituents.

(2) An evaluation of the ability of the agricultural chemicals and constituents contained in the soil or groundwater to be fully utilized by the crop to be grown on the application site and to leach into the environment.

(3) A narrative delineating the scientific evidence supporting the contention that the contaminated soil or groundwater can be land applied to agricultural land without negatively affecting the productivity of the agricultural land or causing harm to the environment or animal or human health.

#### § 130d.24. Operating plan.

The land application proposal shall contain an operating plan setting forth general information and land application rates and procedures. Information in the operating plan will be considered by the Department when reviewing the land application proposal.

(1) *General information.* The operating plan shall contain the following general information:

(i) The address and a description of the remediation site from which the contaminated soil or groundwater to be applied to the agricultural land originated or was generated.

(ii) The address and a description of the agricultural site to which the contaminated soil or groundwater will be applied.

(iii) The proposed life of the operation from the time the first soil pile or quantity of groundwater arrives on the application site to final closure of the application site and the origin and chemical, nutrient and constituent make up of each soil pile or quantity of groundwater to be applied.

(iv) The proposed application rate per acre, which shall be consistent with standards established by this chapter, as well as, the Nutrient Management Act (3 P.S. §§ 1701—1718), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21—111.61) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

(v) The proposed methods, techniques and types of applications, which shall be consistent with standards established by this chapter as well as the Nutrient Management Act, the Fertilizer Act, the Soil and Plant Amendment Act, the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(vi) The proposed dates of application.

(vii) The equipment to be used for site preparation, land application of the contaminated soil and groundwater and incorporation of the contaminated soil.

(viii) The use that will be made of the proposed application area and the crops that will be planted on each application plot for 3 years following the application.

(ix) A plan to control drift or migration of the chemicals, nutrients and constituents in the soil and groundwater being applied.

(x) Information necessary to show compliance with this chapter, such as the contaminants and contamination levels in each soil pile or quantity of groundwater, the specific plot upon which each soil pile or quantity of groundwater will be placed and the techniques and application rates to be utilized.

(2) *Application rate calculation.* The Department will review the application rate proposal set forth by the applicant in the land application proposal. The Department will consider the following, which shall be addressed in the applicant's operation plan:

(i) The type and concentration of each agricultural chemical contained in each soil pile or quantity of groundwater reported by the applicant in the land application proposal submitted to the Department.

(ii) The excavated soil type indicated by the applicant in the land application proposal submitted to the Department.

(iii) The total volume of excavated soil or contaminated groundwater in each individual soil pile or quantity.

(iv) The proposed application site crop for the upcoming growing season and a projected 3 year crop rotation plan including the use of the land, type of crop to be grown and the use of the crops. The same crop may be planted year after year with the approval of the Department.

(v) The concentration, in parts per million, of the active ingredients in each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(vi) The application rate for the selected site and crop based on the current labeling for each pesticide found. If fertilizers are being applied, the applicant shall follow the recommendations for fertilizer applications for specific crops listed in the latest edition of the *Pennsylvania Agronomy Guide*.

(vii) For agricultural chemicals other than fertilizers a conversion factor (37000) shall be used. The calculation considers the concentration of parts per million and the conversion of FT<sup>3</sup> to YD<sup>3</sup>.

$$(3FT)^3/YD^3 \div 1,000,000 = 1/37037.037$$

The result of the calculation is the total acreage required for land application for each individual agricultural chemical. A safety factor included in this calculation considers the cumulative effect of all the pesticides detected in the soil pile or quantity of groundwater. The acres required for each individual contaminant found in each soil pile or quantity of groundwater contaminated with agricultural chemicals are summed. This value is the uniform soil application rate. Soil application rate (volume of excavated soil or contaminated groundwater ÷ total acres required) (yds<sup>3</sup>/acre).

(viii) The application credits that shall be taken and the additive loading effect of the soil or groundwater contaminated with agricultural chemicals. The rate will be calculated using the following formula:

$$(\text{Land required for an individual contaminant} \div \text{total acres required}) \times \text{product label rate} = \text{active ingredient application credit (lbs/acres)}.$$

(3) *Application rate considerations and procedures.* The following shall be addressed in the applicant's operation plan:

(i) *Application rate.* The application rate as compared to the label rates of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals shall adhere to and not exceed the labeling rate for each compound present.

(ii) *Total loading.* All pesticides detected in a single soil pile or quantity of groundwater contaminated with agricultural chemicals shall be considered when developing soil application rates. The cumulative effect of all the pesticides can be considered by summing the acreage needed for each individual pesticide to develop the total acreage required. Where more than one pesticide is present in a soil pile or quantity of groundwater the soil pile or groundwater shall be applied at the most restrictive labeling rate. Nutrients shall be considered separately from pesticides when developing soil application rates. In addition, the sum of pesticide active ingredient applied through any land application activities and other applications in the same season (or following season, in the case of fall or postharvest land applications) may not exceed labeling rate restrictions for any pesticide applied.

(iii) *Incorporation.* The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and shall ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(iv) *Top soil considerations.* The applicant shall set forth procedures (such as developing a soil and erosion prevention plan and an incorporation plan) to assure that topsoil will not be lost, stripped off the land or buried under the contaminated soil to be applied.

(v) *Uniform application rate.* The applicant shall set forth procedures to assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(vi) *Multiple applications of nutrients.* The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications shall be set forth in the operation plan in the land application proposal. In addition, if the nutrients are being applied to an agricultural site that is required to have a nutrient management plan, under the Nutrient Management Act, the applicant shall attest that the application of the additional nutrients contained in the soil piles or groundwater to be applied conform with and do not violate the standards established in the applicant's nutrient management plan. If the application requires a revision to the nutrient management plan, the applicant shall attach a notification from the State Conservation Commission attesting to the fact the nutrient management plan has been revised to account for the additional nutrients and the revised plan has received final approval.

(4) *Additional application requirements.* The operating plan shall also include the following information:

(i) A projected 3-year crop rotation plan for each field or plot upon which soil or groundwater contaminated with agricultural chemicals is to be applied, including type of crop to be grown, planting sequence, crop planting technique to be used, crop and land management and use of crops grown.

(ii) A nutrient and pesticide management plan for the site, including:

(A) A description of the kind and amount of fertilizer, soil conditioner or pesticide that will be placed on the site in addition to the soil or groundwater contaminated with agricultural chemicals.

(B) The number and kind of animals on the farm or property and the total nutrient value of the manure produced by those animals, and the location (field or plot) where the manure is to be placed.

(C) An explanation and analysis of the effect on the soil and crops from the additional nutrients, soil conditioners or pesticides that would be supplied by the soil and groundwater contaminated with agricultural chemicals.

(D) The benefit to the soil, crops or farming operation that the soil and groundwater contaminated with agricultural chemicals would provide.

**§ 130d.25. Maps and related information.**

(a) *Boundary map.* A land application proposal shall contain detailed maps including necessary narrative descriptions, which show the following:

(1) The boundaries and the names of the present owners of record of the land constituting the proposed application site and a description of all title, deed or usage restrictions, including easements, right-of-way, covenants and other property interests, affecting the proposed application site.

(2) The boundaries of the land where soil and groundwater contaminated with agricultural chemicals will be applied over the estimated total life of the proposed application, including the boundaries of each plot of land that will be affected in each sequence of land application activity.

(3) A grid showing the exact field or location where each soil pile or quantity of groundwater contaminated with agricultural chemicals will be applied.

(4) The location and name of public and private water supplies and wells within the proposed application site and adjacent areas that are within the setback requirements set forth in Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Soils map.* A land application proposal shall contain a United States Department of Agriculture Soil Conservation Service Soils Map or other reliable data if current soils maps are unavailable, which shows the location and types of soils within the proposed application area.

**§ 130d.26. Financial responsibility.**

The applicant shall comply with § 128.34 (relating to financial responsibility). The applicant shall be in compliance with § 128.34 prior to the initiation of the application of the soil or groundwater contaminated with agricultural chemicals to the agricultural land and shall remain in compliance until final closure of the application site as set forth in Subchapter F (relating to closure). Failure to comply with § 128.34 shall result in a denial of the land

application proposal or a revocation of the Department's approval when the applicant fails to maintain continued compliance with § 128.34.

**§ 130d.27. Right of entry and agreement with landowner.**

(a) *Consent of landowner.* When the landowner is the person submitting the land application proposal and responsible for the application of the soil and groundwater contaminated with agricultural chemicals, no right of entry or other agreement is necessary. In all other situations, the land application proposal shall contain a description or copies of the legal documents upon which the applicant bases his legal right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the proposed application site. When a description is given, the applicant shall sign a verified statement attesting to the fact the document exists in the form described. The Department will accept either one of the following legal documents or other document the Department may determine conveys the appropriate legal right:

(1) A copy of a signed consent agreement between the applicant and the current owner of the land upon which the soil or groundwater contaminated with agricultural chemicals will be applied.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to enter onto, operate on and apply soil and groundwater contaminated with agricultural chemicals on the current landowner's property and an abstract of title relating the documents to the current landowner.

(b) *Right of entry.* Each land application proposal shall contain, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth and its authorized agents to enter the proposed application site. The consent shall be obtained prior to final approval of the land application proposal by the Department and shall be applicable prior to the initiation of operations, for the duration of operations at the application site, and for not less than 1 year nor more than 3 years after final closure for the purpose of inspection and monitoring. Failure of the landowner to give consent shall result in denial of the land application proposal.

**§ 130d.28. Identification of interest.**

(a) *General information.* Each land application proposal shall contain the following information:

(1) The legal names, addresses and telephone numbers of:

(i) The applicant.

(ii) The applicator.

(iii) Any contractor, if the contractor is a person other than the applicant.

(2) The name, address and telephone number of the current owner of record of the agricultural land on which the applicant intends to apply the soil and groundwater contaminated with agricultural chemicals.

(b) *Ownership information.* Each land application proposal shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the land application proposal shall contain the following information, if applicable:

(1) The name and address of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

(2) For corporations, the names, principal places of business and the Internal Revenue Service tax identification numbers of the applicant corporation, United States parent corporations of the applicant, including ultimate parent corporations, and all United States subsidiary corporations of the applicant and the applicant's parent corporations.

(3) The names and addresses of other persons or entities having or exercising control over any aspect of the land application of the soil and groundwater contaminated with agricultural chemicals, including associates and agents. This shall include a description of the duties and responsibilities and the control to be exercised by these persons.

(c) *Permits and approvals.* Each land application proposal submitted to the Department shall list the additional permits or approvals necessary for the land application of the contaminated soil and groundwater to the proposed application site. The land application proposal shall set forth the status of those permits or approvals.

(d) *Applicant history.* Each land application proposal shall set forth previous experience of the applicant with regard to land application of agricultural waste or soil or groundwater contaminated with agricultural or other chemicals. The applicant shall identify the location of the sites, the type of operation undertaken and any environmental problems or citations during or resulting from the operation.

**§ 130d.29. Compliance information.**

The land application proposal shall contain a verified statement attesting that the proposed land application will comply with all applicable Federal, State and local laws, rules, regulations and ordinances.

**§ 130d.30. Environmental assessment.**

(a) *Impacts.* The land application proposal shall include an environmental assessment setting forth a detailed analysis of the potential impact of the application of the soil and groundwater contaminated with agricultural chemicals to the proposed agricultural site, including potential environmental harms of the proposed land application such as any short term or long term effects or degradation to the fertility or quality of the agricultural land at the application site, water uses and land uses, and potential deleterious effects on contiguous land, the environment and the public health and safety. The applicant shall consider environmental features such as streams, wells, local parks and habitats of concern.

(b) *Mitigation.* The land application proposal shall include a mitigation plan. The mitigation plan shall delineate the steps the applicant will take in the event the application of the soil or groundwater contaminated with agricultural chemicals has a negative impact on the application site or the environment or causes harm or degradation to the application site or contiguous land, or both.

**Subchapter C. LAND APPLICATION PROPOSAL REVIEW PROCEDURES**

Sec.

130d.31. Criteria for approval or denial.

130d.32. Receipt of land application proposal and completeness review.

130d.33. Review process.

**§ 130d.31. Criteria for approval or denial.**

(a) *Acceptance.* In accordance with the authority in section 904(b) of the act (35 P. S. § 6026.904(b)), the

Department will accept and review only those proposals which seek to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, that are to be applied to agricultural land.

(b) *Approval, denial, modification and rescission.* When exercising its power to approve, deny or request modification of a proposal to apply soil or groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities that is to be applied to agricultural land, the Department will follow the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), 3 Pa.C.S. §§ 6701—6725 (relating to Fertilizer Act), 3 Pa.C.S. §§ 6901—6921 (relating to Soil and Plant Amendment Act), the Nutrient Management Act (3 P. S. §§ 1701—1718) and the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y). The Department will deny a land application proposal that violates any provision of the acts in this subsection. The Department may rescind approval of a land application proposal if the person applying the contaminated soil or groundwater violates any provision of the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act, the Federal Insecticide, the Fungicide and Rodenticide Act of 1947, the act or this chapter or if it discovers a mistake or falsification made in the land application proposal, the test results, the sampling techniques or any part of the operation and actual application of the soil or groundwater to the agricultural land.

(c) *Affirmation of facts.* A land application proposal will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

(1) The land application proposal is complete, accurate and meets the standards established by the act and this chapter.

(2) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal can be feasibly accomplished, under the techniques and facts set forth therein and as required by the act and this chapter.

(3) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not cause harm to the environment, the health, safety and welfare of the general public, or degrade or pollute the agricultural land to which it will be applied.

(4) The land application of the soil and groundwater contaminated with agricultural chemicals detailed in the land application proposal will not violate the Pennsylvania Pesticide Control Act of 1973, the Fertilizer Act, the Soil and Plant Amendment Act, the Nutrient Management Act or the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(d) *Soil or groundwater containing other chemicals in addition to agricultural chemicals.* Where the soil or groundwater sought to be applied contains other chemicals in addition to agricultural chemicals, the Department may begin review of the land application proposal for the application of the agricultural chemicals in the soil or groundwater but will not consider the land application proposal complete or issue an approval until the applicant has provided the Department with the information required by §§ 130d.2(d), 130d.21(d) and 130d.29 (relating to scope; general requirements for land application form; and compliance information).

**§ 130d.32. Receipt of land application proposal and completeness review.**

(a) *Receipt of land application proposal and completeness review.* After receipt of a land application proposal, the Department will determine whether the land application proposal is administratively complete.

(b) *Receipt.* For purposes of this section, "receipt of application" does not occur until the land application proposal is deemed administratively complete.

(c) *Administratively complete land application proposal.* A land application proposal is administratively complete if it contains all the necessary information, approvals, maps and other documents required by this chapter. There is no set timetable for review of a land application proposal. If the land application proposal is administratively complete, the Department will make every effort to render a decision, within 60 days of receiving the administratively complete land application proposal, to approve, approve with modifications or deny the land application proposal. The Department will mail the applicant a written notice of approval or disapproval. A notice of disapproval will state the reasons for the Department's disapproval of the land application proposal.

(d) *Incomplete land application proposal.* When the land application proposal is not complete, the Department will send a written notice and a request for additional information and documentation to the applicant. When additional information and documentation is requested, the Department's review and consideration of the land application proposal will cease until the requested material is received. Upon receipt of all the additional information and documentation requested, the Department will resume its review of the land application proposal. The Department will deny the land application proposal if the applicant fails to provide the additional information and documentation within 60 days of mailing of the request for additional information and documentation.

**§ 130d.33. Review process.**

(a) The Department will review all proposals for land application of soil or groundwater contaminated with agricultural chemicals, generated as the result of remediation activities at agricultural chemical facilities, to be applied to agricultural land.

(b) The Department will review all land application proposals with regard to the land application of agricultural chemicals only.

(c) Where chemicals other than agricultural chemicals are contained in the contaminated media, the Department will review the land application proposal in accordance with provisions set forth in §§ 130d.2(d) and 130d.31(d) (relating to scope; and criteria for approval or denial).

(d) The decision of the Department to approve or deny a land application proposal is final.

**Subchapter D. GENERAL OPERATING REQUIREMENTS FOR LAND APPLICATION OF SOIL AND GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS TO AGRICULTURAL LAND**

Sec.

- 130d.41. Standards for land application of soil and groundwater contaminated with agricultural chemicals.
- 130d.42. Land application rates and procedures.
- 130d.43. Additional application requirements.
- 130d.44. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.
- 130d.45. Prohibited applications.
- 130d.46. Daily operational records.

130d.47. Reports.

130d.48. Annual operational report.

**§ 130d.41. Standards for land application of soil and groundwater contaminated with agricultural chemicals.**

A person approved to apply soil or groundwater contaminated with agricultural chemicals resulting from the remediation of an agricultural facility to agricultural land shall comply with the following:

(1) The land application and application rate shall be consistent with labeling requirements for the pesticide active ingredients found in the soil or groundwater being land applied and the Department may require a safety factor of 1/2 the label application rate. With regard to fertilizer found in the soil or groundwater being land applied, the application shall be consistent with labeling and standards established by the *Pennsylvania Agronomy Guide*.

(2) The cumulative effect of all pesticides found in the soil or groundwater being land applied shall be consistent with the labeling requirements for each pesticide and may not exceed the labeling rate for any of the pesticides contained in the soil pile or quantity of groundwater contaminated with agricultural chemicals.

(3) The cumulative effect of all fertilizers or soil amendments, or both, found in the soil or groundwater being land applied shall be consistent with and not exceed the standards established by the *Pennsylvania Agronomy Guide*.

(4) Proper application techniques set forth and approved by the Department in the applicant's operational plan shall be followed.

(5) Consultants or other individuals directing land application activities shall be certified in the appropriate use category for the pesticides being applied. A certified applicator is required to be onsite at all times during the application of pesticide contaminated soils.

(6) Individual soil piles and groundwater contaminated with agricultural chemicals may not be consolidated for application without prior written approval from the Department and the landowner.

(7) The Department may approve the application of additional agricultural chemicals, not found in background levels at the proposed application site, to the proposed application site in cases when the application rate will not result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment. The Department will not approve an application of contaminated soil or groundwater where the application is likely to result in crop injury, illegal crop residues, polluting or fouling of the agricultural land or cause unreasonable adverse effects on the environment.

(8) The application of agricultural chemicals shall be in compliance with the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61), the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y), sections 6701—6725 of 3 Pa.C.S. (relating to Fertilizer Act), sections 6901—6921 of 3 Pa.C.S. (relating to Soil and Plant Amendment Act), the *Pennsylvania Agronomy Guide* and any nutrient management plan approved under the Nutrient Management Act.

(9) Banned, cancelled or suspended agricultural chemicals may not be applied, as established by the regulations under the Pennsylvania Pesticide Control Act of 1973, the Federal Insecticide, Fungicide and Rodenticide Act of

1947 and the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

(10) Incompatible agricultural chemicals may not be applied. The land application of incompatible agricultural chemicals is prohibited by the Pennsylvania Pesticide Control Act of 1973 and the Federal Insecticide, Fungicide and Rodenticide Act of 1947.

(11) The person responsible for the land application of the soil and groundwater contaminated with agricultural chemicals shall comply with all local ordinances.

**§ 130d.42. Land application rates and procedures.**

(a) *Application rate.* When applying soil and groundwater contaminated with agricultural chemicals, the approved applicant shall follow the application rates set forth and approved by the Department in the land application proposal and operation plan.

(b) *Application rates and procedures.* The approved applicant shall follow the application rates, standards and techniques in the operating plan and approved land application proposal. The applicant shall assure:

(1) The application rate of the various compounds present in each soil pile or quantity of groundwater contaminated with agricultural chemicals adheres to and does not exceed the labeling rate for each compound present.

(2) Where more than one pesticide or other agricultural chemical is present in a soil pile or quantity of groundwater, the soil pile or groundwater shall be applied at the most restrictive labeling rate.

(3) The soil and groundwater contaminated with agricultural chemicals shall be applied in a manner that assures an even distribution of agricultural chemicals within the soil pile or quantity of groundwater and ensures the application rate will be uniform across the field application site. In addition, where incorporation is necessary, the incorporation techniques used for soil piles contaminated with agricultural chemicals shall achieve a mixture of top soil and contaminated media and ensure the contaminated media is incorporated to a depth of at least 6 inches. The contaminated media shall be incorporated into the soil at the application site within 24 hours of application.

(4) The applicant shall utilize techniques and procedures that assure topsoil will not be lost, removed, stripped off the land or buried under the contaminated soil to be applied. In addition, the techniques and procedures utilized shall assure the application rate will be uniform across the field application area or as close to uniform as is possible given the current technology, machinery and application techniques available.

(5) The total amount of nutrients applied through the land application plus other commercial fertilizers, manure and nutrient applications may not violate the provisions of any label, the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y) or the Pennsylvania Pesticide Control Act of 1973 (3 P.S. §§ 111.21—111.61).

(c) *Timetable for land application of soil and groundwater contaminated with agricultural chemicals.* Land application of soil and groundwater contaminated with agricultural chemicals shall be applied between April 1 and September 30 of each year, unless otherwise approved in writing by the Department.

(d) *Federal Insecticide, Fungicide and Rodenticide Act of 1947 and Pennsylvania Pesticide Control Act of 1973.*

Application, application rates and application techniques used to land apply soil piles and quantities of groundwater contaminated with agricultural chemicals may not violate the Federal Insecticide, Fungicide and Rodenticide Act of 1947 or the Pennsylvania Pesticide Control Act of 1973.

**§ 130d.43. Additional application requirements.**

The approved applicant shall follow the crop rotation and nutrient and pesticide management plans in the approved operating plan. The Department will monitor the operation to assure the plans are being followed.

**§ 130d.44. Limitations on land application of soil and groundwater contaminated with agricultural chemicals.**

When applying soil and groundwater contaminated with agricultural chemicals the approved applicant shall assure the following:

(1) *Labeling rates.* Pesticide contaminated soil and groundwater shall be applied to a site or crop, or both, in a manner consistent with labeling directions and requirements for that pesticide.

(2) *Annual crops.* In the case of annual crops, the crop shall be grown on the application area during the season that the application is made.

(3) *Postharvest application.* If land application is conducted in the fall or postharvest, the crop following the application shall be suitable for the labeling requirements of the agricultural chemicals contained in the soil and groundwater to be land applied.

(4) *Site suitability.* Site suitability will be based on the land application proposal. The information contained within the land application proposal shall evidence that the rates of application of the soil and groundwater contaminated with agricultural chemicals will comply with labeling requirements, will not exceed labeling rates, will not exceed additivity requirements and will not cause damage to the proposed application site or adjacent land or water. General slope, drainage characteristics, presence of shallow groundwater, distance to surface waters and suitability for agricultural purposes are some of the characteristics that will be considered.

(5) *Application of soil piles.* To allow for proper incorporation of contaminated soil piles, the soil piles may not be applied overtop of the soil at the application site at a thickness greater than 1/2 inch. The soil piles shall be incorporated into the soil at the application site to a depth of at least 6 inches, unless otherwise authorized by the Department.

(6) *Application techniques.* Soil and groundwater contaminated with agricultural chemicals may not be applied by any type of spray irrigation equipment or by aerial equipment or any other technique that may cause or lead to excessive drift of the agricultural chemicals contained in the soil or groundwater unless the person has demonstrated in the land application proposal the equipment or technique will not cause aerosol transport offsite or onto a field that will contain an incompatible crop, and the Department has approved in writing this machinery or technique.

(7) *Ponding and standing accumulations.* Soil and groundwater contaminated with agricultural chemicals shall be applied to the soil surface and incorporated in a manner that prevents ponding or standing accumulations of contaminated soil or groundwater, or both, on or overtop of the topsoil at the application site.

(8) *Pasturing or grazing.* Livestock may not be pastured or allowed to graze on areas where soil and groundwater contaminated with agricultural chemicals has been applied for at least 3 years subsequent to the application, unless otherwise approved by the Department in writing.

(9) *Land use and crops.* The use that will be made of the proposed application area and the crops that will be grown on the site subsequent to the application of the soil and groundwater contaminated with agricultural chemicals shall be consistent with the labeling requirements of the pesticides contained in the soil piles or groundwater to be applied.

#### § 130d.45. Prohibited applications.

(a) *General.* The following applications of soil or groundwater contaminated with agricultural chemicals are prohibited, unless specifically authorized by the Department in writing:

(1) An application which would violate any provisions of the act, the environmental protection acts or this chapter.

(2) An application to any "preserved farmland" as defined in 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

(3) An application to soil designated as "prime farmland" as defined under 7 CFR 657 (relating to prime and unique farmland).

(4) An application which would render the farmland unusable for agricultural purposes or would cause unreasonable adverse effects on the environment.

(5) An application to a site which would cause the total annual application amounts of an agricultural chemical to exceed its respective labeling application rate.

(6) An application that does not comply with existing laws and regulations.

(7) An application where the soil or groundwater contaminated with agricultural chemicals contains a constituent in such high concentrations that it requires a loading rate which would give the media little or no nutrient or soil conditioning value or little or no pesticide value when applied to the proposed application site.

(b) *Setback areas where land application is prohibited.* The operation plan shall address how the applicant intends to comply with this subsection. Soil and groundwater contaminated with agricultural chemicals may not be applied in the following areas:

(1) Within 100 feet of an intermittent or perennial stream as defined in 25 Pa. Code § 271.1 (relating to definitions).

(2) Within 300 feet of a water source, as defined in 25 Pa. Code § 271.1, unless the current owner of the water source has provided a written waiver consenting to the activities closer than 300 feet.

(3) Within 100 feet of a sinkhole or diversion ditch.

(4) Within 100 feet of an exceptional value wetland, as defined in 25 Pa. Code § 105.17 (relating to wetlands).

(5) Within 100 feet measured horizontally from an occupied dwelling, unless the current owner thereof has provided a written waiver consenting to the activities closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner.

#### § 130d.46. Daily operational records.

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an operational record for each day that the contaminated soil or groundwater is applied. These records shall be maintained in dated files and made accessible to the Department upon request.

(b) *Contents of daily operational record.* The daily operational record shall include the following:

(1) The specific soil piles or quantities of groundwater contaminated with agricultural chemicals applied that day, including weight or volume and types and levels of pesticides, fertilizers, soil conditioners, nutrients and other chemicals in each soil pile or quantity of groundwater applied.

(2) The technique and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals, as well as the depth of incorporation.

(3) The application rate and calculations evidencing the application rate for each soil pile or quantity of groundwater contaminated with agricultural chemicals are in compliance with this chapter.

(4) The specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(5) The name, mailing address, county and state of each remediation site from which the contaminated media came and the specific soil pile or quantity of groundwater received from each remediation site. The records shall cross-reference the specific location of the application of each soil pile or quantity of groundwater contaminated with agricultural chemicals.

(6) A record of any deviations from the approved land application proposal operating plan.

(7) The general weather conditions during application.

(8) A record of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(c) *Retention.* Daily operational records shall be maintained and retained until final approval of the site closure plan required by Subchapter F (relating to closure) by the Department. These records shall be available to the Department upon request.

#### § 130d.47. Reports.

(a) A person who receives approval from the Department to apply soil or groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at agricultural chemical facilities, to agricultural land shall file an annual operational report or a final report, or both, with the Department. The annual operational report required by § 130d.48 (relating to annual operational report) shall be filed with the Department within 60 days of the end of the 1-year time period running from the beginning of application of the soil and groundwater contaminated with agricultural chemicals to the application site and each year of operation thereafter. The final report required by § 130d.62 (relating to final report) shall be filed with the Department along with the site closure plan required by § 130d.61 (relating to site closure plan) within 60 days of final closure of the application site. The annual report and the final report may be combined when the application of the contaminated soil or groundwater is completed in 1 year or less.



(b) The records and reports shall be submitted on forms prepared by the Department and shall contain the following:

(1) The name, mailing address, county and telephone number of the person applying the contaminated soil or groundwater.

(2) The name, mailing address, county and telephone number of the owner of the agricultural land upon which the contaminated soil or groundwater is being or has been applied.

(3) A copy of the daily records and annual operational report required by § 130d.46 (relating to daily operational records) and § 130d.48.

(4) A spread sheet on each soil pile or quantity of groundwater applied cross-referencing the field to which it was applied and documenting the following:

(i) The chemical analysis of the specific soil pile or quantity of groundwater applied.

(ii) The application method used for each soil pile or quantity of groundwater.

(iii) The date of incorporation and depth of incorporation of each soil pile.

**§ 130d.48. Annual operational report.**

(a) *General.* The applicant approved to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall make and maintain an annual operational record. These records shall be maintained according to generally accepted principles.

(b) *Contents of annual operational report.* The annual operational record shall be a compilation of the daily records made and maintained by the approved applicant. The annual operational record shall be a synopsis of the daily records and shall include the following:

(1) A synopsis of the weight or volume and types and levels of pesticides, fertilizers, soil conditioners nutrients and other chemicals applied to each field or plot at the application site.

(2) A synopsis of the techniques and equipment used to apply and incorporate each soil pile or quantity of groundwater contaminated with agricultural chemicals to each field or plot at the application site and the depth of incorporation at each field or plot.

(3) A synopsis of the application rate and calculations evidencing the application rate to each field or plot for each soil pile or quantity of groundwater contaminated with agricultural chemicals is in compliance with this chapter.

(4) A final list containing the name, mailing address, county and state of each remediation site from which contaminated media came that was applied to the site. This list shall identify each soil pile and quantity of groundwater received from each remediation site.

(5) A final list, including dates, of any deviations from the land application proposal operating plan.

(6) A final list, including dates, of actions taken to correct deviations from the operating plan or violations of the act, the environmental protection acts or this chapter.

(7) A current certificate of insurance, as specified in § 130d.26 (relating to financial responsibility), evidencing continuous coverage for comprehensive general liability insurance.

(8) A map of the same scale and type required by § 130d.25 (relating to maps and related information), showing the field boundaries where soil and groundwater contaminated with agricultural chemicals was applied, and the volume and type of agricultural chemicals and contaminated media applied to each field or other approved application area.

**Subchapter E. GENERAL REQUIREMENTS AND EXCEPTIONS FOR USE AND APPLICATION OF GROUNDWATER CONTAMINATED WITH AGRICULTURAL CHEMICALS AS TANK MIX**

Sec.  
130d.51. General requirements.  
130d.52. General exceptions.

**§ 130d.51. General requirements.**

(a) *Special land application proposal form.* A person seeking approval to utilize and apply groundwater contaminated with agricultural chemicals generated as a result of remediation activities at an agricultural chemical facility as tank mix, shall apply in writing on a special land application proposal form prepared by the Department. The person seeking permission shall follow the land proposal application procedures in Subchapters B and D (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land; and general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(b) *Review and approval of special land application proposal form.* The Department will follow the review process in Subchapter C (relating to land application proposal review procedures) when reviewing an application for use of groundwater contaminated with agricultural chemicals as tank mix. When the Department permits groundwater contaminated with agricultural chemicals, generated as a result of remediation activities at an agricultural chemical facility, to be applied as tank mix to agricultural land, the applicant shall comply with the provisions of this chapter except those expressly waived in writing by the Department in its letter of approval.

(c) *Denial of special land application proposal form.* When the Department denies a request to utilize and apply groundwater contaminated with agricultural chemicals as tank mix, the person seeking approval may still submit a land application proposal form under the standard provisions of this chapter. The Department's letter of denial will set forth the reasons for the denial.

(d) *Ongoing testing and monitoring requirement.* When the Department approves the application of groundwater contaminated with agricultural chemicals, as tank mix, the approved applicant shall be required to conduct quarterly testing and monitoring of the groundwater and submit the results of the tests to the Department. The testing shall be done in accordance with §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan), shall test and monitor for the agricultural chemicals set forth in the applicant's approved land application proposal and shall be consistent with the land application proposal approved by the Department. The approved applicant shall continue to monitor and test until a final closure plan has been submitted to and approved by the Department and pumping and application of the groundwater contaminated with agricultural chemicals has ceased. This requirement applies to each well or other source from which the groundwater contaminated with

agricultural chemicals to be utilized as tank mix is being drawn or pumped. Based on the quarterly test results and consistent with the rates and procedures in §§ 130d.41—130d.45, the Department may allow or require the approved applicant to change the rates of application.

(e) *Cancellation of approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix.* The Department will cancel the approval to utilize and apply groundwater contaminated with agricultural chemicals as tank mix if the groundwater contamination levels rise above the DEP published MCL and HAL standards or new contaminants are found. The utilization and land application of the contaminated groundwater as tank mix shall immediately cease. The previously approved applicant shall no longer fall under the exception established by this subchapter and delineated in the Department's letter of approval. The previously approved applicant shall be required to either cease and desist or, where possible, comply with the standard land application requirements of this chapter. Land application of the groundwater contaminated with agricultural chemicals may not resume until the previously approved applicant can demonstrate compliance with this chapter.

#### § 130d.52. General exceptions.

(a) When the chemical and waste analysis results manifest that the types and concentrations levels of agricultural chemicals contained in the quantity of groundwater, generated as a result of remediation activities at an agricultural chemical facility, sought to be land applied are at levels below DEP published MCL and HAL standards, the Department may allow the groundwater to be utilized as tank mix.

(b) When the Department permits groundwater contaminated with agricultural chemicals to be utilized as tank mix, the Department may waive certain provisions of this chapter. The Department will determine which provisions to waive based on the information contained in the land application proposal, with special attention to the types, levels and concentrations of agricultural chemicals in the groundwater the applicant is seeking to apply. The Department will set forth the waivers specifically in its letter of approval.

(c) The Department will not waive the following provisions:

(1) Subchapter B (relating to land application proposal requirements for permission to apply soil and groundwater contaminated with agricultural chemicals to agricultural land).

(2) Subchapter C (relating to land application proposal review procedures).

(3) Subchapter D (relating to general operating requirements for land application of soil and groundwater contaminated with agricultural chemicals to agricultural land).

(4) Subchapter F (relating to closure).

#### Subchapter F. CLOSURE

Sec.  
130d.61. Site closure plan.  
130d.62. Final report.

#### § 130d.61. Site closure plan.

(a) *General.* The applicant approved by the Department to land apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a site closure plan and final report delineating the results of the land application activity to the Department. The site closure plan and final report shall be filed with the Department within 60 days of final closure of the application site.

(b) *Contents of plan.* The site closure plan shall include the following:

(1) A proposed postapplication field soil sampling and analysis plan which shall be consistent with the procedures for soil sampling and analysis in §§ 130d.22 and 130d.23 (relating to chemical analysis of waste and sampling techniques and protocol; and waste sampling plan).

(2) The compounds analyzed for and the methods of analysis. This should be consistent with the initial background components analyzed and the methods used.

(3) A discussion of any problems encountered during the project and actions taken to correct any problems or violations.

#### § 130d.62. Final report.

The applicant approved by the Department to apply soil and groundwater contaminated with agricultural chemicals to agricultural land shall submit a final report to the Department. The final report shall be submitted to the Department within 60 days of final closure of the application site and shall contain the final results of the site closure plan, a narrative describing both positive and negative results of the land application and the following information:

(1) The names of the persons supervising the application.

(2) The total acreage on which the soil or groundwater, or both, contaminated with agricultural chemicals was applied.

(3) The dates of each application.

(4) The start and stop time of each application.

(5) The weather conditions during each application.

(6) The calibration measures used.

(7) The type of equipment used.

(8) The type of incorporation method used and the date of incorporation.

(9) The types and concentrations of agricultural chemicals present in each soil pile or quantity of groundwater and the specific field to which each soil pile or quantity of groundwater, or both, was applied.

(10) A discussion of any problems that occurred and actions taken to correct the problems.

(11) The analytical results of both the original application site analysis and the field closure soil sampling plan.

[Pa.B. Doc. No. 04-1543. Filed for public inspection August 20, 2004, 9:00 a.m.]

# Title 31—INSURANCE

## INSURANCE DEPARTMENT

### [31 PA. CODE CH. 147]

#### Annual Audited Insurers' Financial Report Required

The Insurance Department (Department) amends Chapter 147 (relating to annual audited insurers' financial report required) to read as set forth in Annex A.

##### *Purpose*

The purpose of this final-form rulemaking is to update Chapter 147, commonly referred to as the CPA Audit Rule. Chapter 147 requires insurers to have annual audits of their year-end financial statements performed by independent certified public accountants (CPA). The annual audited financial reports are required to be filed with the Department by June 1 of each year. Chapter 147 was adopted in 1979 and is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC). The model is included in the NAIC Financial Regulation Standards and Accreditation Program, which was established in 1989 to set minimum standards for state regulation of the financial solvency of the insurance industry. The Department has been accredited by the NAIC for compliance with the standards since 1994. Chapter 147 was last amended in 2001 to bring it into compliance with changes to the NAIC model. The NAIC model was revised in 2002 to address concerns about the use of indemnification clauses in the engagement of CPAs for the annual audits. In 2003, an additional revision was made to specifically require CPAs to adhere to applicable NAIC instructions and procedures in conducting audits. The updates in this final-form rulemaking include the 2002 and 2003 revisions to the NAIC model, as well as other revisions to improve the clarity of Chapter 147, particularly with respect to its applicability to continuing care providers.

##### *Statutory Authority*

This final-form rulemaking is adopted under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P. S. §§ 443, 764a, 967 and 991.2452) regarding the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations, exchanges, fraternal benefit societies and preferred provider organizations to file statements concerning their affairs and financial condition; sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P. S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701 (relating to reports and examinations; reports and examinations; and regulation); sections 11 and 14 of the Health Maintenance Organization Act (40 P. S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3207 and 3225) which, respectively, relate to the specific regulatory and rulemaking authority of the Department regarding financial reporting by the Pennsylvania Fair Plan, the Pennsylvania Professional Liability Joint Underwriting Association, hospital plan corporations, professional health service corporations, beneficial associations, health maintenance organizations and continuing care providers.

##### *Comments and Response*

Notice of proposed rulemaking was published at 34 Pa.B. 844 (February 14, 2004) with a 30-day public comment period.

No comments were received from the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. No comments were received during the 30-day public comment period. The Independent Regulatory Review Commission (IRRC) submitted its comments and suggestions to the Department on April 14, 2004. The Department has responded to IRRC's comments in this final-form rulemaking.

The following is a discussion of comments and summary of changes in the final-form rulemaking.

##### *§ 147.8. Scope of audit and report of independent certified public accountant.*

Subsection (d) in the proposed rulemaking stated: "The Commissioner may from time to time prescribe that additional auditing procedures be observed by the independent certified public accountant in the audit of the financial statements of insurers under this chapter." IRRC had two comments regarding this subsection. First, IRRC commented that the phrase "from time to time" was vague and should be deleted. The Department agrees that the phrase is unnecessary and has deleted it in the final-form rulemaking. IRRC also commented that the final-form regulation should identify under what circumstances additional auditing procedures may be required. The language in subsection (d) was previously found in subsection (a) and has been in Chapter 147 since it was first adopted in 1979. It provides the Commissioner with the flexibility to respond to an unanticipated or unprecedented situation if additional auditing procedures may be needed. The Department is not aware of any instances where this subsection has been used to require additional auditing procedures. However, because the final-form rulemaking applies to various types of insurers and regulated entities, including continuing care providers and special purpose insurance mechanisms, the subsection may be needed to address unusual or unique situations that may not be contemplated or addressed by generally accepted auditing standards or the NAIC *Financial Condition Examiner's Handbook*. Therefore, the subsection provides the flexibility to respond, if necessary, to an unanticipated or unprecedented event that has not been addressed by Nationally recognized auditing standards.

##### *Affected Parties*

Chapter 147 applies to all types of insurers and continuing care providers licensed to transact business in this Commonwealth and the CPAs retained by these entities to conduct audits of their annual financial statements.

##### *Fiscal Impact*

##### *State Government*

The final-form rulemaking will clarify and strengthen existing regulatory requirements. There will be no increase in cost to the Department as a result of this final-form rulemaking.

##### *General Public*

The final-form rulemaking has no fiscal impact on the general public.

*Political Subdivisions*

There will be no fiscal impact on political subdivisions as a result of the final-form rulemaking.

*Private Sector*

The strengthened requirements in this final-form rulemaking are consistent with NAIC standards and will impose no significant costs on insurers and continuing care providers in obtaining annual audits of their financial statements.

*Paperwork*

The final-form rulemaking will not impose additional paperwork on the Department and affected parties. The final-form rulemaking may reduce paperwork to the extent that it provides for the filing of documents in electronic form.

*Effectiveness/Sunset Date*

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

*Contact Person*

Questions regarding the final form rulemaking should be sent to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (171) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 11, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 844, to IRRC and the Chairpersons of the House Insurance Committee and Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

*Findings*

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Department, 31 Pa. Code Chapter 147, are amended by amending §§ 147.2—147.11 and 147.13 to read as set forth in Annex A.

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

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

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

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

*(Editor's Note: See 34 Pa.B. 4598 for a document relating to this rulemaking.)*

**Fiscal Note:** Fiscal Note 11-217 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 31. INSURANCE**

**PART VIII. MISCELLANEOUS PROVISIONS**  
**CHAPTER 147. ANNUAL AUDITED INSURERS'**  
**FINANCIAL REPORT REQUIRED**

**§ 147.2. Definitions.**

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

*Audited financial report*—The term includes those items specified in § 147.4 (relating to contents of annual audited financial report).

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*Domestic insurer*—An insurer incorporated or organized under the laws of the Commonwealth.

*Foreign insurer*—An insurer not incorporated or organized under the laws of the Commonwealth.

*Independent certified public accountant*—

(i) A certified public accountant licensed, or an accounting firm registered, to practice in this Commonwealth under The CPA Law (63 P.S. §§ 9.1—9.16b) or in another state with similar licensing requirements, in good standing with the American Institute of Certified Public Accountants, Inc., and in good standing in the states in which the certified public accountant is licensed or the accounting firm is registered to practice; who conforms to the standards of the profession as contained in the "Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc." and The CPA Law or similar laws.

(ii) For insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, a chartered accountant.

*Insurer*—

(i) The term includes any of the following licensed to transact business in this Commonwealth:

- (A) An insurance company, association or exchange.
- (B) A reciprocal or interinsurance exchange.
- (C) The Inspection Bureau, the Industry Placement Facility and the Fair Plan coming under the Pennsylvania Fair Plan Act (40 P. S. §§ 1600.101—1600.502).
- (D) A nonprofit health plan corporation, whether operating a hospital plan or a professional health services plan, or both.
- (E) An employers' mutual liability insurance association.
- (F) A health maintenance organization.
- (G) A fraternal benefit society or beneficial association.
- (H) A preferred provider organization.
- (I) A joint underwriting association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.731).

(ii) Except as otherwise noted, the term also includes a continuing care provider licensed to transact business in this Commonwealth.

**§ 147.3. Filing and extensions for filing of annual audited financial report.**

(a) Every insurer, unless exempted by the Commissioner under § 147.13 (relating to effective date and exemption), shall have an annual audit performed by an independent certified public accountant and shall file as instructed by the Commissioner an audited financial report for that year on or before June 1 for the year ending December 31 immediately preceding unless an extension is granted under subsection (b). The Commissioner may require an insurer to file an audited financial report earlier than June 1 by providing 90 days' advance notice to the insurer. The Commissioner may require audited financial reports and related information required under this chapter to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(b) Extensions of the filing date may be granted by the Commissioner for 30-day periods upon showing, by the insurer and its independent certified public accountant, the reasons for requesting an extension by the Commissioner. The request for extension shall be submitted in writing at least 10 days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) Subsections (a) and (b) do not apply to continuing care providers. In accordance with the law and regulations relating to continuing care providers, each continuing care provider shall have an annual audit performed by an independent certified public accountant and shall file with the Commissioner an audited financial report for that year within 4 months following the end of the provider's fiscal year.

(d) Audited financial reports filed as instructed by the Commissioner will be open to the public for examination and inspection.

**§ 147.4. Contents of annual audited financial report.**

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting

practices prescribed, or otherwise permitted, by the Department. Statutory accounting practices are those practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.

(b) The annual audited financial report shall, at a minimum, include the following:

(1) Financial statements that present in a comparable manner, as of the end of the current and the preceding calendar year, the financial condition of the insurer, including the following:

- (i) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (ii) Statement of operations.
- (iii) Statement of cash flows.
- (iv) Statement of changes in capital and surplus.

(2) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed with the Department, with a written description of the nature of these differences, particularly with respect to surplus or stockholder equity and the results of operations. The insurer shall file an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the audited statutory financial statement and the annual statement filed with the Department within 60 days of the filing date of the audited financial report. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(3) The report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Department, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted if sufficient detail is made available to the Department upon request. An account which represents less than 5% of the insurer's admitted assets may be aggregated for reporting purposes, except that all invested asset accounts shall be separately reported.

(d) If an error is discovered after a report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report to the insurer and to the Department within 30 days of the date the independent certified public accountant becomes aware of

the discovery of the error. To the extent that the error requires an amendment to the insurer's annual financial statement filed with the Department, the insurer shall file, within 60 days of the date the corrected report is issued, an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the corrected audited statutory financial statement and the annual statement filed with the Department and including reconciling notes as required by the appropriate National Association of Insurance Commissioners *Annual Statement Instructions* and *Accounting Practices and Procedures Manual*. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(e) Subsections (a)—(d) do not apply to continuing care providers. The annual audited financial report for a continuing care provider shall comply with the following:

(1) The annual audited financial report for a nonprofit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its activities, cash flows and changes in net assets for the fiscal year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of activities, cash flows, changes in net assets and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(2) The annual audited financial report for a for-profit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its operations, cash flows and changes in shareholder's equity for the year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of net income, cash flows, shareholder's equity and comprehensive income, and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(3) If an error is discovered after an annual audited financial report is filed, the independent certified public accountant shall withdraw the report and issue a cor-

rected report within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error.

**§ 147.5. Designation of independent certified public accountant.**

(a) Each insurer required by this chapter to file an annual audited financial report shall, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this chapter. Insurers which have not retained an independent certified public accountant by November 11, 1995, shall engage and register the name and address of an independent certified public accountant with the Commissioner at least 6 months before the date when the first audited financial report is required to be filed. This subsection does not apply to insurers which registered with the Commissioner in writing the name and address of an independent certified public accountant in compliance with this chapter prior to November 11, 1995.

(b) The insurer shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the insurance statutes and regulations that relate to accounting and financial matters of the State in accordance with whose regulation the audited financial report is made and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying the exceptions the independent certified public accountant may believe appropriate.

(c) If an independent certified public accountant who was the independent certified public accountant for the immediately preceding filed audited financial report is dismissed, resigns or is otherwise replaced, the insurer shall within 5 business days notify the Department of the dismissal, resignation or replacement.

(1) Within 10 business days of submitting a notification of dismissal, resignation or replacement, the insurer shall also furnish the Commissioner with a separate letter stating whether, in the 24 months preceding the dismissal, resignation or replacement, there were disagreements with the former independent certified public accountant on a matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former independent certified public accountant, would have caused the independent certified public accountant to make reference to the subject matter of the disagreement in connection with the independent certified public accountant's opinion.

(2) The disagreements required to be reported include both those resolved to the former independent certified public accountant's satisfaction and those not resolved to the former independent certified public accountant's satisfaction. For purposes of this subsection, disagreements are those that occur at the decision making level—that is, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering the report. The insurer shall also in writing request the former independent certified public accountant to furnish it a letter addressed to the insurer stating whether the independent certified public accountant agrees with the statements

contained in the letter of the insurer and, if not, stating the reasons for which the independent certified public accountant does not agree. The insurer shall furnish the responsive letter from the former independent certified public accountant to the Commissioner together with its own.

(d) Subsection (b) does not apply to continuing care providers. A continuing care provider shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the Commonwealth's statutes and regulations that relate to accounting and financial matters applicable to continuing care providers and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity with generally acceptable accounting principles.

**§ 147.6. Qualifications of independent certified public accountant.**

(a) The Commissioner will not recognize a person or firm as a qualified independent certified public accountant under any of the following conditions:

(1) The person is not licensed, or the firm is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth.

(2) The person or firm is not in good standing with the American Institute of Certified Public Accountants, Inc. and, if applicable, the Public Company Accounting Oversight Board.

(3) The person or firm is not in good standing in all states in which the person is licensed, or the firm is registered, to practice.

(4) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(b) For an insurer organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent public accountant under any of the following conditions:

(1) The person or firm is not a chartered accountant.

(2) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.

(c) Except as otherwise provided in this section, the Commissioner will recognize an independent certified public accountant as independent and qualified who conforms to the standards of the profession as contained in the "Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc." and The CPA Law (63 P. S. §§ 9.1—9.16b) or similar laws.

(d) A partner or other person responsible for rendering an audited financial report may not act in that capacity for more than 7 consecutive years. Following a 7-year

period of service, the person will be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for 2 years. An insurer may apply to the Commissioner for relief from the rotation requirement on the basis of unusual circumstances. In determining if the relief should be granted, the Commissioner may consider the following factors:

(1) The number of partners, the expertise of the partners or the number of insurance or continuing care provider clients in the currently registered firm.

(2) The premium volume of the insurer or revenue volume of the continuing care provider.

(3) The number of jurisdictions in which the insurer transacts business.

(e) The Commissioner will not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by a natural person who meets one of the following conditions:

(1) The person has been convicted of fraud, bribery, a violation of 18 U.S.C.A. Chapter 96 (relating to the Racketeer Influenced and Corrupt Organizations) or any dishonest conduct or practice under Federal or state law.

(2) The person has been found to have violated the insurance laws of the Commonwealth with respect to previous reports submitted under this chapter.

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(f) The Commissioner may hold a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56—58 (relating to special rules of administrative practice and procedure; publication of citations and notice of hearings; and objections and procedure for hearings on reports of examination) to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not independent or qualified, or both, for purposes of expressing an opinion on the financial statements in the audited financial report made under this chapter and may require the insurer to replace the certified public accountant.

(g) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a receivership proceeding commenced against the insurer under Article V of The Insurance Department Act (40 P. S. §§ 221.1—221.63), the mediation or arbitration agreement may be disavowed by the statutory receiver.

(h) If the Commissioner has reason to believe that an audit performed contains a material departure from generally accepted auditing standards, the Commissioner may refer the matter to the State Board of Accountancy and the American Institute of Certified Public Accountants, Inc., for review and determination. Upon the finding by the State Board of Accountancy or the American Institute of Certified Public Accountants, Inc., that a certified public accountant violated applicable standards relating to competence, the performance of audits, accounting principles or other professional conduct, the Commissioner will not accept the audited financial report for that audit and will no longer accept audited financial statements certified by that certified public accountant.

(i) Within 60 days of receipt of notice from the Commissioner of a finding under subsection (h) that an audit

contains a material departure from generally accepted auditing standards, the insurer for which the audit was performed shall register with the Commissioner the name and address of a qualified independent certified public accountant retained by the insurer to perform an audit in compliance with this chapter for the year for which the finding was made. The audited financial report for the year for which the finding was made shall be filed within a time period to be determined by the Commissioner.

**§ 147.7. Consolidated or combined audits.**

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial reports in lieu of separate annual audited financial reports if the insurer is part of a group of insurance companies which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. A columnar consolidating or combining worksheet, setting forth the amounts shown on the consolidated or combined audited financial report with a reconciliation of differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurer, shall be filed with the report. The reconciliation shall include explanations of consolidating and eliminating entries. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Consolidated or combined audited financial reports shall be prepared in conformity with statutory accounting practices as set forth in § 147.4(a) (relating to contents of annual audited financial report).

(b) The Commissioner may require an insurer to file separate annual audited financial reports.

(c) Subsection (a) does not apply to continuing care providers. A continuing care provider may make written application to the Commissioner for approval to file consolidated or combined financial reports in lieu of separate annual audited financial reports if the continuing care provider is part of a group of affiliated entities. A columnar consolidating or combining worksheet, setting forth the amounts shown for each individual entity on the consolidated or combined audited financial report and including explanations of consolidating and eliminating entries, shall be filed with the report. Consolidated or combined audited financial reports shall be prepared as set forth in § 147.4(e).

**§ 147.8. Scope of audit and report of independent certified public accountant.**

(a) The annual financial statements filed by an insurer with the Department shall be audited by an independent certified public accountant. The audit of the financial statements of the insurer shall be conducted in accordance with generally accepted auditing standards.

(b) The scope of the audit and data testing procedures shall be conducted as required by the appropriate *Annual Statement Instructions* adopted by the National Association of Insurance Commissioners. Consideration shall also be given to other procedures in the *Financial Condition Examiner's Handbook* adopted by the National Association of Insurance Commissioners.

(c) Subsection (b) does not apply to continuing care providers.

(d) The Commissioner may prescribe that additional auditing procedures be observed by the independent

certified public accountant in the audit of the financial statements of insurers under this chapter.

**§ 147.9. Notification of adverse financial condition.**

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or audit committee of the insurer, any of the following:

(1) A determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently being audited.

(2) A determination by the independent certified public accountant that the insurer does not meet its capital and surplus requirement, or that the continuing care provider does not meet its liquid reserve requirement, under laws and regulations relating to the insurer or continuing care provider as of the balance sheet date currently being audited.

(b) An insurer required by this chapter to file an annual audited financial report who receives any report from the independent certified public accountant, as required by this section, shall forward a copy of the report to the Commissioner within 5 business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If within the required 5 business day period, the independent certified public accountant does not receive evidence from the insurer of the report being furnished to the Commissioner, the independent certified public accountant shall directly furnish to the Commissioner a copy of the report within the next 5 business days.

(c) The engagement letter executed by the insurer and the independent certified public accountant shall expressly provide that the independent certified public accountant is not liable in any manner to the insurer for a statement made under subsection (b) if the statement is made in good faith in compliance with subsection (b).

(d) If the independent certified public accountant, subsequent to the date of the annual audited financial report filed under this chapter, becomes aware of facts which might have affected the independent certified public accountant's report, the independent certified public accountant is required to take action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, Inc. If, pursuant to the auditing standards for subsequent discovery of facts, the independent certified public accountant advises the insurer to make appropriate disclosure of newly discovered facts, the insurer shall provide the Department with written notice of the independent certified public accountant's advice within 5 business days of receipt of that advice.

**§ 147.10. Report on significant deficiencies in internal controls.**

(a) Concurrently with the filing of the annual audited financial reports, each insurer shall furnish the Commissioner with a written report prepared by the independent certified public accountant describing significant deficiencies in the insurer's internal control structure noted by the independent certified public accountant during the audit. The *Statement of Auditing Standard No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public*



*Accountants, Inc.*) requires an independent certified public accountant to communicate significant deficiencies, known as "reportable conditions," noted during a financial statement audit to the appropriate parties within an entity. A report should not be issued if the independent certified public accountant does not identify significant deficiencies.

(b) The insurer is required to provide, within 60 days of the date of the independent certified public accountant's report on significant deficiencies, a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the independent certified public accountant's report.

**§ 147.11. Definitions, availability and maintenance of independent certified public accountant workpapers.**

(a) Workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to audit of the financial statements of an insurer. For purposes of this chapter, workpapers include audit planning documentation, audit programs, permanent files, internal control and electronic data processing questionnaires, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries which are prepared or obtained by the independent certified public accountant in the course of the independent certified public accountant's audit of the financial statements of an insurer and which support the opinion thereon.

(b) Every insurer required to file an annual audited financial report under this chapter shall require the independent certified public accountant to make available, through the insurer, for review by Department examiners workpapers prepared in the conduct of the audit, as well as communications related to the audit between the independent certified public accountant and the insurer, including the engagement letter, at the offices of the insurer, at the offices of the independent certified public accountant, at the offices of the Department or at another reasonable place designated by the Commissioner. The insurer shall require that the independent certified public accountant retain the audit workpapers and communications for at least 7 years after the period reported on and agree to make a partner or manager available to the Department upon reasonable request.

(c) In the conduct of the periodic review by Department examiners described in subsection (b), electronic copies or photocopies of pertinent audit workpapers may be made and retained by the Department.

(d) Copies of audit workpapers so obtained in the course of review will be considered part of the record of examination of the Commissioner and will be held as confidential records.

**§ 147.13. Effective date and exemption.**

(a) This chapter applies to all insurers doing business in this Commonwealth.

(b) For those insurers retaining an independent certified public accountant on November 11, 1995, the 7-year period of service referred to in § 147.6(d) (relating to qualifications of independent certified public accountant) begins when the independent certified public accountant or other person responsible for rendering the annual audited financial report was first retained or assigned that responsibility. The requirement that an insurer

retain the services of a new independent certified public accountant in order to comply with the 7-year rotation provision in § 147.6(d) shall become effective November 11, 1997.

(c) Foreign insurers having direct premiums written in this Commonwealth less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies in this Commonwealth at the end of that calendar year shall be exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Foreign insurers having assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(d) Domestic insurers having total admitted assets less than \$10 million, direct premium written Nationwide less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies Nationwide at the end of that calendar year are exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Domestic insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties, or both, of reinsurance of \$1 million or more are not exempt.

(e) Domestic insurers not insuring or reinsuring risks located outside of this Commonwealth having total admitted assets less than \$10 million and either direct premium written of less than \$1 million in a calendar year or fewer than 1,000 policyholders or certificateholders of directly written policies at the end of that calendar year are exempt from this chapter for that year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(f) Foreign insurers filing annual audited financial reports in another state, pursuant to that state's requirements for annual audited financial reports whose requirements have been found by the Commissioner to be substantially similar to the requirements of this chapter, are exempt from this chapter if the insurer meets the following conditions:

(1) A copy of the annual audited financial report, report of evaluation of accounting procedures and system of internal controls, report on significant deficiencies in internal controls, and the independent certified public accountant's letter of qualifications which are filed with the other state are filed as instructed by the Commissioner in accordance with the filing dates specified in this chapter. Canadian insurers may submit independent certified public accountant's reports as filed with the Canadian Dominion Department of Insurance.

(2) A copy of a notification of adverse financial condition report filed with the other state is filed with the Commissioner within the time frames specified in § 147.9 (relating to notification of adverse financial condition).

(g) Upon written application of an insurer, the Commissioner may grant an exemption from compliance with this chapter if the Commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and

from time to time for specified periods. Within 10 days from a denial of the written request of an insurer for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. Hearings will be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56—58 (relating to special rules of administrative practice and procedure; publication of citations and notice of hearings; and objections and procedure for hearings on reports of examinations).

(h) Subsections (c)—(g) do not apply to continuing care providers.

(i) In the case of insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the annual audited financial report is defined as the annual statement of total business on the form filed by the insurers with their domiciliary supervision authority, audited by an independent chartered accountant. For these insurers, the letter required in § 147.15 (relating to letter of qualifications of independent certified public accountant) shall state that the independent certified public accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner under § 147.3 (relating to filing and extensions for filing of annual audited financial report) and shall affirm that the opinion expressed is in conformity with those requirements.

[Pa.B. Doc. No. 04-1544. Filed for public inspection August 20, 2004, 9:00 a.m.]

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**INSURANCE DEPARTMENT**  
**[31 PA. CODE CH. 151]**  
**Continuing Care Providers**

The Insurance Department (Department) amends Chapter 151 (relating to continuing care providers).

*Purpose*

This final-form rulemaking updates and clarifies Chapter 151 with respect to the requirements for annual audits of financial statements filed by continuing care providers with the Department. This final-form rulemaking is a companion to Insurance Department Document #11-217 (see 34 Pa.B. 4591 (August 21, 2004)), which includes amendments to clarify the requirements in Chapter 147 (relating to annual audited insurers' financial report required) with respect to audits of non-profit and for-profit continuing care providers. Chapter 151 was adopted in 1985 to implement the Continuing-Care Provider Registration and Disclosure Act (act) (40 P.S. §§ 3201—3225). Chapter 147 was last amended in 2001 and prescribes requirements for annual audits of all types of licensed insurers and continuing care providers. Therefore, the provisions in Chapter 151 regarding annual audits are outdated and not needed in addition to the requirements in Chapter 147.

*Statutory Authority*

This final-form rulemaking is adopted under the authority of the act.

*Comments*

Notice of proposed rulemaking was published at 34 Pa.B. 850 (February 14, 2004) with a 30-day public comment period.

No comments were received from the House Insurance Committee and the Senate Banking and Insurance Committee. No comments were received during the 30-day public comment period. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. Therefore, no changes were made to the final-form rulemaking.

*Affected Parties*

Chapter 151 applies to continuing care providers licensed to transact business in this Commonwealth. The provisions regarding annual audits also apply to the certified public accountants retained to conduct audits of financial statements filed by continuing care providers with the Department.

*Fiscal Impact*

*State Government*

This final-form rulemaking updates and clarifies existing regulatory requirements. There will be no increase in costs to the Department as a result of this final-form rulemaking.

*General Public*

The final-form rulemaking has no fiscal impact on the general public.

*Political Subdivisions*

There will be no fiscal impact on political subdivisions as a result of the final-form rulemaking.

*Private Sector*

The updates in this final-form rulemaking will impose no significant costs on continuing care providers.

*Paperwork*

The final-form rulemaking will not impose additional paperwork on the Department or affected parties.

*Effectiveness/Sunset Date*

The final-form rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

*Contact Person*

Questions or comments regarding the final-form rulemaking should be sent to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, fax (717) 705-3873, psalvatore@state.pa.us.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 11, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 850, to IRRC and the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5g of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective July 14, 2004.

*Findings*

The Commissioner finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

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

(a) The regulations of the Department, 31 Pa. Code Chapter 151, are amended by amending § 151.7 to read as set forth at 34 Pa.B. 850.

(b) The Commissioner shall submit this order and 34 Pa.B. 850 to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and 34 Pa.B. 850 and deposit them with the Legislative Reference Bureau as required by law.

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

M. DIANE KOKEN,  
*Insurance Commissioner*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 11-220 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-1545. Filed for public inspection August 20, 2004, 9:00 a.m.]

# Title 61—REVENUE

## DEPARTMENT OF REVENUE

### [61 PA. CODE CH. 873]

#### Lucky for Life Lotto

The Secretary of Revenue (Secretary), under the authority in section 303 of the State Lottery Law (72 P. S. § 3761-303), adds Chapter 873 (relating to Lucky for Life Lotto) to read as set forth in Annex A.

Because of time constraints associated with the establishment, operation and administration of Lottery games, the Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4, finds that notice of proposed rulemaking is, under the circumstances, impracticable and, therefore, may be omitted.

The Department's justification for utilizing the final-omitted rulemaking process is based upon the time constraints associated with the establishment, operation and administration of Lottery games. The efficient and successful operation of the Lottery requires that the Lottery implement the latest innovations and trends in

the lottery industry. The inability to adapt marketing strategies quickly may lead to a reduction in Lottery revenues. The necessity of the Lottery to react quickly to market forces has been recognized in the past as an appropriate justification for utilizing the final-omitted rulemaking process as evidenced by the approval of these types of regulations in the past.

*Purpose of the Final-Omitted Rulemaking*

The final-omitted rulemaking establishes and details the procedures that will be followed in operating and administering the Lucky for Life Lotto.

*Explanation of Regulatory Requirements*

The Lucky for Life Lotto game offers the player two opportunities to win: an instant prize feature and correctly matching the numbers on a ticket in a single play to those drawn in the Lottery drawing in which the ticket is entered.

The instant prize is determined by the Lottery's central computer system which will assign each play on a ticket a randomly selected number from 1 through 20. Nineteen of these numbers will have been pre-designated by the Lottery's central computer as "nonwinning" numbers, the remaining number having been predetermined by the computer as the "winning" number. If the randomly selected number assigned to a play matches the predetermined "winning" number, that play will be an instant winning play entitling the player to an instant prize of \$10.

Correctly matching six numbers from 1 through 38, or a designated combination thereof, within a single play, and meeting other validation criteria, entitles the ticket holder to a set prize as set forth in § 873.9 (relating to determination of prize winners). The first prize category (jackpot) prize is \$3,000 a month for life (\$1.008 million lifetime minimum), second prize \$2,000, third prize \$40 and fourth prize \$3.

*Fiscal Impact*

The Department has determined that the final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth and that the game described by the regulations could increase revenues available to older residents in this Commonwealth.

*Paperwork*

The regulations will not generate substantial paperwork for the public or the Commonwealth.

*Effectiveness/Sunset Date*

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The final-omitted rulemaking is scheduled for review within 5 years of final publication. No sunset date has been assigned.

*Contact Person*

The contact person for an explanation of the final-omitted rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

*Regulatory Review*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on June 11, 2004, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the

Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5.1(j,2) of the Regulatory Review Act, on July 14, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-omitted rulemaking.

#### *Findings*

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because of the time constraints associated with the establishment, operation and administration of Lottery games.

#### *Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by adding §§ 873.1—873.19 to read as set forth in Annex A.

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

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

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

GREGORY C. FAJT,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** 15-427. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 61. REVENUE**

#### **PART V. STATE LOTTERIES**

#### **CHAPTER 873. LUCKY FOR LIFE LOTTO.**

Sec.	
873.1.	Creation.
873.2.	Purpose.
873.3.	Definitions.
873.4.	Ticket sales retailers.
873.5.	Ticket price.
873.6.	Lucky for Life Lotto bet slip and ticket characteristics and restrictions.
873.7.	Determination of instant prize winners.
873.8.	Time, place and manner of conducting drawing.
873.9.	Determination of prize winners.
873.10.	Ticket responsibility.
873.11.	Ticket validation requirements.
873.12.	Procedures for claiming and payment of prizes.
873.13.	Prizes.
873.14.	Unclaimed prize money.
873.15.	Withholding.
873.16.	Purchase and prize restrictions.
873.17.	Restriction on voluntary assignment of first place prize (jackpot).
873.18.	Governing law.
873.19.	Probability of winning.

#### **§ 873.1. Creation.**

Under the act and this part, there is created a numbers game, called Lucky for Life Lotto, which will commence at the discretion of the Secretary, and will continue until the Secretary publicly announces a suspension or termination date.

#### **§ 873.2. Purpose.**

(a) The Lucky for Life Lotto Game offers the player the opportunity to win two ways: instantly winning a prize; and correctly matching the numbers on his ticket in a single play to those drawn in the Lottery drawing in which the ticket is entered.

(b) The purpose of the Lucky for Life Lotto Game is to determine winners from ticket holders matching six numbers from 1 through 38, or a designated combination thereof, within a single play, with the six winning numbers to be randomly drawn. Correctly matching the six winning numbers drawn, or a designated combination thereof, and meeting other validation criteria, entitles the ticket holder to a set prize identified in § 873.9(a) (relating to determination of prize winners). Drawings will be conducted twice a week or as determined and publicly announced by the Secretary.

(c) In addition, every Lucky for Life Lotto ticket issued by the Lottery central computer system will be eligible to win an instant prize. The determination of the instant ticket winners, as described in § 873.7 (relating to determination of instant prize winners), will be made by the Lottery's central computer system based upon a statistical probability of 1 in 20. This probability will be adjusted to incorporate the number of plays on each ticket.

#### **§ 873.3. Definitions.**

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

*Apparent winning ticket*—A ticket bearing winning numbers which has not been validated by the Lottery.

*Confidential security checks*—Proprietary measures used by the Lottery to validate and verify a ticket's authenticity.

*Drawing*—The process of selecting winning numbers that determines the number of winners for each prize category of the game.

*Game section*—One of the five areas of the Lucky for Life Lotto bet slip that contains 38 squares each numbered 1 through 38. Each area is lettered either A, B, C, D or E and, when used to purchase a ticket, each corresponds to the numbers selected or quick picked, or both, and printed on the ticket for a single play.

*Lucky for Life Lotto bet slip*—A card having a game section used by a player to play the game.

*On-line retailer or retailer*—A person who is properly licensed by the Lottery to sell tickets.

*Pay status*—The designation within the Lottery's gaming computer system, which indicates that a given drawing has been verified and validated.

*Play*—A single line of six numbers from 1 to 38 which represents a single \$2 wager, and consists of six player-selected or quick-picked numbers, or both.

*Quick pick*—The random selection through a Lottery terminal of up to six different numbers from 1 through 38 that appear as a play in the Lucky for Life Lotto Game.

*Set prize*—Any prize other than the first prize category (jackpot) prize that can be won in this game.

*Ticket*—A Lucky for Life Lotto ticket is a lottery ticket produced by a licensed retailer in an authorized manner, and contains, at the discretion of the player one, two, three, four or five plays, designated respectively as game A, B, C, D and E. The ticket also contains at a minimum, the drawing date, the amount bet, instant play data as described in § 873.7 (relating to determination of instant prize winners) and validation data.

*Trailing ticket*—A ticket produced automatically by the lottery's central computer system when an original ticket with remaining plays is presented for payment. The ticket contains the same pertinent play data for the remaining plays as contained on the original ticket.

*Validation criteria*—Criteria, including those set forth in § 873.11(a) (relating to ticket validation requirements), against which Lottery tickets are compared in the determination of whether the ticket has won a prize.

*Winning numbers*—Six numbers, from 1 through 38, selected in a Lucky for Life Lotto drawing and which have been subsequently validated by the Lottery, which shall be used to determine the winning Lucky for Life Lotto plays on tickets.

**§ 873.4. Ticket sales retailers.**

(a) Lucky for Life Lotto Game ticket sales may only be made through licensed retailers the Director will appoint and contract with as provided in § 815.42 (relating to ticket sales agents).

(b) The Lottery may terminate sales by a retailer without prior notice to the retailer if the retailer becomes delinquent in payment of proceeds due the Lottery, or fails to handle Lottery funds in the prescribed manner, or if the retailer fails to follow the contract or an addendum thereof, this part or procedures established governing the sale of tickets or if the Lottery deems it to be in the best interest of the Commonwealth.

**§ 873.5. Ticket price.**

Lucky for Life Lotto tickets may be purchased for \$2 per play. A play, at the owner's option, may be up to six numbers selected by the player from 1 through 38, and the remainder selected randomly by the Lottery computer system, or all six numbers randomly selected through the Lottery terminal. Additional plays may, at the discretion of the player, be purchased for an additional \$2 for each play purchased. There may be up to five plays on a ticket.

**§ 873.6. Lucky for Life Lotto bet slip and ticket characteristics and restrictions.**

(a) The player shall select, or request selection by computer, up to six numbered squares from 1 through 38. If less than six numbers are selected by the player the remaining number or numbers will be selected randomly by the Lottery computer system from that same range of numbers, in one or more of the game sections on a Lucky for Life Lotto bet slip. Lucky for Life Lotto bet slips shall be available at no cost to the player. The minimum entry is \$2. For \$2, play game A; for \$4, play games A and B; for \$6, play games A, B and C; for \$8, play games A, B, C, and D; for \$10, play games A, B, C, D and E. Game sections shall be selected in alphabetical order in accordance with the instructions printed on the Lucky for Life Lotto bet slip. A Lucky for Life Lotto bet slip has no pecuniary or prize value and does not constitute evidence of the purchase of a ticket or the numbers selected.

(b) To purchase a ticket, a player shall, in addition to the purchase price, submit the completed Lucky for Life Lotto bet slip, or request number selection, either by quick pick or manual terminal entry, or both, to an on-line retailer to have issued a ticket. The ticket shall contain, at a minimum, a six number selection, in each play section, (for each \$2 wagered), the drawing date, amount bet, validation number data and instant play data. This ticket, or a subsequently produced trailing ticket, shall be the only valid proof of the bet placed, and the only valid receipt for claiming a prize. The ticket shall only be valid for the drawing date or dates printed on the ticket.

(c) If Lucky for Life Lotto bet slips are unavailable, number selections may be given to an on-line retailer in groups of up to six number selections for each \$2 wagered. The retailer shall manually enter each group of up to six number selections into the computer terminal. The terminal will randomly generate the remainder of the numbers if the player selected less than the six required numbers.

(d) A Lucky for Life Lotto ticket may not be cancelled or voided once printed by the Lottery terminal, even if the ticket is printed in error.

(e) It is the sole responsibility of the ticket holder to verify the accuracy and condition of data printed on the ticket. The placing of plays is done at the player's own risk through the on-line retailer who is acting on behalf of the player in entering the play or plays.

(f) The Department reserves the right to stop play on a number or combination of numbers to protect the integrity of the prize structure of the game anytime during the course of the game.

**§ 873.7. Determination of instant prize winners.**

(a) For each Lucky for Life Lotto play, the Lottery's central computer system will assign that play a randomly selected number from 1 through 20. Nineteen of the numbers from 1 through 20 will have been predesignated by the Lottery's central computer as "nonwinning" numbers, the remaining number having been predetermined by the computer as the "winning" number. If the randomly selected number assigned to a play matches the predetermined "winning" number, that play will be an instant winning play.

(b) If on a ticket no play is an instant winner the ticket produced by the Lottery terminal will indicate "NO INSTANT WIN TRY AGAIN."

(c) A ticket upon which one or more plays qualifies as an instant winner will indicate "INSTANT WINNER \$" followed by the total amount of the instant prize won on that ticket.

**§ 873.8. Time, place and manner of conducting drawing.**

(a) *Time of drawing.* A Lucky for Life Lotto drawing will be held twice a week or as determined and publicly announced by the Secretary.

(b) *Place of drawing.* A Lucky for Life Lotto drawing will be conducted in the Harrisburg area unless the Secretary directs that a drawing or part of the drawing procedure be conducted at some other location.

(c) *Manner of conducting drawings.* The Lottery will select at random, six numbers from a field of numbers from 1 through 38, with the aid of mechanical devices or

any other selection methodology as authorized by the Secretary. The validity of a drawing will be solely determined by the Lottery.

**§ 873.9. Determination of prize winners.**

<i>Tickets containing the following numbers in one single game play</i>	<i>Prize Category</i>	<i>Prize Amount</i>	<i>Percent (%) of Sales Anticipated to Be Paid in Prizes/Category</i>
All six winning numbers	1st	\$3,000/month/life	10.27%
Five winning numbers	2nd	\$2,000	6.95%
Four winning numbers	3rd	\$40	5.39%
Three winning numbers	4th	\$3	5.39%
Instant winner	Instant winner	\$10	25.0%

(b) Holders of tickets entitling them to a first prize category (jackpot) prize shall be entitled to a prize of \$3,000 a month for life (\$1,008,000 lifetime minimum), which shall be paid by an initial cash payment of \$36,000, plus equal annual payments of \$36,000, over the lifetime of the winner. In the event that the winner dies before having received the \$1,008,000 minimum, payments will continue under provisions of § 811.16 (relating to prizes payable after death of prize winner) until the \$1,008,000 minimum has been paid. For purposes of claiming the \$3,000 a month for life prize, "lifetime" for legal entities shall be defined as 28 years, beginning the date the prize is claimed.

(c) If the winner of a Pennsylvania Lottery Lucky for Life Lotto first place prize is younger than 18 years of age, the winner will not begin to receive the prize until the winner has attained 18 years of age.

(d) There can only be one claimant per ticket for a first prize category (jackpot) prize.

(e) Lucky for Life Lotto prizes will be paid as follows:

(1) Individual ticket prize payments will be made as a single payment with the exception of the first prize (jackpot) category.

(2) If more than five winning first prize (jackpot) plays are determined in the same drawing, each, upon meeting the requirements of §§ 873.11 and 873.12 (relating to ticket validation requirements; and procedures for claiming and payment of prizes), is entitled to a share of annual payments totaling \$180,000. Each share is limited to annual payments for the lifetime of the winner equal to \$180,000 divided by the actual number of jackpot prize winners. In these cases, the minimum lifetime amount is determined to be 28 annual payments each in the amount as determined above. For the purpose of calculating the share of the first-place prize pool, prizes will be rounded down to the nearest 50¢. This conditional pari-mutuel top prize payout may be changed at the discretion of the Secretary and the change will be announced by public notice in the *Pennsylvania Bulletin*. The change will only apply prospectively to Lucky for Life Lotto drawings as of the date specified in the public notice.

(f) A winning Lucky for Life Lotto play is entitled only to the highest prize won by those numbers, plus the instant prize, if applicable.

(g) The number of prize categories, the allocation of prize money among the prize categories, the instant prize amount and frequency of instant prize award, and the annuity amount or terms may be changed at the discretion of the Secretary and the change will be announced by

(a) The prizes to be awarded to an owner of an apparent winning ticket are as follows:

public notice in the *Pennsylvania Bulletin*. The changes will only apply prospectively to Lucky for Life Lotto drawings as of the date specified in the public notice.

(h) Retailer incentive and marketing promotion programs, including the use of free tickets, may be implemented at the discretion of the Secretary. Funds for the programs, if needed, will be drawn from the Lottery fund.

**§ 873.10. Ticket responsibility.**

(a) A ticket is a bearer document deemed to be owned by the person holding the ticket, except that if a name is contained on the back of the ticket, the person so named will, for all purposes, be considered the owner of the ticket.

(b) The Commonwealth will not be responsible for lost or stolen tickets.

(c) The purchaser of the ticket has the sole responsibility for checking the accuracy and condition of the data printed on the ticket.

(d) The Commonwealth will not be responsible for tickets redeemed in error by a player at an on-line retailer.

**§ 873.11. Ticket validation requirements.**

(a) *Valid tickets.* To be a valid ticket, the following conditions shall be met:

(1) The ticket validation number shall be present in its entirety and shall correspond to the computer record generated at the time the ticket is produced.

(2) The ticket shall be intact.

(3) The ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The ticket may not be counterfeit or an exact duplicate of a winning ticket.

(5) The ticket shall have been issued by the Lottery through a licensed retailer.

(6) The ticket may not have been stolen.

(7) The ticket shall be validated in accordance with § 873.12 (relating to procedures for claiming and payment of prizes).

(8) The player-selected or computer-selected numbers, or both, on the ticket shall be in individual groups of six numbers each associated with a single letter, A, B, C, D or E. The six numbers and the associated letter shall constitute a single play.

(9) The ticket data shall have been recorded on the Lottery's central computer system prior to the drawing and the ticket data shall match this computer record in every way.

(10) The player-selected and computer-selected numbers, the validation number data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets; and a ticket with that exact data may not have been previously paid.

(11) The ticket may not be misregistered, defectively printed or printed or produced in error to an extent that it cannot be processed by the Lottery.

(12) The ticket shall pass other confidential security checks of the Lottery.

(13) By submitting a ticket for validation, the player agrees to abide by this chapter as determined by the Secretary.

(14) There may not be another breach of this part in relation to the ticket which, in the opinion of the Secretary, justifies disqualification.

(b) *Invalid or defective tickets/disputes.* A ticket not passing the validation checks in subsection (a) will be considered invalid and will not be paid.

(1) In cases of doubt, the determination of the Secretary is final and binding. The Secretary may replace an invalid ticket with a ticket of equivalent sale price from a current Lottery game.

(2) If a defective ticket is purchased or if the Secretary determines to adjust an error, the sole and exclusive remedy will be the replacement of the defective or erroneous ticket with a ticket of equivalent sale price from a current Lottery game.

(3) If a ticket is not paid by the Lottery and a dispute occurs as to whether the ticket is a winning ticket, the Lottery may replace the ticket as provided in paragraph (2). This is the sole and exclusive remedy of the holder of the ticket.

**§ 873.12. Procedures for claiming and payment of prizes.**

(a) A prize shall be claimed only through a licensed on-line retailer, and except for the instant prize, may be claimed as soon as that drawing is placed in pay status by the Lottery.

(1) The holder of a ticket designated as an instant prize winner may claim the instant prize before or after the drawing for which the ticket was valid.

(2) The holder of a ticket designated as an instant prize winner, who has claimed the instant prize prior to the drawing for which the ticket is valid shall be issued a trailing ticket which shall contain the same relevant play information as contained in the redeemed ticket except for the instant prize data.

(b) An on-line retailer is authorized and required to make payment of a prize of \$2,500 or less, if the ticket is presented within a designated time period as announced by the Secretary, on an individual winning ticket, if the retailer has sufficient funds available for payment.

(c) The holder of an apparent winning ticket representing a prize of \$2,500 or less will be paid by participating on-line retailers as provided in subsection (b), if the ticket validation requirements in § 873.11 (relating to ticket validation requirements) have been met, a proper validation pay ticket has been issued by the retailer's computer terminal, and other retailer procedures have been met.

(d) The holder of an apparent winning ticket representing a prize in excess of \$2,500, with the exception of the first place prize (jackpot), shall present the winning ticket to an on-line retailer or authorized claim center under Chapter 811 (relating to prizes).

(e) The holder of an apparent winning ticket representing a first place prize (jackpot) shall present, in person, the apparent winning ticket to Lottery Headquarters under Chapter 811.

(f) The payment of a prize to a person who dies before receiving any or all of a particular prize or to a person under 18 years of age will be paid under §§ 811.16 and 811.27 (relating to prizes payable after death of prize winner; and payment of prizes to persons under 18 years of age).

(g) The Commonwealth will be discharged of liability after payment of prizes as provided in § 811.26 (relating to discharge of State liability upon payment).

**§ 873.13. Prizes.**

(a) If the total of the set prizes awarded in a Lucky for Life Lotto drawing exceeds the sales for that drawing by 100% or more, then those set nonjackpot prize tiers, in which the stated prizes won exceed the percentage of sales anticipated to be paid in prizes/category, will become pari-mutuel (rounded down to the nearest 50c) to the extent necessary to limit the total set prizes awarded to 200% of sales. Moneys shall be drawn from the Lottery Fund, to the extent necessary, to fund the payment of prizes under this subsection.

(b) If the Lucky for Life Lotto is terminated for any cause, prize moneys remaining undistributed will be paid out of the State Lottery Fund and used for purposes otherwise provided for by law.

**§ 873.14. Unclaimed prize money.**

Prize money on a winning Lucky for Life Lotto play may be retained by the Secretary for payment to the person entitled to it. If within 1 year of the drawing date on the ticket, no claim is made on a winning play, as determined by the Secretary, the right to claim prize money terminates, and the prize money will be paid into the State Lottery Fund and used for purposes otherwise provided for by statute.

**§ 873.15. Withholding.**

Federal withholding taxes will be withheld by the Lottery for prize payments in amounts required in accordance with applicable provisions of law.

**§ 873.16. Purchase and prize restrictions.**

A ticket may not be purchased by, and a prize will not be paid to, an officer or employee of the Lottery, Lottery professional services contractors or subcontractors, who are involved in the operation of the on-line Lottery games system or its associated drawing; or to a spouse, child, brother, sister or parent residing in the same household of the officer, contractor, or subcontractor.

**§ 873.17. Restriction on voluntary assignment of first place prize (jackpot).**

A prize payable over, and whose term is determined by the lifetime of the winner, can be voluntarily assigned only to the extent of remaining unpaid minimum guaranteed prize amount.

**§ 873.18. Governing law.**

(a) In purchasing a ticket, the purchaser agrees to comply with and abide by applicable laws, this part, instructions, conditions and final decisions of the Secretary, and procedures established by the Director for the conduct of the Lucky for Life Lotto.

(b) Decisions made by the Director or the Secretary including the declaration of prizes and the payment thereof in interpretation of this part are final and binding on players and persons making a claim in respect thereof.

**§ 873.19. Probability of winning.**

<i>Tickets containing the following numbers in one single game play</i>	<i>Prize Category</i>	<i>Odds of winning</i>	<i>Prize Amount</i>
All six winning numbers	1st	1:2,760,681	\$3,000/month/life
Five winning numbers	2nd	1:14,378.5	\$2,000
Four winning numbers	3rd	1:371.1	\$40
Three winning numbers	4th	1:27.8	\$3
Instant winner	Instant winner	1:20	\$10

[Pa.B. Doc. No. 04-1546. Filed for public inspection August 20, 2004, 9:00 a.m.]



# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

### Special Fishing Regulations; Delayed Harvest Artificial Lures Only

A notice of proposed rulemaking was published by the Fish and Boat Commission (Commission) at 34 Pa.B. 1460 (March 13, 2004) containing proposed amendments to § 65.6 (relating to delayed harvest artificial lures only areas) that would permit all tackle to be used in delayed harvest artificial lures only areas during the harvest season of June 15 through Labor Day. At its meeting on July 27, 2004, the Commission voted not to adopt the proposed amendments.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

[Pa.B. Doc. No. 04-1547. Filed for public inspection August 20, 2004, 9:00 a.m.]

# NOTICES

## DELAWARE RIVER BASIN COMMISSION

### Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold an informal conference followed by a public hearing on Wednesday, September 1, 2004. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, NJ.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: an update on the Water Resources Plan for the Delaware River Basin and the Watershed Summit scheduled for September 13-15, 2004; a proposal to amend the Water Quality Regulations, Water Code and Comprehensive Plan to designate the Lower Delaware River as Special Protection Waters; options available to provide interim water quality protection for the Lower Delaware pending the effective date of the proposed designation; a proposed rule to establish waste minimization plan requirements for point and nonpoint source discharges following issuance of a TMDL or assimilative capacity determination; a proposal to amend Resolution No. 2002-33 regarding the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions to restore a distinction between drought operation of Lake Wallenpaupack and drought operation of the Mongaup Reservoir System and to insert a reference to flow and temperature targets in the upper Delaware River and in the West Branch Delaware, East Branch Delaware and Neversink Rivers; recommendations of the Toxics Advisory Committee concerning the collection of additional point source data in accordance with Resolution No. 2003-27 for purposes of developing the Stage 2 TMDLs for PCBs in the Delaware Estuary; and a report on the PCB TMDL Implementation Advisory Committee meeting of August 11, 2004.

The subjects of the public hearing to be held during the 2:30 p.m. business meeting include the following dockets:

1. *Exelon Generation Company, LLC D-69-210 CP Final (Revision 12)*. An application for temporary approval to modify the Operating Plan of the Limerick Generating Station (LGS), a nuclear-powered electric generating station in Limerick Township, Montgomery County, regarding surface water withdrawal restrictions related to ambient water temperature in the Schuylkill River. The applicant proposes to demonstrate, under controlled conditions, that the withdrawal of Schuylkill River water can continue without adverse impact when the background water temperature exceeds 59°F, the maximum temperature at which withdrawals can be made under the current docket. In July 2004, an amended application and draft operating and monitoring plan was submitted after discussion with Commission staff, the Commonwealth and stakeholders. The amended application provides:

- A multiyear demonstration period during the remainder of the 2004 season through the 2007 season associated with flow and temperature restrictions in accordance with an approved operating and monitoring plan.
- Withdrawals of approximately 1/2 (not to exceed 60%, 24 million gallons per day (mgd)) of LGS's consump-

tive water needs during times when the Schuylkill River 24-hour average river ambient water temperature exceeds 59°F and when river flow is at or below 1,791 cubic feet per second (cfs) (but above 560 cfs) at the gaging station at Pottstown.

- Withdrawals of all of LGS's consumptive water needs during times when the Schuylkill River 24-hour average river ambient water temperature exceeds 59°F and when river flow exceeds 1,791 cfs.
- Maintenance of minimum flows below 27 cfs but at least 10 cfs in the East Branch Perkiomen Creek during the effective period of the demonstration.
- Development of flow management procedures to increase flows in the East Branch Perkiomen Creek above 10 cfs to support specific short-term recreational events.
- Allowing consumptive use augmentation credit for augmented Perkiomen Creek flow.
- Establish a restoration and monitoring fund based on \$0.06/1,000 gallons of augmentation water that is not required due to lifting the 59°F temperature requirement.
- The establishment of a list of restoration projects and performing restoration projects during 2005 and future years.
- Developing an adaptive management plan for restoration projects.
- Working with stakeholders regarding the design and implementation of the demonstration and restoration projects.
- Test periods of times with no augmentation (beyond minimum flows in the East Branch Perkiomen Creek).
- The continuation of the Wadesville Mine Pool withdrawal and Stream Flow Augmentation Demonstration Project that was approved under Doc. D-69-210 CP (Final) (Revision 11) and extended for 2 years by Commission Resolution No. 2003-25, adopted December 3, 2003.

2. *Cabot Supermetals D-70-72 (Revision)*. An application to upgrade an industrial wastewater treatment plant (IWTP) and implement manufacturing operation improvements necessary to meet water quality objectives in Swamp Creek, a tributary of Perkiomen Creek in the Schuylkill River Watershed. The applicant produces primary nonferrous metals and alloys plus inorganic chemicals at its Boyertown Facility, which is on the east side of Wilson Avenue and straddles the borders of Douglass Township, Montgomery County, and Colebrookdale Township, Berks County. No expansion of the 0.222 mgd IWTP is proposed. The plant effluent, along with storm water, cooling water and water supply treatment wastewater, will continue to be discharged to Swamp Creek by means of the existing outfall.

3. *UTI Corporation D-93-61 (G)-2*. An application for the renewal of a groundwater withdrawal project to supply up to 3.16 million gallons per 30 days (mg/30 days) of water to the applicant's groundwater remediation system from existing Wells UTM-1 and UTM-11 in the Brunswick Formation. This renewal project represents a decrease in allocation from 6.5 mg/30 days to 3.16 mg/30 days. The project is in the Perkiomen Creek Watershed in the Borough of Trappe, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Oley Township Municipal Authority D-2001-36 CP*. An application for approval of a groundwater withdrawal

project to supply up to 2.16 mg/30 days within the first year of operation from proposed Well 4 in the Granitic Gneiss Formation to the applicant's public water supply system. In subsequent years, and based on the results of a monitoring program, the allocation from Well 4 may be incrementally increased up to 6.48 mg/30 days. The withdrawal from all wells will be limited to 12.94 mg/30 days. The project is in the Little Manatawny Creek Watershed in Oley Township, Berks County.

5. *Penn Estates Utilities, Inc. D-2003-36 CP.* An application for approval of a groundwater withdrawal project to supply up to 3.9 mg/30 days of water to the applicant's Penn Estates development from new Well 7 in the Catskill Formation and to increase the existing withdrawal from all wells to 10.80 mg/30 days. The project is in the Brodhead Creek Watershed in Stroud Township, Monroe County.

6. *Milford Township Water Authority D-2003-37 CP.* An application for approval of a groundwater withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from new Well 5 in the Brunswick Formation and to increase the existing withdrawal from all wells to 15.52 mg/30 days. The project is in the Unami-Licking Creeks Watershed in Milford Township, Bucks County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Bedminster Municipal Authority D-2004-2 CP.* An application for approval of a groundwater withdrawal project to supply up to 7.136 mg/30 days of water to the applicant's public water distribution system from new Wells A and E in the Brunswick Formation and in conjunction with existing Wells 2 and 9, to increase the existing withdrawal from all wells to 10.705 mg/30 days. The project wells are in the Deep Run Watershed in Bedminster Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Telford Borough Authority D-2004-10 CP.* An application for approval of a groundwater withdrawal project to supply up to 2.19 mg/30 days of water to the applicant's public water distribution system from new Well 7 in the Brunswick Formation, and to retain the existing withdrawal from all wells to 38.6 mg/30 days. The project wells are in the East Branch Perkiomen Creek Watershed in Telford Borough, Bucks and Montgomery Counties, and West Rockhill and Hilltown Townships, Bucks County, all located in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Greenbriar Founders, LLC D-2004-26-1.* An application for approval of a groundwater withdrawal project to supply up to 16.5 mg/30 days of water for supplemental irrigation of the applicant's proposed Ledgerock Golf Course from new Well IW-1 and up to 1.77 mg/30 days from new Well IW-2, both in the Hammer Creek Formation and to initially limit the existing withdrawal from all wells to 16.5 mg/30 days. The initial combined allocation of 16.5 mg/30 days is provided to allow for establishment of the golf course turf grasses. Once the turf grasses are established, the combined allocation will be reduced to 8.25 mg/30 days. The project is in the Angelica Creek Watershed in Cumru Township, Berks County.

10. *New York City Department of Environmental Protection D-2004-28 CP-1.* An application to modify a sewage treatment plant (STP) at 4 Neversink Drive, City of Port Jervis, Orange County, NY. The STP has a capacity of 5 mgd and serves the City of Port Jervis. The existing plant provides secondary treatment, and discharges to the Neversink River, upstream from DRBC Special Protection

Waters and the Delaware Water Gap National Recreation Area. The proposed modification, which constitutes Phase I of a multiphase improvement project, involves the demolition of three Imhoff tanks and construction of two sedimentation basins, plus minor facility upgrades. No increase in STP capacity is proposed.

In addition to the public hearing on the previous dockets, the Commission's 2:30 p.m. business meeting will include a public hearing and possible action on a resolution to amend Resolution No. 2002-33 relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions to restore a distinction between drought operation of Lake Wallenpaupack and drought operation of the Mongaup system reservoirs and to insert a reference to flow and temperature targets in the upper Delaware River and the West Branch Delaware, East Branch Delaware and Neversink Rivers. The business meeting may include resolutions for the minutes to initiate notice and comment rulemakings amending the Water Quality Regulations, Water Code and Comprehensive Plan to: (1) designate the Lower Delaware River as Special Protection Waters; and (2) establish waste minimization plan requirements for point and nonpoint source discharges following issuance of a TMDL or assimilative capacity determination. In addition, the meeting will include: adoption of the minutes of the July 13, 2004, business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and an opportunity for public dialogue.

Draft dockets and the resolution scheduled for public hearing on September 1, 2004, will be posted on the Commission's website: [www.drbc.net](http://www.drbc.net) (select "Next DRBC Meeting"). Additional documents relating to the dockets and other items can be examined at the Commission's offices. Contact William Muszynski at (609) 883-9500 Ext. 221 with docket-related questions.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary at (609) 883-9500 Ext. 203 or through the Telecommunications Relay Services at 711, to discuss how the Commission can accommodate their needs.

PAMELA M. BUSH,  
Secretary

[Pa.B. Doc. No. 04-1548. Filed for public inspection August 20, 2004, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

### Farm Safety and Occupational Health Grant Program Application Period

The Department of Agriculture (Department) announces the opening of the application period for funding from the Farm Safety and Occupational Health Grant Program (program) for FY 2005. Grant applications will be accepted from August 30, 2004, to October 30, 2004, at the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Room G-13, Harrisburg, PA 17110-9408. Applications must be postmarked by October 30, 2004, to be considered for funding.

The program was created by the General Assembly through the passage of the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1901—1915). The program is funded through a specific appropriation provided for in the act. For program guidelines, see the Farm Safety and Occupational Health Grant Program Guidelines.

The program will award financial assistance of up to \$2,500 to Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads in this Commonwealth that wish to develop and deliver farm safety, occupational health and emergency response programs. The applications will be evaluated using criteria in 7 Pa. Code Chapter 138k (relating to farm safety and occupational health grant program).

#### *Obtaining Applications*

Applications are available by contacting Shiree Hunter, Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5202, fax (717) 783-3275.

For further assistance, contact Phillip Pitzer, Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5206.

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 04-1549. Filed for public inspection August 20, 2004, 9:00 a.m.]

### **Order of Quarantine; Plum Pox Virus**

#### *Recitals*

1. Plum Pox Virus (PPV), a serious non-native plant pest that injures and damages stone fruits such as peaches, nectarines, plums and apricots by drastically reducing the fruit yields from these stone fruit trees and by disfiguring the fruit to the point it is unmarketable, has been detected in certain areas of this Commonwealth.

2. The Plant Pest Act (act) (3 P. S. §§ 258.1—258.27) empowers the Department of Agriculture (Department) to

take various measures to detect, contain and eradicate plant pests in this Commonwealth.

3. The Department has exercised its authority under the act and issued several Orders of Quarantine affecting portions of Adams, Cumberland, Franklin and York Counties in an effort to contain, identify and eradicate PPV.

4. The Department determined it necessary to temporarily prohibit the planting of stone fruit trees and related trees and shrubs in these quarantined areas, and imposed this prohibition through an Order of Quarantine issued on December 13, 2000, and published at 30 Pa.B. 6608 (December 23, 2000).

5. The temporary prohibition has contributed to a rapid decline in numbers of trees found infected with PPV, although it is likely that some small number of infected trees remain.

6. The prohibition has severely affected the ability of stone fruit producers within the quarantined areas to properly maintain existing blocks of trees that lie within those areas or to maintain standard rotational planting of stone fruit blocks within those areas.

#### *Order*

Under authority of section 21 of the act (3 P. S. § 258.21), and with the foregoing recitals incorporated herein, the Department issues the following order:

The Department modifies the prohibition on planting of stone fruit trees (apricot, nectarine, peach and plum) in the areas under PPV-related quarantine to allow the Department to offer controlled options for limited planting of trees within quarantined areas. Planting shall be done under permit, with permits issued by the Department and subject to specific written guidelines to be provided by the Department. These limited planting options shall only be considered for fruit-bearing trees in commercial settings, since the goal of the permitted planting is to allow greater financial stability to commercial growers, without unduly compromising the Department's PPV eradication program. The areas currently under PPV-related quarantine, and with respect to which this order is applicable, are as follows:

#### *County/Area*

Adams/Latimore Township

Adams/Huntington Township

Cumberland/South Middleton Township

Adams/Part of Tyrone Township

Adams/Part of Menallen Township

Cumberland/Dickinson Township

Adams/Borough of York Springs

Cumberland/Borough of Mount Holly Springs

York/Washington Township

York/Franklin Township

Cumberland/Southampton Township

#### *Date of Order/Pennsylvania Bulletin Reference*

October 21, 1999/29 Pa.B. 5735  
(November 6, 1999)

October 21, 1999/29 Pa.B. 5735

June 15, 2000/30 Pa.B. 3269  
(July 1, 2000)

July 27, 2000/30 Pa.B. 4357  
(August 19, 2000)

July 27, 2000/30 Pa.B. 4357

July 27, 2000/30 Pa.B. 4357

October 31, 2000/30 Pa.B. 5852  
(November 11, 2000)

October 31, 2000/30 Pa.B. 5852

June 22, 2001/31 Pa.B. 3560  
(July 7, 2001)

June 22, 2001/31 Pa.B. 3560

June 26, 2001/31 Pa.B. 3559  
(July 7, 2001)

<i>County/Area</i>	<i>Date of Order/Pennsylvania Bulletin Reference</i>
Franklin/Quincy Township	August 27, 2001/31 Pa.B. 5117 (September 8, 2001)
Franklin/Borough of Mont Alto	August 27, 2001/31 Pa.B. 5117
York/Conewago Township	August 1, 2002/32 Pa.B. 4045 (August 17, 2002)
York/Monaghan Township	August 1, 2002/32 Pa.B. 4045
Adams/Part of Butler Township	September 26, 2003/33 Pa.B. 5087 (October 11, 2003)
Adams/Part of Menallen Township	September 26, 2003/33 Pa.B. 5087

This order is effective as of July 30, 2004, and shall remain in effect until terminated by subsequent order.

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 04-1550. Filed for public inspection August 20, 2004, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending August 10, 2004.

#### BANKING INSTITUTIONS

##### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
8-4-04	Yardville National Bancorp, Trenton, NJ, to acquire up to 19.9% of the outstanding common stock of Bucks County Bank (In Organization), Doylestown, PA	Trenton, NJ	Approved
8-5-04	Leesport Financial Corp., Wyomissing, to acquire 100% of the voting shares of Madison Bancshares Group, Ltd., Blue Bell	Wyomissing	Filed

##### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-5-04	Leesport Bank, Wyomissing, and The Madison Bank, Blue Bell Surviving Institution— Leesport Bank, Wyomissing	Wyomissing	Filed

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-2-04	S & T Bank Indiana Indiana County	30 Towne Center Drive Leechburg Westmoreland County	Opened
8-2-04	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	2905 Whitehall Road Norristown Montgomery County (previously approved as 701 West Germantown Pike)	Opened

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-4-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Parkway Center Giant Eagle 1165 McKinney Lane Pittsburgh Allegheny County	Authorization Rescinded
8-5-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Erie WalMart 2711 Elm Street Erie Erie County	Filed
8-6-04	First Star Savings Bank Bethlehem Lehigh County	Moravian Village Tower Wood Street Bethlehem Northampton County (Limited Service Facility)	Filed
8-10-04	Reliance Savings Bank Altoona Blair County	1921 Pleasant Valley Road Altoona Blair County	Filed

**Branch Relocations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-4-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 1065 West County Line Road Hatboro Montgomery County <i>From:</i> 200 Blair Mill Road Horsham Montgomery County	Filed
8-5-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> Giant Eagle 400 Northtowne Square Gibsonia Allegheny County <i>From:</i> Giant Eagle 5600 Wm. Flynn Highway Gibsonia Allegheny County	Effective

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-30-04	S & T Bank Indiana Indiana County	109 Grant Avenue Vandergrift Westmoreland County	Effective

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS****Articles of Amendment**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Purpose</i>	<i>Action</i>
8-5-04	TruMark Financial Credit Union Trevose Bucks County	Amendment to Article 1 of the Articles of Incorporation provides for a reduction in the par value of one share from \$50 to \$5.	Approved and Effective
8-5-04	Pittsburgh Teachers Credit Union Pittsburgh Allegheny County	Amendment to Article 8 of the Articles of Incorporation provides for the addition of occupational or associational groups to the credit union's field of membership.	Approved and Effective

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 04-1551. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Maximum Lawful Rate of Interest for Residential Mortgages for the Month of September 2004

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of September 2004 is 7 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on an individual who finances the sale or exchange of residential real property which the individual owns and which

the individual occupies or has occupied as a principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 4.83 to which was added 2.50 percentage points for a total of 7.33 that by law is rounded off to the nearest quarter at 7 1/2%.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 04-1552. Filed for public inspection August 20, 2004, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

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

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

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

### I. NPDES Renewal Applications

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0031097	Radley Run Sewer Association Radley Run Country Club 1100 Country Club Road West Chester, PA 19382	Chester County Birmingham Township	Radley Run	Y

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0060445 Renewal	Historical and Museum Commission Eckley Miners Village R. D. 2, Box 236 Weatherly, PA 18255	Foster Township Luzerne County	Unnamed tributary to Black Creek 05D	Y
PA0070092 Renewal	John M. Yetter and Van Daniel Yetter Evergreen Village Mobile Home Park R. D. 5, Box 5308 East Stroudsburg, PA 18301	Upper Mount Bethel Township Northampton County	Unnamed tributary to Allegheny Creek 01F	Y

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0039225	Blaine E. Rhodes Sewer Company P. O. Box 397 Reno, PA 16343-0397	Sugarcreek Borough Venango County	Allegheny River 16-E	Y

### II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

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

**PA0031097**, Sewage, **Radley Run Sewer Association, Inc.**, 1100 Country Club Road, West Chester, PA 19382. This facility is in Birmingham Township, **Chester County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from the Radley Run Country Club sewage treatment plant.

The receiving stream, Radley Run, is in the State Water Plan watershed 3H Brandywine and classified for WWF, aquatic life, water supply and recreation. There are no public water supplies downstream in this Commonwealth. Brandywine Creek crosses the State line into Delaware, approximately 7 miles downstream from the point of discharge. The City of Wilmington, DE has water supply intakes approximately 7 miles downstream from the State line on Brandywine Creek.

The proposed effluent limits for Outfall 001, based on a design flow of 0.017 mgd, are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Suspended Solids	30	60
Ammonia (as N)	20	40
Phosphorus (as P) (4-1 to 10-31)	1.5	3.0
Total Residual Chlorine	0.5	1.2
Fecal Coliform	200 colonies/100 ml as a geometric average	



<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Dissolved Oxygen	minimum of 5.0 mg/l at all times	
pH	within limits of 6.0—9.0 standard units at all times	

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

**PA0064343**, Industrial, **Pennsylvania American Water Company**, 4 Wellington Road, Wyomissing, PA 19610. This proposed facility is in Wind Gap Borough, **Northampton County**.

Description of Proposed Activity: Issuance of an NPDES permit.

The receiving stream, Ross Common Creek, is in the State Water Plan watershed no. 2B and classified for HQ-CWF and MF. The nearest downstream public water supply intake for the Northampton Borough Water Authority is on the Lehigh River, 33.6 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.025 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
Flow	Monitor and Report			
Total Suspended Solids			30.0	60.0
Total Iron			2.0	4.0
Total Aluminum			4.0	8.0
Total Manganese			1.0	2.0
pH	not less than 6.0 nor greater than 9.0 at all times			
Total Residual Chlorine			0.5	1.0

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

**PA0044971**, Sewage, **B. P. O. E. Lodge**, P. O. Box 2026, 3200 Milligantown Road, Lower Burrell, PA 15068. This application is for renewal of an NPDES permit to discharge treated sewage from the B. P. O. E. Lodge 512 STP in Lower Burrell City, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Little Pucketa Creek, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Oakmont Municipal Water Authority.

*Outfall 001*: existing discharge, design flow of 0.0027 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	25,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0097047**, Sewage, **Westmoreland County Industrial Park Authority**, 2 North Main Street, Suite 601, Greensburg, PA 15601. This application is for renewal of an NPDES permit to discharge treated sewage from the Nike Site No. 37 Shaner Heights STP in Sewickley Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as drainage swale to Little Sewickley Creek, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the McKeesport Municipal Water Works.

*Outfall 001*: existing discharge, design flow of 0.008 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform				

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 3.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0098388**, Sewage, **Patusan Trading Company, Inc.**, 5490 Highway 217 North, Blairsville, PA 15717. This application is for renewal of an NPDES permit to discharge treated sewage from the Patusan Trading Company Sewage Treatment Plant in Blacklick Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Greys Run, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Saltsburg Municipal WW on the Conemaugh River.

*Outfall 001*: existing discharge, design flow of 0.00084 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	50,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0216631**, Sewage, **Regis Kraisinger**, 139 Quarry Street, Mount Pleasant, PA 15664. This application is for renewal of an NPDES permit to discharge treated sewage from the Kraisinger Reception Hall Sewage Treatment Plant in East Huntingdon Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Sherrick Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Westmoreland County Municipal Authority—McKeesport.

*Outfall 001*: existing discharge, design flow of 0.0036 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	7.0			14.0
(11-1 to 4-30)	21.0			42.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0218154**, Sewage, **Partnership of Robert Gearhart, Deborah Bomberger and Anthony Tommasone**, 610 Midland-Beaver Road, Beaver, PA 15009. This application is for renewal of an NPDES permit to discharge treated sewage from the Lock 6 Landing Restaurant and Lounge Wastewater Treatment Plant in Industry Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Ohio River, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Midland Borough Municipal Authority.

*Outfall 001:* existing discharge, design flow of 0.0024 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 10-31)	200/100 ml as a geometric mean			
(11-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0218162**, Sewage, **Indiana County Municipal Services Authority**, 827 Water Street, Indiana, PA 15701. This application is for renewal of an NPDES permit to discharge treated sewage from the Creekside STP in Washington Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Crooked Creek, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority, Freeport Plant, on the Allegheny River.

*Outfall 001:* existing discharge, design flow of 0.15 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	19.0	28.5		38.0
(11-1 to 4-30)	25.0	37.5		50.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	18,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

Other Conditions: The following effluent limitations will apply when the treatment plant is expanded to a flow of 0.45 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	15	23		30
(5-1 to 10-31)	25	38		50
(11-1 to 4-30)				
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	7.5	11.3		15.0
(11-1 to 4-30)	22.5	33.8		45.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	7,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0218251**, Sewage, **Westmoreland Department of Public Works**, R. D. 12, Box 203, Donohoe Road, Greensburg, PA 15601. This application is for renewal of an NPDES permit to discharge treated sewage from the Magistrate Office and Washington Township Firehall STP in Washington Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Beaver Run, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Buffalo Township Municipal Authority.

*Outfall 001: existing discharge, design flow of 0.001 mgd.*

Parameter	Concentration (mg/l)			Instantaneous Maximum
	Average Monthly	Average Weekly	Maximum Daily	
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen (5-1 to 10-31) (11-1 to 4-30)	14.0			28.0
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		Monitor and Report		
Total Residual Chlorine		200/100 ml as a geometric mean 2,000/100 ml as a geometric mean		
pH		1.4		3.3
		not less than 6.0 nor greater than 9.0		

The EPA waiver is in effect.

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

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

**WQM Permit No. 2304403**, Sewerage, **Newtown Township Municipal Authority**, 209 Bishop Hollow Road, Newtown Square, PA 19073. This proposed facility is in Newtown Township, **Delaware County**.

Description of Proposed Action/Activity: Construction and operation of a gravity sanitary sewer system.

**WQM Permit No. 4604412**, Sewerage, **Upper Gwynedd Township**, One Parkside Place, Westpoint, PA 19486. This proposed facility is in Upper Gwynedd Township, **Montgomery County**.

Description of Proposed Action/Activity: Modifications to its existing treatment plant from 4.5 mgd to 5.7 mgd.

**WQM Permit No. 0904412**, Sewerage, **James W. Williams**, P. O. Box 222, 809 Township Line Road, Wycombe, PA 18980-0222. This proposed facility is in Wrightstown Township, **Bucks County**.

Description of Proposed Action/Activity: Applicant request approval for the construction and operation of a small flow wastewater treatment plant.

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

**WQM Permit No. 0500407, Amendment 04-1**, Sewerage, **South Woodbury Township**, R. R. 1, Box 246, New Enterprise, PA 16664. This proposed facility is in South Woodbury Township, **Bedford County**.

Description of Proposed Action/Activity: Change in design for construction of their sewage treatment plant.

**WQM Permit No. 2101406, Amendment 04-1**, Sewerage, **William Lamadue, Visaggio's Ristorante**, 6990 Wertzville Road, Enola, PA 17025-1037. This proposed facility is in Silver Spring Township, **Cumberland County**.

Description of Proposed Action/Activity: Amendment to their existing wastewater treatment plant and disposal system to include the permanent installation of a pump tank, pumps, filters and related equipment. These modifications are proposed to alleviate existing operational problems associated with severe filamentous bacteria growth and grease accumulation through the treatment system and bring the wastewater treatment plant into compliance.

**WQM Permit No. 0103403, Amendment 04-1**, Sewerage, **Bonneauville Borough**, 46 East Hanover Street, Gettysburg, PA 17325. This proposed facility is in Bonneauville Borough, **Adams County**.

Description of Proposed Action/Activity: Amendment to permit to relocate the Cedarfield Condo pump station to a point downstream across the road from the condominiums.

**WQM Permit No. 2804403**, Sewerage, **Greene Township Municipal Authority**, 4182 Sunset Pike, Chambersburg, PA 17201. This proposed facility is in Greene Township, **Franklin County**.

Description of Proposed Action/Activity: Construction of pump station no. 9 to serve the Scotland Run residential development.

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

**WQM Permit No. 6304202**, Industrial Waste, **U. S. Army Corps of Engineers, Pittsburgh District**, 1000 Liberty Avenue, Pittsburgh, PA 15222-4186. This proposed facility is in Carroll Township, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of a wastewater treatment facility to serve the Victory Hollow offloading and upland placement area.

**WQM Permit No. 0204407**, Sewerage, **Gina Muscante**, 79 Coursin Road, Elizabeth, PA 15037. This proposed facility is in Lincoln Borough, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a small flow sewage treatment facility to serve the Muscante residence.

**WQM Permit No. 0204408**, Sewerage, **The Mills Corporation**, 2012-A Butler Logan Road, Tarentum, PA 15084. This proposed facility is in Frazer Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of sewer extensions to serve the Pittsburgh Mills.

**WQM Permit No. 0271412-A3**, Sewerage, **Leetsdale Borough Municipal Authority**, 5 Sixth Street, Leetsdale, PA 15056. This proposed facility is in Leetsdale Borough, **Allegheny County**.

Description of Proposed Action/Activity: Application for the modification and operation of the Leetsdale sewage treatment plant and pump stations.

The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

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

**WQM Permit No. 2574407**, Sewerage Amendment No. 1, **Municipal Authority of Middleboro**, P. O. Box 189, McKean, PA 16426. This proposed facility is in McKean Borough, **Erie County**.

Description of Proposed Action/Activity: This project is for the construction of a second treatment tank and updates to the existing tank and treatment facility.

**WQM Permit No. 4204401**, Sewerage, **Borough of Eldred**, 3 Bennett Street, Eldred, PA 16731. This proposed facility is in Eldred Borough, **McKean County**.

Description of Proposed Action/Activity: This project is for the replacement of two pump stations.

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#### **IV. NPDES Applications for Stormwater Discharges from MS4**

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#### **V. Applications for NPDES Waiver Stormwater Discharges from MS4**

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010904009	Bracalente Manufacturing Company Development 20 West Creamery Road P. O. Box 570 Trumbauersville, PA	Bucks	Milford Township	Unami Creek HQ-TSF
PAI011504054	B & B Homes 1935 Swedesford Road Development Suite 200, 112 Moores Road Malvern, PA 19355	Chester	Tredyffrin Township	Valley Creek EV
PAI011504055	Devault Foods, Inc. Devault Food Filling/Grading Plan 1 Devault Lane Devault, PA 19432	Chester	Charlestown Township	Valley Creek EV
PAI011504056	St. Peter's Church in Great Valley P. O. Box 334 Paoli, PA 19301	Chester	Tredyffrin Township	Valley Creek EV
PAI011504057	Wawa, Inc. Proposed Food Market 260 West Baltimore Pike Wawa, PA 19063	Chester	North Coventry Township	Schuylkill River HQ-TSF
PAI011504058	Lionville Business Center Development 502 Gordon Drive Exton, PA 19341	Chester	Uwchlan Township	Pine and Pickering Creeks HQ-TSF

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

*Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024504005-1	Game Commission 2001 Elmerton Ave. Harrisburg, PA 17110-9797	Monroe	Coolbaugh and Tobyhanna Townships	UNT Wagner Run HQ-CWF
PAI024504020	Romec Inc. P. O. Box 99 Pocono Lake, PA 18347	Monroe	Middle Smithfield Township	Michael Creek HQ-CWF

*Northampton County Conservation District: Greystone Building, Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024804029	DePalo Builders, LLC 107 East Main St. Bath, PA 18014	Northampton	Moore Township	Monocacy Creek HQ-CWF

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

*Clinton Conservation District: 45 Cooperation Lane, Mill Hall, PA 17751, (570) 726-3798.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041804003	Clinton County Economic Partnership 212 N. Jay St. Lock Haven, PA 17745	Clinton	Lamar Township	Fishing Creek HQ

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10F034R	Ronald Thompson JARO Development Co. Inc. 3816 Wax Myrtle Run Naples, FL 34112	Centre	Rush Township	Cold Stream HQ

## **VII. List of NOIs for NPDES and/or Other General Permit Types**

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

## **PUBLIC WATER SUPPLY (PWS) PERMIT**

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed per-

mit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### **SAFE DRINKING WATER**

#### **Applications Received under the Pennsylvania Safe Drinking Water Act**

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

**Permit No. 1304501**, Public Water Supply.

Applicant **Borough of Jim Thorpe**  
 Township or Borough **Jim Thorpe Borough, Carbon County**

Responsible Official **Vince Yaich, Superintendent**  
 Borough of Jim Thorpe  
 Water Department  
 421 North Street  
 Jim Thorpe, PA 18229-2528

Type of Facility **PWS**

Consulting Engineer **Michael J. Dashbach, P. E.**  
 Entech Engineering, Inc.  
 4 South Fourth Street  
 P. O. Box 32  
 Reading, PA 19603

Application Received Date **August 3, 2004**

Description of Action **This permit amendment consists of the following modifications: changing primary coagulant from Alum to Stern PAC; changing the corrosion inhibitor from Aqua Mag to Calcquest; installing a sodium permanganate feed system; backwash system modifications; and installing an in-line filter/screen.**

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 1704502**, Public Water Supply—Major Amendment.

Applicant **Clearfield Municipal Authority**  
 107 Market Street  
 Clearfield, PA 16830-2405

Township or Borough **Lawrence Township**  
 County **Clearfield**

Responsible Official **Jeffrey Williams, Manager**  
 Clearfield Municipal Authority  
 107 Market Street  
 Clearfield, PA 16830-2405

Type of Facility **PWS—Construction.**

Consulting Engineer **Gwin, Dobson & Foreman, Inc.**

Application Received Date **August 3, 2004**

Description of Action **Installation of 3,800 feet of 8-inch PVC waterline, 2,600 linear feet of 6-inch PVC waterline, a 100,000-gallon water storage tank, one pumping station and all required appurtenances.**

#### MINOR AMENDMENT

#### Applications Received under the Pennsylvania Safe Drinking Water Act

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

**Application No. 4504502**, Minor Amendment.

Applicant **Pleasant Valley School District**  
**Polk Elementary School**  
 Route 209  
 Brodheadsville, PA 18322

Township or Borough **Polk Township, Monroe County**

Responsible Official **Roger Borger**

Type of Facility **Water System**

Consulting Engineer **Quad Three Group**  
 72 Glenmaura National Blvd.  
 Moosic, PA 18507

Application Received Date **July 12, 2004**

Description of Action **The addition of pH adjustment, phosphate and hypochlorination for purposes of controlling copper, general corrosion and for disinfection.**

#### Application No. Minor Amendment.

Applicant **Aqua Pennsylvania, Inc.**

Township or Borough **Palmyra Township, Pike County**

Responsible Official **Roswell S. McMullen, Mgr. NE Ops.**  
 HC 6, Box 6040  
 Hawley, PA 18428  
 (570) 226-1528

Type of Facility **Community Water System**

Consulting Engineer **Douglas E. Berg, P. E.**  
 4 South Fourth Street  
 Reading, PA 19603

Application Received Date **August 5, 2004**

Description of Action **Application for approval to change pH adjustment chemical for the Ozark Well at Tanglewood North Development from soda ash to caustic soda.**

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 1

**Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons 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 Notice of Intent to Remediate with the Department. A Notice of

Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, 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 the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**1400 Calcon Hook Rd. Site,** Darby Borough, **Delaware County.** Peter Malik, RT Environmental Svc., Inc., 215 W. Church Rd., King of Prussia, PA 19406 on behalf of Dean DiValerio, Republic Svc., Inc., 414 E. Baltimore Pike, 2nd Fl., Media, PA 19063 has submitted a Notice of Intent to Remediate. Incidental impact of VOCs occurred overtime from discharges of wastewater runoff from a former truck wash pad toward the western edge of the pad at the site. The proposed remediation measures are to excavate the impacted soil, treat it onsite, then reuse it per Act 2 protocol and/or dispose of it offsite at a permitted facility.

*Northeast Regional Field Office: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Former Allentown Paint Property,** City of Allentown, **Lehigh County.** Vincent M. Carbone, P. G., Project Geologist, Lawler, Matusky & Skelly Engineers, LLP, The Sovereign Building, 609 Hamilton Mall, Allentown, PA 18101 has submitted a revised Notice of Intent to Remediate (on behalf of Ramzi Haddad, Allen Street Development, Inc., 1111 Sixth Street, Whitehall, PA

18052) concerning the remediation of soils found or suspected of being contaminated with lead, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and BTEX components. A final report for this site was previously approved on October 12, 2000, after demonstrating attainment of the Nonresidential Statewide Health Standard. The revised Notice of Intent to Remediate reflects a change to propose to meet the Residential Statewide Health Standard. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Hillwood Palmyra, LP, Hetrick Avenue Property, Petroleum-Containing Soils Site,** Palmyra Borough, **Lebanon County.** ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Notice of Intent to Remediate petroleum-containing soils that were encountered during excavation activities at the site. The site has been developed as commercial warehousing.

**Hillwood Palmyra, LP, Hetrick Avenue Property, Soil Mound Site,** Palmyra Borough, **Lebanon County.** ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Notice of Intent to Remediate soils contaminated with lead and copper. The site has been developed as commercial warehousing.

**Hillwood Palmyra, LP, Hetrick Avenue Property, Fill Area Site,** North Londonderry Township and Palmyra Borough, **Lebanon County.** ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Notice of Intent to Remediate soils contaminated with metals in non-native fill materials. The site has been developed as commercial warehousing.

**RSC 196 Thomasville,** Jackson Township, **York County.** Brown and Caldwell, 110 Commerce Drive, Allendale, NJ 07401, on behalf of RSC 196 Thomasville, 6778 Lincoln Highway, Thomasville, PA 17364, submitted a Notice of Intent to Remediate site soils contaminated with heating fuel. The site will continue to operate as a construction equipment rental facility.

*Northcentral Region: Environmental Cleanup Program, 208 West Third Street, Williamsport, PA 17701.*

**Jersey Shore Coastal,** Jersey Shore Borough, **Lycoming County,** Mountain Research, on behalf of Sunoco, Inc., 5733 Butler Street, Pittsburgh, PA 15201, has submitted a Notice of Intent to Remediate groundwater contaminated with gasoline. This site is being remediated to meet the Statewide Health Standards.

**Tom's Citgo,** Valley Township, **Montour County,** Ralph G. Scharr, on behalf of Tom's Citgo, 30 Sheraton Street, Danville, PA 17821, has submitted a Notice of Intent to Remediate groundwater contaminated with gasoline. This site is being remediated to meet the Site Specific Standards.

## AIR QUALITY

### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

#### NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State



operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

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

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

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

#### PLAN APPROVALS

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

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**40-320-024: Prime Time Rewind, Inc.** (173 Gilligan Street, Wilkes-Barre, PA 18702) to install an air cleaning device (regenerative thermal oxidizer) to control the atmospheric emissions from a printing operation at their facility in Hanover Township, **Luzerne County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**36-05018A: LASCO Bathware, Inc.** (8101 East Kaiser Blvd., Anaheim, CA 92808) for installation of a new concentrator and replacement of a thermal oxidizer at their existing facility in West Donegal Township, **Lancaster County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**59-301-021: Carleton Funeral Home, Inc.** (11470 Route 6, Wellsboro, PA 16901) for construction of a human crematory incinerator in Charleston Township, **Tioga County**.

**41-313-011C: Lonza, Inc.** (3500 Trenton Avenue, Williamsport, PA 17701) for installation of an air cleaning device (a packed bed scrubber) on a number of formaldehyde-emitting chemical reactors and process vessels currently controlled by different air cleaning devices in the City of Williamsport, **Lycoming County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.*

**03-00976B: AMFIRE Mining Co.** (One Energy Place, Latrobe, PA 15650) to increase throughput at Ridge Deep Mine in South Bend Township, **Armstrong County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.*

**25-994B: Advanced Mold Technologies, Inc.** (2011 East 30th Street, Erie, PA 16510) for installation of a decorative chrome, nickel and copper plating operation in the City of Erie, **Erie County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**AMS 04122: Amerada Hess Corp.** (1630 South 51st Street, Philadelphia, PA 19143) for increasing throughput in Philadelphia, **Philadelphia County**.

**AMS 4134: Perfecseal Inc.** (9800 Bustleton Avenue, Philadelphia, PA 19115) for installation of a flexographic press in Philadelphia, **Philadelphia County**.

**AMS 04145: VHA Medical Center** (3900 Woodland Avenue, Philadelphia, PA 19104) for installation of a boiler in Philadelphia, **Philadelphia County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**23-0093: Bryn Hill Industries** (Price and Pine Streets, Holmes, PA 19043) for installation of the urethane foam product line at their Bryn Hill Industries light industrial facility in Ridley Township, **Delaware County**. The installation of the urethane foam product line will result in the emissions of: 0.1 ton per year of NO<sub>x</sub>; 0.09 ton per year of CO; 24.9 tons per year of VOCs; 0.001 ton per year of SO<sub>x</sub>; and 2.71 tons per year of PM. The Plan Approval and Operating Permit will contain

additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**22-05034B: Pennsy Supply, Inc.** (1001 Paxton Street, P. O. Box 3331, Harrisburg, PA 17104-3331) for construction of a pulverized mineral processing operation, Hummelstown Quarry, in South Hanover Township, **Dauphin County**. This plan approval will include appropriate restrictions and requirements designed to keep the source operating within all applicable air quality requirements. Estimated atmospheric emissions for PM10, SOx, CO, NOx, VOCs and HAPs are projected to be 6.82, 0.85, 30.75, 6.25, 9.50 and 0.05 tpy, respectively. The pulverized mineral processing operation is subject to 40 CFR Part 60—Standards of Performance for New Stationary Sources, Subpart 000.

**67-03128A: Bookspan, Inc.** (501 Ridge Avenue, Hanover, PA 17331) for construction of a no. 6 oil-fired boiler rated at 8.5 mmBtu/hr at their book distribution facility in Penn Township, **York County**. The facility has the following annual potential emissions: 39.0 tons SOx, 13.5 tons NOx, 2.5 tons PM10 and 1.2 tons CO. The plan approval and subsequent State-only operating permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Richard Maxwell, New Source Review Chief, (570) 327-3637.*

**17-305-051: Parkwood Resources, Inc.** (P. O. Box 552, Somerset, PA 15501) for construction of a bituminous coal stockpiling and truck loading operation at the Cherry Tree Mine in Burnside Township, **Clearfield County**.

The coal stockpiling and truck loading operation will process up to 700,000 tons per year of coal from an underground mine. Air contaminant emission control will be provided by the inherent moisture content of the coal, the use of a water truck, the use of partial conveyor covers and a screen enclosure, the use of a stacking tube and the implementation of various work practices (truck tarping, vehicle speed limits, minimizing the front end loader bucket-to-truck bed freefall height, and the like).

The Department's review of the information submitted by Parkwood Resources, Inc. indicates that the respective coal stockpiling and truck loading operation will comply with all applicable air quality requirements pertaining to air contamination sources and the emission of air contaminants including the fugitive air contaminant emission requirements of 25 Pa. Code §§ 123.1 and 123.2, the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12 and the requirements of Subpart Y of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.250—60.254. Based on this finding, the Department proposes to issue plan approval for the construction of the coal stockpiling and truck loading operation.

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

1. The facility shall not process more than 700,000 tons of coal in any 12 consecutive month period.

2. An operable water truck equipped with a pressurized spray bar and a pressurized spray nozzle or hose connection shall be kept onsite at all times and shall be used, as needed, for the control of fugitive dust emissions from plant roadways, stockpile areas, and the like.

3. The facility's screen shall be completely enclosed except for the coal entrance and exit points.

4. All aboveground conveyors shall be partially or fully enclosed.

5. All 0-inch to 2-inch coal from the screen shall be placed onto the 0-inch to 2-inch stockpile through a stacking tube.

6. All trucks entering or exiting the site through a public roadway shall have their truck beds completely tarped or otherwise covered unless empty.

7. The entrance road and internal plant roadways shall have posted speed limits of 10 miles per hour.

8. The facility's entrance roadway shall be paved.

9. Front end loader bucket-to-truck bed height shall be kept to a minimum during all truck loading.

10. This plan approval does not authorize the construction, installation or operation of any gasoline, natural gas, propane or diesel-fired stationary engines, generators or engine-generator sets.

11. Records shall be maintained of the number of tons of coal loaded out each month. Records shall be retained for at least 5 years and shall be made available to the Department upon request.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.*

**37-290C: Industrial Concerns, Inc.** (526 South Jefferson Street, New Castle, PA 16101) for use of two torches at their scrap metal operation in the City of New Castle, **Lawrence County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department intends to issue a plan approval for a minor modification to use two torches at their scrap metal operation in the City of New Castle, Lawrence County. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into a State-only operating permit through an administrative amendment at a later date.

**24-012D: C/G Electrodes LLC—St. Marys Plant** (800 Theresia Street, St. Marys, PA 15857-1898) for reactivation of the 25-inch Extrusion press and dust collector in their Extrusion Department in St. Marys City, **Elk County**. This is a Title V facility.

The public notice is required for sources required to obtain a Plan Approval at Title V facilities in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V operating permit through an administrative amendment at a later date. The source shall comply with the following conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology for the source:

- The source shall comply with 25 Pa. Code §§ 123.1, 123.31 and 123.41 for fugitive matter, odor and visible emissions.

- PM emissions shall not exceed 0.02 grain per dry standard cubic foot.

- Stack test for PM compliance and for developing CAM.
- The permittee shall perform a daily operational inspection of the control device. The operational inspection shall include, at a minimum, recording the pressure drop across the control device.
- The permittee shall maintain a manometer or similar device to measure the pressure drop across the control device.
- The permittee shall operate the control device at all times that the source is operation.
- The permittee shall maintain and operate the source and control device in accordance with the manufacturer's specifications and in accordance with good air pollution control practices.

The permittee shall maintain a record of all preventative maintenance inspections of the control device. These records shall, at a minimum, contain the dates of the inspections, any problems or defects, the actions taken to correct the problem or defects and any routine maintenance performed.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**AMS 04203: National Greyhound Adoption Program** (10901 Dutton Road, Philadelphia, PA 19154) for installation of a 50-pound per hour animal crematory. The installation permit will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

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**Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.**

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*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**25-00952: Bush Industries, Inc.** (2455 Robison Road, Erie, PA 16509) for a Natural Minor Permit to operate a wood furniture manufacturing plant in Summit Township, **Erie County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**N04-006: Smurfit Stone Container Corp.—Philadelphia West** (9820 Blue Grass Road, Philadelphia, PA 19114) for operation of their corrugated paperboard manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two boilers. The facility's air pollution control devices include two cyclones.

The operating permit will be reissued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at the AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener, (215) 685-9426.

Persons wishing to file protests or comments on the operating permit must submit the protests or comments within 30 days from the date of this notice. Protests or comments filed with the AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, the AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

## COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an 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.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and

relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**03980107 and NPDES Permit No. PA0202495. State Industries, Inc.** (P. O. Box 1022, Kittanning, PA 16201). Renewal application for continued operation and reclamation of an existing bituminous surface mine in Washington Township, **Armstrong County**, affecting 355.6 acres. Receiving stream: unnamed tributary to Allegheny River (WWF). The first potable water supply intake within 10 miles downstream from the point of discharge is the Allegheny Power. Renewal application received July 29, 2004.

**03890109 and NPDES Permit No. PA0591700. Rosebud Mining Company** (301 Market Street, Kittanning, PA 16201) renewal application for reclamation only to an existing bituminous surface mine in Perry Township, **Armstrong County**, affecting 56.0 acres. Receiving stream: unnamed tributary to Allegheny River (WWF). The first portable water supply intake within 10 miles downstream from the point of discharge is the Pennsylvania American Water Co. Renewal application received August 5, 2004.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56890111 and NPDES Permit No. PA0598577. Ritchie Trucking & Excavating, Inc.**, 19709 Winner View Terrace, Frostburg, MD 21532, surface mining permit renewal in Elk Lick Township, **Somerset County**, affecting 66.3 acres. Receiving streams: Tub Mill Run, unnamed tributaries to Tub Mill Run, unnamed tributaries to Casselman River and Casselman River (CWF and WWF). There are no potable water supply intakes within 10 miles downstream. Application received July 21, 2004.

**56890102 and NPDES Permit No. PA0598372. Svonavec, Inc.**, 150 W. Union Street, Suite 201, Somerset, PA 15501, surface mining permit renewal for reclamation only in Lower Turkeyfoot Township, **Somerset County**, affecting 92.5 acres. Receiving

### *Coal Applications Received*

*Effluent Limits*—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

streams: unnamed tributaries to Casselman River and Casselman River (WWF). The first downstream potable water supply intake from the point of discharge is the Ohioyle Borough Municipal Waterworks Youghiogheny River surface water withdrawal. Application received June 26, 2004.

*California District Mining Office: 2 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**17831601. NPDES Permit No. PA0215317, River Hill Coal Company, Inc.** (P. O. Box 141, Kylertown, PA 16847), to renew the permit for Bedford Siding in Karthaus Township, **Clearfield County** and related NPDES Permit. No additional discharges. Application received April 26, 2004

**63841302. Maple Creek Mining, Inc.** (981 Route 917, Bentleyville, PA 15314), to revise the permit for the Maple Creek Mine in Nottingham Township, **Washington County**, ACOE Pittsburgh District (Hackett, PA Quadrangle N: 14.6 inches; W: 10.3 inches to N: 14.4 inches; W: 10.4 inches).

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the regarding of approximately 450 feet of unnamed tributary to Mingo Creek to alleviate ponding conditions of the O West longwall panel.

Written comments or objections on the request for section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the previous district mining office. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the California District Mining Office, by appointment. Application received May 26, 2004.

**63841302. Maple Creek Mining, Inc.** (981 Route 917, Bentleyville, PA 15314), to revise the permit for the Maple Creek Mine in Nottingham Township, **Washington**

ton County, ACOE Pittsburgh District (Hackett, PA Quadrangle N: 14.6 inches, W: 10.8 inches to N: 14.3 inches, W: 10.9 inches).

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the regarding of approximately 750 feet of unnamed tributary to Mingo Creek to alleviate ponding conditions over the O West longwall panel.

Written comments or objections on the request for section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the previous district mining office. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the California District Mining Office, by appointment. Application received May 26, 2004

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**24830103 and NPDES Permit No. PA0601578. Tamburlin Bros. Coal Co., Inc.** (P. O. Box 1419, Clearfield, PA 16830). Renewal of an existing bituminous surface strip and auger operation in Horton Township, **Elk County** affecting 134.0 acres. Receiving streams: Johnson Run (CWF). There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received July 29, 2004.

**10030101 and NPDES Permit No. PA0242331. Quality Aggregates, Inc.** (200 Neville Road, Neville Island, PA 15225-0347). Revision to an existing bituminous surface strip and coal ash placement operation in Venango Township, **Butler County** affecting 95.0 acres. Receiving streams: three unnamed tributaries to Seaton Creek (CWF). There are no potable surface water supply intakes within 10 miles downstream. Revisions to add auger mining and acreage. Application received August 2, 2004.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17030103 and NPDES Permit No. PA0243442. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650-9628). Transfer of an existing bituminous surface mine-auger permit application from Moravian Run Reclamation Co., Inc. The permit is in Lawrence Township, **Clearfield County** and affects 80.2 acres. Receiving streams: unnamed streams 1—3 to Hogback Run to West Branch Susquehanna River. Application received July 7, 2004.

**17960125 and NPDES Permit No. PA0220531. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650-9628). Transfer of an existing bituminous surface mine permit from Moravian Run Reclamation Co., Inc. The permit is in Beccaria Township, **Clearfield County** and affects 110 acres. Receiving streams: unnamed tributary to Muddy Run and Muddy Run. Application received July 7, 2004.

**17990109 and NPDES Permit No. PA0238325. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650-9628). Transfer of an existing bituminous surface mine-auger permit from Moravian Run Reclamation Co., Inc. The permit is in Beccaria Township, **Clearfield County** and affects 103.3 acres. Receiving streams: unnamed streams to Muddy Run and Muddy Run. Application received July 7, 2004.

**17980123 and NPDES Permit No. PA0238163. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650-9628). Transfer of an existing bituminous surface mine permit from Moravian Run Reclamation Co., Inc. The permit is in Knox Township, **Clearfield County** and affects 66.6 acres. Receiving streams: unnamed streams to Dunlap Run and Cherry Run. Application received July 7, 2004.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.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. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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

## WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E23-444. Mobil Pipeline Company**, P. O. Box 2220, Houston, TX 77252-2220, Tinicum Township, **Delaware County**, ACOE Philadelphia District.

To perform the following activities associated with the ExxonMobil Delaware River crossing replacement project:

1. To install and maintain a 12-inch diameter pipeline, carrying refined petroleum products beneath the Delaware River (WWF, MF) by directional boring. This pipeline will replace an existing 10/12-inch pipeline that will be cleaned and filled with grout and abandoned in place.

2. To install and maintain an 8-inch diameter pipeline, carrying jet fuel beneath the Delaware River by directional boring. This pipeline will replace an existing 8-inch pipeline that will be cleaned and filled with grout.

3. To temporarily impact 0.37 acre of wetland (PEM) associated with directional drilling operations, equipment storage and laydown.

4. To construct and maintain a temporary road across the South Ponding Ditch (WWF), a tributary to the Delaware River, to facilitate access to the site.

5. To replace a 12-inch pipeline across the South Ponding Ditch.

The site is in just south of the Philadelphia International Airport (Bridgeport NJ-PA USGS Quadrangle N: 20.0 inches; W: 1.5 inches).

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

**E39-442. City of Allentown, Bureau of Parks**, 2700 Parkway Blvd., Allentown, PA 18104-5399 in the City of Allentown, **Lehigh County**, U. S. Army Corps of Engineers, Philadelphia District.

To construct and maintain an 8-foot wide, prefabricated pedestrian bridge (Cedar Beach Crossing) on existing stone masonry abutments, having a 32.75-foot span and a 2.7-foot approximate underclearance across Cedar Creek (HQ-CWF) and to modify and maintain an existing 5-foot wide pedestrian bridge (Rose Garden Crossing) having a 20.5-foot span and a 3-foot approximate underclearance across Cedar Creek with work consisting of replacing the wooden superstructure.

The Rose Garden Crossing is approximately 1,300 feet upstream of Ott Street (Allentown West, PA Quadrangle N: 16.5 inches; W: 2.3 inches) and the Cedar Beach Crossing is approximately 800 feet upstream of Ott Street (Allentown West, PA Quadrangle N: 17.0 inches; W: 1.5 inches) in the City of Allentown, Lehigh County (Allentown West, PA Quadrangle N: 6.5 inches and 17.0 inches; W: 2.3 inches and 1.5 inches).

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

**E29-084: Mason Dixon Council Boy Scouts of America**, 677 Boy Scout Road, Fort Littleton, PA 17223 in Dublin Township, **Fulton County**, ACOE Baltimore District.

To construct and maintain a stream restoration project on an unnamed tributary to Plum Run (Dry Run) (TSF) beginning at the lake at Camp Sinoquie (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.1 inches) and extending to a point 1,667 feet upstream (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.9 inches) involving permanent impacts to 0.04 acre of palustrine forested wetlands and temporary impacts to 0.02 acre of a palustrine forested wetland; relocation of the stream channel; floodway and floodplain excavation, filling and

grading; the placement of 19 cross vanes; the creation and enhancement of approximately 0.50 acre of forested floodplain wetlands; and the replacement of an existing twin 36-inch culvert crossing with an 11-foot by 3 1/2-foot arch culvert in the channel of the unnamed tributary to Plum Run at a point 440 feet upstream of the lake at Camp Sinoquie (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.3 inches) in Dublin Township, Fulton County.

The project is proposed to be amended as follows: To construct and maintain a stream rehabilitation project on an unnamed tributary to Plum Run (Dry Run) (TSF) beginning at the lake at Camp Sinoquie (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.1 inches) and extending to a point 1,506 feet upstream (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.89 inches) using a natural stream channel design approach involving floodway excavation, filling and grading and minor channel modifications along approximately 930 linear feet of the stream channel, the placement of six rock cross vanes and three J-hook log vanes and the replacement of an existing twin 36-inch CMP stream crossing with an 11-foot by 3 1/2-foot arch culvert at a point 440 feet upstream of the lake at Camp Sinoquie (Burnt Cabins, PA Quadrangle N: 16.1 inches; W: 13.3 inches) all for the purpose of improving channel stability and aquatic habitat in Dublin Township, Fulton County. The project proposes to directly affect 1,506 linear feet of the channel of the unnamed tributary to Plum Run.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E14-465. Wetlands Habitat Management Inc.**, 2525 Green Tech Drive, Suite D, State College, PA 16803. Phase 2 Bald Eagle Site in Huston Township, **Centre County**, ACOE Baltimore District (Port Matilda, PA Quadrangle N: 4.1 inches; W: 12.6 inches).

Applicant is proposing to create 18.2 acres of palustrine wetlands along the flood plain of Bald Eagle Creek (TSF) and Steel Hollow Run (CWF and WTF). The site is comprised of two tracts lying just east and west of Steel Hollow Run and immediately south of SR 220. Temporary construction impacts (0.1 acre) are also proposed to facilitate access to the site.

**E18-377. Department of Transportation, Engineering District 2-0**, 1924-30 Daisy Street Extension, P. O. Box 342, Clearfield, PA 16830. SR 0120, Section A01, Structure Replacement over Shintown Run in Noyes Township, **Clinton County**, ACOE Baltimore District (Renovo-West, PA Quadrangle N: 10.5 inches; W: 7.10 inches).

To remove the existing bridge and to construct and maintain: (1) a reinforced concrete culvert with a waterway opening of 230 square feet, a normal clear span of 20 feet and a minimum underclearance of 12 feet; (2) a temporary roadway of two 8-foot diameter pipes (minimum hydraulic opening of 83 SF) and clean fill 20 feet downstream of the existing bridge; (3) a 90-foot long by 10-foot wide earthen/sandbag ditch temporary by-pass around the bridge site. This project proposes to permanently impact 142 feet of Shintown Run (CWF) without any wetland impacts.

**E53-401. Oswayo Borough**, 115 Rumsey Street, Oswayo, PA 16915. Depot Street Bridge Replacement Project in Oswayo Borough, **Potter County**, ACOE Baltimore District (Oswayo, PA Quadrangle N: 8.26 inches; W: 2.61 inches).

To remove an existing structure and construct, operate and maintain a single span prestressed concrete adjacent box beam bridge to carry Depot Street across Oswayo Creek (HQ-CWF). The single span bridge shall be constructed with a minimum span of 42 feet, underclearance of 6.24 feet and curb-to-curb width of 21 feet. All construction and future maintenance work shall be completed during stream low flow and dry work conditions by dams and pumping or fluming stream flow around work areas. Since Oswayo Creek is a wild trout fishery, no maintenance work shall be conducted in or along the unnamed tributary channel between October 1 and December 31, without prior written permission from the Fish and Boat Commission. The project will not impact wetlands, while impacting 110 feet of waterways that is along the eastern right-of-way of SR 0244 approximately at the intersection of Depot Street and SR 0244.

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

**E04-305. Emmanuel Panagiotakas**, 103 Rosewood Drive, Aliquippa, PA 15001. Stream crossing over Shafers Run in Center Township, **Beaver County**, Pittsburgh ACOE District (Beaver, PA Quadrangle N: 2.2 inches; W: 5.6 inches—Latitude: 40° 38' 14" and Longitude: 80° 17' 23"). The applicant proposes to construct and maintain a 24-foot by 5-foot concrete box culvert depressed 6 inches approximately 25 feet long in Shafers Run to provide access to a proposed multifamily housing development. The project is on the south side of East Shaffer Road approximately 500 feet west of Chapel Road. The total proposed impact to Shafers Run is 25 feet of culvert.

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

**E42-311, Department of Conservation and Natural Resources, Bureau of State Parks**, P. O. Box 8451,

Harrisburg, PA 17105-8451. Kinzua Bridge State Park viaduct site in Hamlin and Keating Townships, **McKean County**, ACOE Pittsburgh District (Cyclone, PA Quadrangle N: 2.3 inches; W: 12.1 inches).

To repair and maintain the existing foundations, abutments and railroad towers/bents and to maintain the debris field as a result of the Kinzua Viaduct Bridge collapse within the floodway/floodplain of Kinzua Creek (CWF) at a point within the Kinzua Bridge State Park.

#### ENVIRONMENTAL ASSESSMENTS

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**D02-083EA Nicassio Corporation**, 24 South 18th Street, Pittsburgh, PA 15203. Plum Borough, **Allegheny County**, ACOE Pittsburgh District.

Project proposes to breach and remove Johnston Pond Dam across a tributary to Aber's Creek (TSF) to eliminate a threat to public safety and to restore the stream to a free flowing condition. The dam is classified as a high hazard dam and is in poor condition due to inadequate maintenance. The dam is approximately 700 feet south of the intersection of SR 286 and SR 2075 (Murrysville, PA Quadrangle N: 13.8 inches; W: 12.7 inches).

**EA17-001CO. City of DuBois**, P. O. Box 408, DuBois, PA 15801. City of DuBois, **Clearfield County**, ACOE Baltimore District.

Project proposes to breach and remove McCracken Run Dam across Beaver Run (CWF) for the purpose of restoring the stream to a free flowing condition. The dam is approximately 4,000 feet east of the intersection of U. S. 219 and SR 255 in the City of DuBois (Luthersburg, PA Quadrangle N: 22.6 inches; W: 16.0 inches).

## ACTIONS

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

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

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

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

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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### I. NPDES Renewal Permit Actions

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

<i>NPDES Permit No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0038181	Hempfield Township Municipal Authority R. D. 6, Box 501 Municipal Building Greensburg, PA 15601	Westmoreland County Hempfield Township	Sewickley Creek	N

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### II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

**NPDES Permit No. PA0011002**, Industrial Waste, **American Inks and Coatings Corporation**, P. O. Box 803. This proposed facility is in Schuylkill Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into the Schuylkill River in Watershed 3D.

**NPDES Permit No. PA0051071**, Industrial Waste, **Schramm Incorporated**, 800 East Virginia Avenue, West Chester, PA 19380-4206. This proposed facility is in West Goshen Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge in Goose Creek in Watershed 3H.

**NPDES Permit No. PA0053376**, Sewage, **Strawberry Family Restaurant**, 3773 Layfield Road, Pennsburg, PA 18073. This proposed facility is in Upper Hanover Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into an unnamed tributary to West Branch to Perkiomen Creek in Watershed 3E.

**NPDES Permit No. PA0058343**, Sewage, **Bedminster Municipal Authority**, P. O. Box 92, Bedminster, PA 18910-0092. This proposed facility is in Pennsbury Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into an unnamed tributary to Deep Run in Watershed 2D-Three Mile.

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

**NPDES Permit No. PA0043052**, Sewage, **Municipal Authority of the Township of Spring**, 2800 Shillington Road, Sinking Spring, PA 19608. This proposed facility is in Spring Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Cacoosing Creek in Watershed 3-C.

**NPDES Permit No. PA0042137**, Industrial Waste, **The Glidden Company**, 301 Bern Street, Reading, PA 19601-1252. This proposed facility is in Reading City, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Bernhart Creek in Watershed 3-C.

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

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

**WQM Permit No. 0904411**, Sewerage, **Warrington Township**, 1585 Turk Road, Warrington, PA 18976. This proposed facility is in Warrington Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the construction and operation of an 8-inch gravity sewer to serve the proposed Valley Square Development.



**WQM Permit No. 1503427**, Sewerage, **Stanley Wannop and Elaine Gerwig**, 196 Springton Road, Glenmoore, PA 19343. This proposed facility is in West Brandywine Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the construction and operation of single residential sewage treatment plant.

**WQM Permit No. 23044017**, Sewerage, **Upper Providence Township Sewer Authority**, 935 North Providence Road, Media, PA 19063-1499. This proposed facility is in Upper Providence Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the construction and operation of two sanitary sewer extensions utilizing individual grinder pumps.

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

**WQM Permit No. 0603407**, Sewerage, **Bern Township Municipal Authority**, 1069 Old Bernville Road, Reading, PA 19605-9632. This proposed facility is in Bern Township, **Berks County**.

Description of Proposed Action/Activity: Approval for construction/operation of a gravity collection system for the conveyance of sewage to the Reading Municipal Airport STP.

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

**WQM Permit No. 0204403**, Sewerage, **Upper Allegheny Joint Sanitary Authority**, 320 Fourth Avenue, Tarentum, PA 15084. This proposed facility is in Frazer Township, **Allegheny County**.

Description of Proposed Action/Activity: Construct approximately 7,200 feet of 18-inch diameter ductile iron sanitary interceptor sewer to serve the Pittsburgh Mills Development.

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

**WQM Permit No. 518690**, Sewerage, **Barbara A. and John R. Miles**, 6366 Heidler Road, Fairview, PA 16415. This proposed facility is in Beaver Township, **Crawford County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**WQM Permit No. 521167**, Sewerage, **Richard A. and Tambra W. Sabatini**, 349 Turkey Farm Road, Titusville, PA 16354. This proposed facility is in Cherrytree Township, **Venango County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

**IV. NPDES Stormwater Discharges from MS4 Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAI132238	Butler Township 415 West Butler Drive Drums, PA 18222	Luzerne	Butler Township	Nescopeck Creek (Basin) HQ-CWF Nescopeck Creek (Main Stem) CWF UNT to Nescopeck Creek CWF Long Run CWF Little Nescopeck Creek CWF	Y

**V. NPDES Waiver Stormwater Discharges from MS4 Actions**

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023904020	Lower Macungie Township 3400 Brookside Rd. Macungie, PA 18062	Lehigh	Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAS10Q157-R	JDN Development Co. 3300 Enterprise Parkway Beachwood, OH 44122	Lehigh	Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAI023904022	Lehigh Valley Hospital P. O. Box 689 Allentown, PA 18105-1556	Lehigh	South Whitehall and Salisbury Townships	Little Lehigh Creek HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023904021	Liberty Property Limited Partnership 1510 Valley Center Parkway Bethlehem, PA 18017	Lehigh	Upper Macungie Township	Little Lehigh Creek HQ-CWF
PAI024504003	Ireland Hotels, Inc. Pocono Manor Route 314 Pocono Manor, PA 18349	Monroe	Pocono Township	Scot Run HQ-CWF
PAI024503025	Resort Beverage, Inc. P. O. Box 143 Tannersville, PA 18372	Monroe	Pocono Township	Pocono Creek HQ-CWF
PAI024803025	Stewart Associates, L. P. 8108 E. Buckspark Lane Potomac, MD 20854-4267	Northampton	Williams Township	Frya Run HQ-CWF, MF
PAI024804017	DePaulo Builders, LLC 231 Moorestown Dr. Bath, PA 18014	Northampton	Moore Township	East Branch Monocacy Creek HQ-CWF
PAI025203014	Woodloch Spa Resort, LLC R. R. 1, Box 280 Hawley, PA 18428	Pike	Lackawaxen Township	West Falls Creek HQ-CWF, MF
PAI025204001	Lowe's Home Centers, Inc. 927 Wakefield Dr. Havre De Grace, MD 21078	Pike	Westfall Township	Tributary to Delaware River HQ-CWF
PAI026404002	Duck Harbor Co., Inc. R. R. 1, Box 214C Equinunk, PA 18417	Wayne	Lebanon Township	Alder Marsh Brook HQ-CWF, MF Little Equinunk Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062003001	Wal Mart Stores, Inc. Wal Mart Supercenter Skyline Drive Titusville, PA 16354	Crawford	Oil Creek Township	Oil Creek WWF

## **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)

## NOTICES

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PAG-12 CAFOs  
 PAG-13 Stormwater Discharges from MS4

*General Permit Type—PAG-2*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Thornbury Township Delaware County	PAG2002304021	Michael McCabe 5 East Elm Avenue Aston, PA 19014	Chester Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Chester Delaware County	PAG2002304026	Brian Crimmins 1 Medical Center Blvd. Upland, PA 19013	Chester Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Bethel Township Delaware County	PAG2002303080	Zebley Company, LP 130 Lancaster Road Berwyn, PA 19312	Naaman's Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Perkiomen Township Montgomery County	PAG2004604049	Mask Trust, Inc. 11 West Skippack Pike Broad Axe, PA 19002	Landis Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG2004603182	Heritage Building Group, Inc. Kistler Tract 3326 Old York Rd. Suite A100 Furlong, PA 18925	Macoby Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG2004604081	Ike Heckler Brook Run Phases 6 and 7 2278 East Buck Road Pennsburg, PA 18073	Unnamed tributary Macoby Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Cheltenham Township Montgomery County	PAG2004604043	East Cedarbrook Plaza, LLC 370 Seventh Avenue Suite 1700 New York, NY 10001	Unnamed tributary Frankford Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Horsham Township Montgomery County	PAG2004604031	Horsham Township Horsham Municipal Complex 1025 Horsham Road Horsham, PA 19044	Park Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Gwynedd Township Montgomery County	PAG2004604044	William MacNair, Jr. 1417 Sumneytown Pike Dev. 2716 Allison Lane Allentown, PA 18104	Trewyllyn Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004603009	Heritage Building Group, Inc. Evans Track a/k/a Evans Brooke 3326 Old York Road Suite A100 Furlong, PA 18925	Brooke Evans Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Norriton Township Montgomery County	PAG2004604048	40 Scully Company DeKalb Apartments Pool 801 Old York Road, Noble Plaza Jenkintown, PA 19046	Unnamed tributary Stony Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Abington Township Montgomery County	PAG2004604110 f/k/a PAR10T774-1	Presby Homes and Services Rydal Park Improvements 2000 Joshua Road Lafayette Hill, PA 19444	Pennypack Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Dublin Township Montgomery County	PAG2004603201	Congregations Beth Or 700 Pennlyn/Blue Bell Pk. Springhouse, PA 19477	Unnamed tributary Park Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004603235	Rotelle Development Dise Subdivision 219 Niantic Road Barto, PA 19504	Mine Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Perkiomen Township Montgomery County	PAG2004603180	Heritage Building Group Carson/Barr Tract 3326 Old York Road Suite A100 Furlong, PA 18925	Landis Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Montgomery Township Montgomery County	PAG2004604056	Nappen Associates Montgomeryville Industrial Center Lot 5 119 Keystone Drive Montgomeryville, PA 18936	Tributary Park Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Conshohocken Borough Montgomery County	PAG2004604023	Ten Tower Bridge Associates Ten Tower Bridge 300 Barr Harbor Drive Suite 750 West Conshohocken, PA 19428	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Salford Township Montgomery County	PAG2004603211	Dennis Godshall Damiani Property 2131 Hendricks Station Road Harleysville, PA 19438	Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Providence Township Montgomery County	PAG2004603236	Toll Brothers Inc. Rivercrest Phase II—Malickson 3103 Philmont Avenue Huntingdon Valley, PA 19006	Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hatfield Township Montgomery County	PAG2004603189	Site Development, Inc. Snyder Square Shopping Center 17000 Horizon Way Mt. Laurel, NJ 08054	West Branch Neshaminy Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004604055	Ambler Savings & Loan Assoc. 155 East Butler Pike Ambler, PA 19002	Landis/Lodal Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Plymouth Township Montgomery County	PAG2004603055	M/D Development Company Belvoir Estates 770 Crooked Lane King of Prussia, PA 19406	Unnamed tributary	Diamond Run Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Whitpain Township Montgomery County	PAG2004604097	Gambone Brothers Amberley at Blue Bell 1030 West Germantown Pike Fairview Village, PA 19409	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

## NOTICES

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Lower Merion Township Montgomery County	PAG2004604122	Haverford School 450 West Lancaster Avenue Haverford, PA 19041	Cobbs Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015104012	School District of Philadelphia Northeast High School Athletic Site Phase I 734 Schuylkill Avenue Philadelphia, PA 19146	Tacony Creek/Delaware River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Taylor Borough Lackawanna County	PAG2003504022	Daniel Zeleniak 122 Union St. Taylor, PA 18517	Lackawanna River CWF	Lackawanna County Conservation District (570) 281-9495
Taylor Borough Lackawanna County	PAG2003504027	Francis Mickavicz 214 N. Main St. Taylor, PA 18517	Lackawanna River CWF	Lackawanna County Conservation District (570) 281-9495
Apolacon Township Susquehanna County	PAG2005804005	Gregory Harris R. R. 2, Box 2425 Brackney, PA 18812	Unnamed tributary to Apalachin Creek CWF	Susquehanna County Conservation District (570) 278-4600
Wright Township Luzerne County	PAG2004004012	Mountaintop Youth Soccer Complex P. O. Box 102 Mountaintop, PA 18707	Big Wapwallopen Creek CWF	Luzerne County Conservation District (570) 674-7991
Lehigh and Moore Townships Northampton County	PAG2004804019	Larry Kemmerer Kemmerer Corp. 3220 Valley View Dr. Bath, PA 18014	Hokendauqua Creek CWF	Northampton County Conservation District (610) 746-1971
Lower Towamensing Township Carbon County	PAG2001304003	Guy Seifert GSZC, LP 8015 Pohopoco Dr. Kunkletown, PA 18058	Aquashicola Creek TSF, MF	Carbon County Conservation District (610) 377-4894
Dunmore Borough Lackawanna County	PAG2003504026	Sister Mary Persico 2300 Adams Ave. Scranton, PA 18509	Meadow Brook CWF	Lackawanna County Conservation District (570) 281-9495
City of Scranton Taylor Borough Lackawanna County	PAG2003504020	Eugene Kane, Jr. P. O. Box 931 Scranton, PA 18501	Keyser Creek CWF	Lackawanna County Conservation District (570) 281-9495
Centre County Rush Township	PAG2001404009	Cory Miller 2622 Black Moshannon Rd. Philipsburg, PA 16866	Moshannon Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Lycoming County Muncy Borough	PAG2004103011	Blaise Alexander 933 Broad St. Montoursville, PA 17754	Turkey Run WWF	Lycoming County Conservation District 542 County Farm Rd. Suite 202 Montoursville, PA 17754 (570) 433-3003
Northumberland County Coal Township	PAG2004904009	Hakes St. Commercial Development Hakes St. Coal Township, PA 17866	Coal Run CWF	Northumberland County Conservation District R. R. 3, Box 238C Sunbury, PA 17801 (570) 286-7114, Ext. 4

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Centre County Rush Township	PAG2001404010	Bill Tafuto ARM Group Inc. P. O. Box 797 Hershey, PA 17033	Tributary to Moshannon Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Tioga County Tioga and Lawrence Townships Lawrenceville Borough	PAG2005904003	Department of Transportation District 3-0 P. O. Box 218 Montoursville, PA 17754	Tioga and Cowanesque Rivers WWF	Tioga County Conservation District 29 East Avenue Wellsboro, PA 16901 (570) 724-1801
Beaver County Center Township	PAG2000404008	Jason Welch Beaver Valley Lodging, LLC 1910 8th Avenue N. E. Aberdeen, SD 57140	Rag Run WWF	Beaver County Conservation District (724) 774-7090
Cambria County Cresson Borough	PAG2001104011	Sister Servants of the Most Sacred Heart of Jesus 866 Cambria Street Cresson, PA 16630-1713	Little Conemaugh River CWF	Cambria County Conservation District (814) 472-2120
Indiana County North Mahoning Township	PAG2003204009	Timothy Jablunovsky Department of Transportation District 10 2550 Oakland Avenue Indiana, PA 15701	Tributaries of Dutch Run and Canoe Creek CWF	Indiana County Conservation District (724) 463-8547
Somerset County Milford Township	PAG2005604009	Huston Farms, LLC 626 Cross Road Rockwood, PA 15557	South Glade Creek WWF	Somerset County Conservation District (814) 445-4652
Westmoreland County Hempfield Township	PAG2006504020	Gene Rayman 2249 Northview Drive North Huntingdon, PA 15642	Brush Creek WWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Hempfield Township	PAG2006504025	Hempfield Township Municipal Authority R. D. 6 Box 501 Greensburg, PA 15601	Slate Creek WWF	Westmoreland County Conservation District (724) 837-5271
Butler County Cranberry Township	PAG2001004019	Hannibal Land Investments, Inc. P. O. Box 420500 Summer Key, FL 33042-0500  Hannabal Land Investment Dutilh Road Cranberry, PA 16319	Brush Creek WWF	DEP 230 Chestnut Street Meadville, PA 16335

*General Permit Type—PAG-3*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Moosic Borough Lackawanna County Dupont Borough Luzerne County Pittston Township Luzerne County	PAR802210	Wilkes-Barre/Scranton International Airport 100 Terminal Road Avoca, PA 18641	Lidy and Mill Creeks CWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
West Hazleton Borough Luzerne County	PAR232242	Graham Packaging Company, LP 75 Jaycee Drive West Hazleton, PA 18202-1247	Black Creek WWF	NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Berks County Kutztown Borough	PAR213506	Berks Products Corporation Kutztown Building Materials P. O. Box 421 Reading, PA 19603	Saony Creek through stormwater sewer system TSF	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Berks County Muhlenberg Township	PAR803585	Berks Products Corporation Fuel Oil Truck Terminal P. O. Box 421 Reading, PA 19603	Bernharts Creek WWF	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

*General Permit Type—PAG-4*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
North Shenango Township Crawford County	PAG048625	David S. Graham 3984 Savannah Lane Jamestown, PA 16134-2914	Unnamed tributary of Bennett Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Beaver Township Crawford County	PAG048984	Barbara A. and John R. Miles 6366 Heidler Road Fairview, PA 16415	Unnamed tributary to Mud Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Cherrytree Township Venango County	PAG048989	Richard A. and Tandra W. Sabatini 349 Turkey Farm Road Titusville, PA 16354	Unnamed tributary to Prather Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Summit Township Erie County	PAG048964	Kris Risto 9595 Donation Road Waterford, PA 16441	Unnamed tributary to Walnut Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Conewango Township Warren County	PAG049002	Carl L. and James M. Lopez 191 Scott Run Road Warren, PA 16365	Scott Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Cussewago Township Crawford County	PAG049000	Thomas E. Mook P. O. Box 1077 Saegertown, PA 16433	Unnamed tributary to Cussewago Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Doylestown Borough Bucks County	PAG050056	MEA Inc. 1365 Ackermanville Road Bangor, PA 1013	Neshaminy Creek Neshaminy-2F	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
East Huntingdon Township Westmoreland County	PAG056110	Groomes Transit Inc. R. R. 2 Box 87 Scottsdale, PA 15683	Jacobs Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

*General Permit Type—PAG-8 (SSN)*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Site Name and Location</i>	<i>Contact Office and Telephone No.</i>
Richmond Township Berks County	PAG080002 PAG080011 PAG080013 PAG083522 PAG083551	Jesse Baro, Inc. 4 Quarry Rd. Douglasville, PA 19518	Ker-Min (Schlegel) Farm	SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Mt. Pleasant Township Adams County	PAG083588	Abbottstown-Paradise Joint Sewer Authority P. O. Box 505 Abbottstown, PA 17301	Kenneth Leatherman Farm	SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*General Permit Type—PAG-9 (SSN)*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Site Name and Location</i>	<i>Contact Office and Telephone No.</i>
Bratton Township Mifflin County	PAG093544	Renno's Custom Spreading and Vacuum Service 23 Mountain View Lane McVeytown, PA 17051	Craig Swigart Farm	SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*General Permit Type—PAG-12*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Lancaster County Clay Township	PAG123583	Jarad Rottmund 1030 Girl Scout Road Denver, PA 17517	India River TSF 7J	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

## PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board

within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for 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.**

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

**Operations Permit** issued to **Aqua Pennsylvania, Inc.**, 762 W. Lancaster Avenue, Bryn Mawr, PA 19010, PWS ID 1460068, Collegetown Borough, **Montgomery County** on August 3, 2004, for the operation of facilities approved under Construction Permit No. 4604501.

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

**Operations Permit** issued to **Hazleton Water Company**, 410 West Mine Street, Hazleton, PA 18201, PWS ID 2406524, Black Creek and Sugarloaf Townships, **Luzerne County** on July 22, 2004, for the operation of facilities approved under Construction Permit No. 4004502.

**Operations Permit** issued to **Big Boulder Corp.**, P. O. Box 707, Blakeslee, PA 18610, PWS ID 3130306, Kidder Township, **Carbon County** on July 22, 2004, for the operation of facilities approved under Construction Permit N/A.

**Operations Permit** issued to **Nature's Way Pure Water Systems, Inc.**, 164 Commerce Road, Dupont, PA 18641, PWS ID 2406411, Dupont Borough, **Luzerne County** on July 23, 2004, for the operation of facilities approved under Construction Permit N/A.

**Operations Permit** issued to **Hazleton Water Company**, 410 West Mine Street, Hazleton, PA 18201, PWS ID 2406524, Black Creek and Sugarloaf Townships, **Luzerne County** on July 30, 2004, for the operation of facilities approved under Construction Permit No. 4004502.

**Operations Permit** issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010, PWS ID 2640020, Canaan Township, **Wayne County** on August 5, 2004, for the operation of facilities approved under Construction Permit Minor Amendment issued on March 28, 2002.

**Operations Permit** issued to **Nature's Way Pure Water Systems, Inc.**, 164 Commerce Road, Dupont, PA 18641, PWS ID 2406411, Dupont Borough, **Luzerne County** on August 5, 2004, for the operation of facilities approved under Construction Permit N/A.

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

**Permit No. 2804503 MA, Minor Amendment, Public Water Supply.**

Applicant	<b>Guilford Water Authority</b>
Municipality	Greene Township
County	<b>Franklin</b>
Type of Facility	This permit approves the construction of a new 64,000-gallon water storage tank at Knob Hill.
Consulting Engineer	Diana Young, P. E. Buchart-Horn, Inc. P. O. Box 15040 York, PA 17405-7040

Permit to Construct August 10, 2004  
Issued

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

**Permit No. 4393505-MA1, Minor Amendment.**

Applicant	<b>Buhl Community Water Company</b>
Borough or Township	Springfield Township
County	<b>Mercer</b>
Type of Facility	PWS
Consulting Engineer	Daniel F. Schmitt, P. E. Gibson-Thomas Engineering Co. Inc. 1004 Ligonier St. Latrobe, PA 15650

Permit to Construct August 6, 2004  
Issued

**Permit No. 363W8-T2-MA1, Minor Amendment.**

Applicant	<b>West Hickory Water Company</b>
Borough or Township	Harmony Township
County	<b>Forest</b>
Type of Facility	PWS
Permit to Construct Issued	August 6, 2004

## HAZARDOUS SITES CLEANUP UNDER THE ACT OF OCTOBER 18, 1988

### Administrative Record Reopening

#### Mangan Property HSCA Site, Moore Township, Northampton County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305) reopens the administrative record in the previously referenced matter on the date of publication of this notice, August 21, 2004, under section 506(h) of the HSCA (35 P. S. § 6020.506(h)), to provide the public the opportunity to comment on the costs incurred in conducting a prompt interim response at the Mangan Property HSCA Site (Site). The original public comment period expired on March 14, 2000. The Department closed the administrative record on that date after filing the Statement of Decision and the Response to Public Comments under section 506(g) of the HSCA.

The Department now reopens the administrative record under section 506(g)(3) and (h) of the HSCA to document the costs incurred during the prompt interim response.

This cost information is available for public review and comment from 8 a.m. to 4:30 p.m., Monday through Friday at the Department's Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711.

The cost information will be available for public review and comment for 60 days from the date of receipt or publication of this notice. Persons may submit written comments regarding the cost information during the 60 day period by sending or delivering comments to Karen Unruh, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711.

The Department may hold a public hearing if a written request is received within 30 days of receipt or publica-

tion of the notice. Should the Department decide to conduct a public hearing, persons may present oral comments regarding the cost information for inclusion in the administrative record. The request should be mailed or delivered to Karen Unruh, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711. A public hearing will not be held if the Department does not receive a written request within 30 days of publication of this notice.

Once the 60-day public comment period ends and a public hearing is held, should one be requested and deemed necessary by the Department, the Department will respond to any comments received and close the administrative record.

#### **Prompt Interim Response**

#### **Interlectric Mercury Site, Clarendon Borough, Warren County**

The Department, under the authority of the HSCA, has determined a response action is necessary for the Interlectric Mercury Site (Site), Clarendon Borough, Warren County at the former Interlectric Company manufacturing facility on the south side of U. S. Route 6. Specifically, the Site is a shed-like room on the northeastern side of the manufacturing facility where mercury-contaminated materials and soils were found, within and just outside of that room.

For this prompt interim response, the Department considered two alternatives for the Site: (1) no action; and (2) excavation and removal of the mercury containing materials and adjacent mercury contaminated soils for off-Site recycling or disposal.

Each alternative was evaluated with respect to four comparison criteria of: (1) the extent to which each alternative protects the public health and the environment; (2) the extent to which each alternative complies with or otherwise addresses Applicable or Relevant and Appropriate Requirements; (3) the extent to which each alternative is feasible, effective, implementable and permanent; and (4) the relative cost of each alternative.

Furthermore, this comparative analysis evaluated the relative performance of each alternative in relation to each specific comparison criterion. The comparative analysis identified advantages and disadvantages of each alternative, so that tradeoffs between the alternatives could be determined.

Based on the comparative analysis, the Department determined that Alternative 2 was the appropriate prompt interim response for the Site. This alternative was selected because it would, in the more cost-effective manner, protect the public and environmental receptors from direct contact with mercury contaminated materials and soils and eliminate the ongoing release and threat of release of mercury into the environment.

This notice is being provided under section 506(b) of the HSCA. The administrative record, which contains the information that forms the basis and documents the selection of this response, is available for public review and comment Monday through Friday from 8 a.m. to 4 p.m. at the Department's Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335. To make an appointment, call (814) 332-6648.

The administrative record will be open for comment from August 21, 2004, until November 19, 2004. Persons may submit written comments into the record during this time only by sending or delivering them to James W.

Weaver, Project Manager, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335.

In addition, persons may present oral comments, for inclusion in the administrative record, at a public hearing. Persons wishing to present comments must register with James W. Weaver before September 21, 2004, by telephone or in writing. Persons interested in finding out if anyone has registered should contact James W. Weaver. If no one registers to present oral comments before September 21, 2004, the public meeting will not be held.

Persons with a disability who wish to attend the hearing and require auxiliary aid, service or other accommodations to participate in the proceedings should call James W. Weaver at (814) 332-6648 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

## **LAND RECYCLING AND ENVIRONMENTAL REMEDIATION**

### **UNDER ACT 2, 1995**

#### **PREAMBLE 2**

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**The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of 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, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Narberth Main Post Office**, Narberth Borough, **Montgomery County**. Bruce R. Cushing, P. G., URS Corp., 1400 Union Meeting Rd., Suite 202, Blue Bell, PA 19422-1972 on behalf of USPS, Elizabeth Ann Carter, 22 W. Maple Ave., 2nd Fl., Merchantville, NJ 08109-5100, has submitted a Final Report concerning remediation of site groundwater contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Passyunk Property**, City of Philadelphia, **Philadelphia County**. Trevor King, ARCADIS, 3000 Cabot Blvd., West, Suite 3004, Langhorne, PA 19047, on behalf of Rodd W. Bender, Attorney for Mary T. Bosco, Manko, Gold, Katcher & Fox, LLP, 401 City Ave., Bala Cynwyd, PA 19004 has submitted a Final Report concerning remediation of site soil contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health and Site-Specific Standards.

*Northeast Regional Field Office, Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Viewmont Mall**, Borough of Dickson City and City of Scranton, **Lackawanna County**. Joseph Ozog, Jr., Environmental Scientist II, Mountain Research, LLC, 825 25th Street, Altoona, PA 16601 has submitted a combined Remedial Investigation and Final Report (on behalf of Pennsylvania Real Estate Investment Trust, Pasquerilla Plaza, Johnstown, PA 15907) concerning the characterization and remediation of site soils and groundwater found or suspected to have been contaminated with BTEX constituents, naphthalene, lead and other petroleum hydrocarbons. The reports were submitted in fulfillment of a combination of Statewide Health and Site-Specific Standards.

**Douze Corporation**, South Whitehall Township, **Lehigh County**. Andrew Meadows, The Cardinal Group, Inc., 828 North Hanover Street, Pottstown, PA 19464, has submitted a Final Report (on behalf of David Gendal, Douze Corporation, 18669 Long Lake Drive, Boca Raton, FL 33496) concerning the remediation of soils found or suspected to have been contaminated by an accidental release of no. 2 fuel oil. The report was submitted to demonstrate attainment of the site to the Residential Statewide Health Standard. The report was submitted within 90 days of the release.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Hanover Shoe Farms**, Union Township, **Adams County**. Marshall Miller & Associates, Inc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011, on behalf of Hanover Shoe Farms, Inc., P. O. Box 339, Hanover, PA 17331-0339, submitted a Final Report concerning remediation of site soils contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to the Statewide Health Standard.

**Linden Hall School for Girls**, Borough of Lititz, **Lancaster County**. GCI Environmental Services, 1250 East King Street, Lancaster, PA 17602, on behalf of Linden Hall School for Girls, 212 East Main Street, Lititz, PA 17543, submitted a Final Report concerning remediation of site soils and groundwater contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to the Statewide Health Standard.

**Hillwood Palmyra, LP, Hetrick Avenue Property, Petroleum-Containing Soils Site**, Palmyra Borough,

**Lebanon County**. ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Final Report concerning remediation of petroleum-containing soils that were encountered during excavation activities at the site. The report is intended to document remediation of the site to the Statewide Health Standard.

**Hillwood Palmyra, LP, Hetrick Avenue Property, Soil Mound Site**, Palmyra Borough, **Lebanon County**. ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Final Report concerning remediation of soils contaminated with lead and copper. The report is intended to document remediation of the site to the Statewide Health Standard.

**Hillwood Palmyra, LP, Hetrick Avenue Property, Fill Area Site**, North Londonderry Township and Palmyra Borough, **Lebanon County**. ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Final Report concerning remediation of site soils contaminated with metals in non-native fill materials. The report is intended to document remediation of the site to the Statewide Health Standard.

**Precision Offset Printing Company**, Centre Township, **Berks County**. UAI Environmental, Inc., 607 Commerce Drive, Reading, PA 19607, on behalf of Precision Offset Printing Company, P. O. Box 675, Leesport, PA 19533, submitted a Final Report concerning remediation of site groundwater contaminated with leaded and unleaded gasoline. The report is intended to document remediation of the site to the Statewide Health Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentra-

tion of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager; 2 East Main Street, Norristown, PA 19401.*

**Gilbertsville CVS**, New Hanover Township, **Montgomery County**. Craig Herr, RT Environmental Svc., Inc., 215 W. Church Rd., King of Prussia, PA 19406, has submitted a Final Report concerning the remediation of site soil contaminated with lead and site groundwater contaminated with lead and MTBE. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on July 21, 2004.

**Melchiorre Const. Co. Park Site**, Phoenixville, Borough, **Chester County**. Lawrence W. Bily, RT Environmental Svc., Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of Peter Melchiorre, Melchiorre Construction Co., P. O. Box 14, R. D. 5, Malvern, PA 19355 has submitted a Final Report concerning the remediation of site soil contaminated with heavy metal. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on August 3, 2004.

**Darby Creek Joint Authority Former Sewage Treatment Plant**, Darby Township, **Delaware County**. Edward R. Kashdan, P. E., Gannett Fleming, Inc., P. O. Box 80794, Valley Forge, PA 194840794 on behalf of Darby Creek Joint Authority, DELCORA, 100 E. Fifth St., P. O. Box 999, Chester, PA 19016-0999 has submitted a Remedial Investigation/Risk Assessment Report concerning the remediation of site soil contaminated with inorganics, PAH, PCB and groundwater contaminated with inorganics. The Remedial Investigation/Risk Assessment Report was approved by the Department on July 27, 2004.

**Rosemont Estates**, Upper Providence Township, **Montgomery County**. Christopher Orzechowski, RT Environmental Svc., Inc., 215 W. Church Rd., King of Prussia, PA 19406 on behalf of Penn International Land Co., 900 E. 8th Ave., Suite 300, King of Prussia, PA 19406 has submitted a Final Report concerning the remediation of site soil contaminated with arsenic. The Final report demonstrated attainment of the Site-Specific Standard and was approved by the Department on August 6, 2004.

*Northeast Region: Joseph A. Brogna, Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Former Alliance America Facility**, Borough of Port Carbon, **Schuylkill County**. Chris Orzechowski, RT Environmental Services, Inc., 215 West Church Road, King of Prussia, PA 19406, submitted a combined Remedial Investigation and Final Report (on behalf of JDSW Real Estate Limited Partnership, Fifth and Mahantango Streets, Pottsville, PA 17901) concerning the remediation of groundwater suspected to have been contaminated by solvents related to historical operations involving lamination of porcelain steel on final products. The reports demonstrated attainment of a combination of groundwater standards including the nonuse aquifer Statewide Health Standard and Site-Specific Standard through pathway elimination and were approved on August 4, 2004.

**Corporate Real Estate, Ltd.—Former Werner Street Site**, Washington Township, **Northampton County**. Vincent Carbone, P. G., Lawler, Matusky & Skelly Engineers LLP Management, Inc., 609 Hamilton Mall, Allentown, PA 18101 submitted a combined Remedial Investigation and Final Report (on behalf of Jeff Green, 100 Majestic Way, Bangor, PA 18013) concerning the remediation of groundwater suspected to have been contaminated with chlorinated solvents, lead and other inorganics by previous industrial operations and disposal practices. The report demonstrated attainment of the Site-Specific Standard through pathway elimination and was approved on July 26, 2004.

**Estate of Pauline Kime (12 Oteyakwa Lake Drive)**, Franklin Township, **Susquehanna County**. Kevin Van Kuren, P. G., Hydrocon Services, Inc., 16 East Minor Street, Emmaus, PA 18049 submitted a Final Report (on behalf of Attorney Myron DeWitt, 249 Main Street, Susquehanna, PA 18847) concerning the remediation of soils and/or groundwater found or suspected to have been contaminated with no. 2 fuel oil constituents as the result of an underground storage tank release. The report demonstrated attainment of the Residential Statewide Health Standard and was approved on July 15, 2004.

**Viewmont Mall**, Borough of Dickson City and City of Scranton, **Lackawanna County**. Joseph Ozog, Jr., Environmental Scientist II, Mountain Research, LLC, 825 25th Street, Altoona, PA 16601 submitted a combined Remedial Investigation and Final Report (on behalf of Pennsylvania Real Estate Investment Trust, Pasquerilla Plaza, Johnstown, PA 15907) concerning the characterization and remediation of site soils and groundwater found or suspected to have been contaminated with BTEX constituents, naphthalene, lead and other petroleum hydrocarbons. The reports were submitted in fulfillment of a combination of Statewide Health and Site-Specific Standards and were approved on August 2, 2004.

**Douze Corporation**, South Whitehall Township, **Lehigh County**. Andrew Meadows, The Cardinal Group, Inc., 828 North Hanover Street, Pottstown, PA 19464, submitted a Final Report (on behalf of David Gendal, Douze Corporation, 18669 Long Lake Drive, Boca Raton, FL 33496) concerning the remediation of soils found or suspected to have been contaminated by an accidental release of no. 2 fuel oil. The report was submitted to demonstrate attainment of the site to the Residential Statewide Health Standard. The report was originally submitted within 90 days of the release and was approved on July 30, 2004.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Hillwood Palmyra, LP, Hetrick Avenue Property, Petroleum-Containing Soils Site**, Palmyra Borough, **Lebanon County**. ARM Group, Inc., 1129 West Governor Road, P. O. Box 797, Hershey, PA 17033-0797, on behalf of Hillwood Palmyra, LP, Three Lincoln Center, 5430 LBJ Freeway, Suite 800, Dallas, TX 75240, submitted a Final Report concerning remediation of petroleum-containing soils. The final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 4, 2004.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Stackpole Center Industrial Site Northeast Area**, City of St. Marys, **Elk County**. Edward B. Burkett, Burkett Env. Svc., 1218 Brusselles St., P. O. Box 1017, St. Marys, PA 15857 has submitted a Risk Assessment Report concerning the remediation of site soil, groundwater and surface water contaminated with PCBs, lead, heavy metals, BTEX, PHCs, PAHs and solvents. The Risk Assessment Report was approved by the Department on July 16, 2004. This is a correction to the notice published at 34 Pa.B. 4064 (July 31, 2004).

#### REGISTRATION FOR GENERAL PERMIT—MUNICIPAL WASTE

**Registration Approved under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and municipal waste regulations for a general permit to operate municipal waste processing facilities and the beneficial use of municipal waste.**

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

**General Permit Application No. WMGM025R001. Kennedy & Company, Inc.**, 4910 Simpson Ferry Road, Mechanicsburg, PA 17055. General Permit No. WMGM025 authorizes the processing and beneficial use of unpainted and untreated wood waste, gypsum board, brick, block and concrete waste from new residential and commercial construction. The approved uses are: (1) mulch for landscaping purposes; (2) soil erosion control; and/or (3) temporary walkway material at new residential home or commercial building construction sites or distributed to wholesale outlets. The Central Office approved this registration for coverage under the general permit on August 6, 2004.

#### DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

**Applications for Determination of Applicability Accepted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**General Permit Application No. WMGR038SE007. SPC Corp.**, 26th and Penrose Avenue, Philadelphia, PA 19145. Application submitted for processing of tires into tire chips and recover metals for beneficial use at the SPC Corp. site in the City of Philadelphia. The application for determination of applicability was determined to be administratively complete by the Southeast Regional Office on August 4, 2004.

**General Permit Application No. WMGM020SE004. SPC Corp.**, 26th and Penrose Avenue, Philadelphia, PA 19145. The application for determination of applicability under the scrap metal for recycling general permit to process ferrous/nonferrous metal coated with ash residue for beneficial use in the City of Philadelphia. The application for determination of applicability was determined to be administratively complete by the Southeast Regional Office on August 4, 2004.

#### MUNICIPAL AND RESIDUAL WASTE TRANSPORTER AUTHORIZATION

**Issued applications for Municipal and Residual Waste Transporter Interim Authorization received under the Waste Transportation Safety Act (27 Pa.C.S. §§ 6201—6209) and regulations to transport municipal or residual waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472.*

**Gertrude Hawk Chocolates, Inc.**, 9 Keystone Industrial Park, Dunmore, PA 18512-1516. Authorization No. WH3586. Effective July 22, 2004.

**M & B Truck Line, Inc.**, 509 73rd St., North Bergen, NJ 07047. Authorization No. WH5874. Effective August 3, 2004.

**Kunning Hauling & Disposal**, 2027 Reis Run Rd., Pittsburgh, PA 15237. Authorization No. WH6146. Effective July 27, 2004.

**Heath Oil Co.**, P. O. Box 1128, Oil City, PA 16301-0628. Authorization No. WH6236. Effective July 02, 2004.

**Jeffery S. Sargent**, 960-A State Highway 173, Bloomsburg, NJ 08804. Authorization No. WH6354. Effective July 12, 2004.

**Vin-Zam Enterprises, Inc.**, 50 Union St., Newark, NJ 07105. Authorization No. WH6382. Effective July 19, 2004.

**HP Trucking**, 608 W. Elm St., Linden, NY 07036. Authorization No. WH6383. Effective July 19, 2004.

**Balsharn Singh**, 11 Beverly Ct., Robbinsville, NJ 08691. Authorization No. WH6384. Effective July 27, 2004.

**City Recycling Corp.**, 151 Anthony St., Brooklyn, NY 11222. Authorization No. WH6386. Effective July 19, 2004.

**Pennsy Supply, Inc.**, P. O. Box 3331, Harrisburg, PA 17105-3331. Authorization No. WH6388. Effective July 20, 2004.

**Penn Township Public Works**, 3000 Commercial Ct., Irwin, PA 15642. Authorization No. WH6389. Effective July 20, 2004.

**BAJWA Transport, Inc.**, 22026 Hyde Park Dr., Ashburn, VA 20147. Authorization No. WH6390. Effective July 20, 2004.

**PSC Industrial Outsourcing, Inc.**, 31 Waldron Way, Portland, ME 04103. Authorization No. WH6391. Effective July 20, 2004.

**Orejano Transport**, 722 Essex Ave., Linden, NJ 07036. Authorization No. WH6392. Effective July 20, 2004.

**James A. Scrhiver Excavating, Inc.**, 680 Clarks Ln., West Chester, PA 19382-6807. Authorization No. WH6393. Effective July 20, 2004.

**Sarbjit Singh**, 119 B Orchard Apts., Cranbury, NJ 08512. Authorization No. WH6394. Effective July 20, 2004.

**Robert J. Champion**, 34 Ann St., Pottsville, PA 17501. Authorization No. WH6395. Effective July 20, 2004.

**Marcy Hauling**, 1206 Whitney Ave., Easton, PA 18045. Authorization No. WH6396. Effective July 20, 2004.

**MPB Trucking, Inc.**, 74 Lincoln Ave., Cliffside Park, NJ 07010. Authorization No. WH6397. Effective July 20, 2004.

**Myrmar Al Corporation**, 58 Madison Ave., Apt. 2, Jersey City, NJ 07304. Authorization No. WH6398. Effective July 20, 2004.

**Saltarin Trucking, Inc.**, 1312 Morrison Ave., Bronx, NY 10472. Authorization No. WH6399. Effective July 20, 2004.

**Carlos Tome**, 238 Ivy St., No. 2, Kearny, NJ 07032. Authorization No. WH6400. Effective July 21, 2004.

**C. E. Environmental Services, LLC**, 15 Weldon Rd., Lake Hopatcong, NJ 07849. Authorization No. WH6401. Effective July 21, 2004.

**Pluchino Trucking**, 8 Palmer Dr., Wayne, NJ 07470. Authorization No. WH6402. Effective July 21, 2004.

**S & G Carting, LLC**, P. O. Box 113, Beltsville, NJ 07109. Authorization No. WH6403. Effective August 6, 2004.

**Brocklehurst Drop Boxes**, 54 Kimberly Dr., Grove City, PA 16127-9037. Authorization No. WH6404. Effective July 21, 2004.

**Custom Craft Contractors, Inc.**, 2224 Bustard Rd., Lansdale, PA 19446. Authorization No. WH6405. Effective July 21, 2004.

**Reliable Construction**, 153 Treasure Dr., DuBois, PA 15801. Authorization No. WH6406. Effective July 27, 2004.

**Tung Carrier, Inc.**, 114 Wynewood Ln. E., Easton, PA 18040. Authorization No. WH6407. Effective July 26, 2004.

**Juan Jufre**, 102-29 Nichols Ave., Corona, NY 11368. Authorization No. WH6408. Effective July 27, 2004.

**R R Transportation, Inc.**, 319 5th St., Fairview, NJ 07022. Authorization No. WH6409. Effective July 27, 2004.

**Francisco R. C. Neto**, P. O. Box 2262, New Burgh, NY 10550. Authorization No. WH6410. Effective July 27, 2004.

**McKees Rocks Borough**, 340 Bell Ave., McKees Rocks, PA 15136-3514. Authorization No. WH6411. Effective July 27, 2004.

**Segundo A. Siguencia**, 219 Pacifica St., Newark, NJ 07114. Authorization No. WH6412. Effective August 3, 2004.

**Accredited Excavating & Paving, Inc.**, 119 Harding Dr., Brick, NJ 08724. Authorization No. WH6413. Effective July 23, 2004.

**R. L. Brubaker Trucking**, R. R. 1 Box 2935, McAlisterville, PA 17048. Authorization No. WH6414. Effective July 27, 2004.

**Earthworks Excavating**, 1219 S. Main St., Old Forge, PA 18518. Authorization No. WH6415. Effective July 27, 2004.

**MAS Trucking**, 184 S. Greenview Rd., Schuylkill Haven, PA 17972. Authorization No. WH6416. Effective July 27, 2004.

**Jaswant Singh**, 15 St. Ann St., Carteret, NJ 07008. Authorization No. WH6417. Effective July 27, 2004.

**David Zuidema, Inc.**, 90 Midland Ave., Midland Park, NJ 07432. Authorization No. WH6419. Effective July 30, 2004.

**L. G. Fisher, Inc.**, P. O. Box 308, Oak Hall, VA 23416. Authorization No. WH6420. Effective July 30, 2004.

**K H & Sons Trucking, Inc.**, 10913 121st St., South Ozone Park, NJ 11420. Authorization No. WH6421. Effective July 30, 2004.

**Daniel Castro**, 39 Hamilton Ave., Brentwood, NY 11717. Authorization No. WH6422. Effective July 30, 2004.

**ABK Constructors, Inc.**, 818 Green Hills Rd., Birdsboro, PA 19508. Authorization No. WH6424. Effective July 30, 2004.

**John D. Piercy**, 207 Roseland Ave., P. O. Box 572, Seneca, PA 16346-0572. Authorization No. WH6424. Effective July 30, 2004.

**Precise Plumbing, Inc.**, 73 Porete Ave., North Arlington, NJ 07031. Authorization No. WH6425. Effective July 30, 2004.

**Crowley Roll Off Service**, 2440 Saranac Ave., Pittsburgh, PA 15216-3428. Authorization No. WH6426. Effective July 30, 2004.

**P. Wilbur Trucking**, R. R. 1, Box 126, Tioga, PA 16946. Authorization No. WH6428. Effective July 30, 2004.

**All American Sewer Service, Inc.**, 61 Miller St., Wallington, NJ 07057-2020. Authorization No. WH6429. Effective July 30, 2004.

**Central Jersey Septic, Inc.**, 3168 Bordentown Ave., Oldbridge, NJ 08857. Authorization No. WH6430. Effective July 30, 2004.

**David E. Ritzman**, 1144 W. Shamokin, Trenvaton, PA 17881. Authorization No. WH6431. Effective July 30, 2004.

**JCS Contracting**, 102 Pocono Heights, East Stroudsburg, PA 18301-8786. Authorization No. WH6432. Effective July 30, 2004.

**Crider's Excavating, Inc.**, 555 Bosler Ave., Lemoyne, PA 17043. Authorization No. WH6433. Effective July 30, 2004.

**Norman J. Mundis**, 679 Potts Hill Rd., Lewisberry, PA 17339. Authorization No. WH6434. Effective July 30, 2004.

**Barrett Trucking**, P. O. Box 2603, Weirton, WV 26062. Authorization No. WH6436. Effective August 3, 2004.

**Greg Martin**, 143 Meadow Court, Scotrun, PA 18355. Authorization No. WH6437. Effective August 3, 2004.

**Poole Anderson Construction, LLC**, Industrial Park Rd., P. O. Box 576, Huntingdon, PA 16652. Authorization No. WH6439. Effective August 3, 2004.

**A. Apollo Sewer and Plumbing**, 110 W Front St., Keyport, NJ 07735. Authorization No. WH6440. Effective August 3, 2004.

**Da Silva Line Transport System, Inc.**, 404 Ainsworth St., Linden, NJ 07036. Authorization No. WH6441. Effective August 2, 2004.

**Big Mike Drain & Septic Cleaning, Inc.**, 96 Schoolhouse Rd., Somerset, NJ 08873. Authorization No. WH6442. Effective August 3, 2004.

**Bates Tires & Auto Salvage**, 134 Bates Rd., Markleysburg, PA 15459. Authorization No. WH6443. Effective August 3, 2004.

**Murry Construction Associates, Inc.**, 22A East Roseville, Lancaster, PA 17601-6518. Authorization No. WH6444. Effective August 3, 2004.

**Sequoia Supply, Inc.**, 335 NW Bristol Rd., Warminster, PA 18974. Authorization No. WH6445. Effective August 6, 2004.

**William Pena**, 20 Clent Rd., Apt. 1N, Great Neck, NY 11021. Authorization No. WH6446. Effective August 6, 2004.

**Lakewood Automotive, LLC**, 4 Beechtree Rd., Roseland, NJ 07066. Authorization No. WH6447. Effective August 6, 2004.

## AIR QUALITY

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**23-302-138GP: Elwyn, Inc.** (111 Elwyn Road, Elwyn, PA 19063) on August 3, 2004, to operate two 600 hp boilers in Middletown Township, **Delaware County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**GP3-21-03064: Brubacher Excavating, Inc.** (825 Reading Road, P. O. Box 528, Bowmansville, PA 17507) on

August 3, 2004, for portable nonmetallic mineral processing plants under GP3 in South Middleton Township, **Cumberland County**.

**GP3-22-03031: Department of the Army—99th Regional Support Command** (99 Soldiers Way, Coraopolis, PA 15108-2550) on August 2, 2004, for portable nonmetallic mineral processing plants under GP3 in East Hanover Township, **Dauphin County**.

**GP7-67-03033B: The Sheridan Press** (450 Fame Avenue, Hanover, PA 17331-9581) on August 2, 2004, for sheetfed offset lithographic printing press under GP7 in Penn Township, **York County**.

**Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**23-0024D: Hanson Aggregates Pennsylvania, Inc.** (523 West Forge Road, Glen Mills, PA 19342) on August 3, 2004, to operate two baghouses in Middletown Township, **Delaware County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**01-05016F: ISP Minerals, Inc.** (P. O. Box O, Blue Ridge Summit, PA 17214) on August 3, 2004, to install a portable dryer and associated conveyors controlled by a portable fabric filter baghouse at their Charmian facility in Hamiltonban Township, **Adams County**

**06-05079B: United Corrstack, LLC** (720 Laurel Street, Reading, PA 19602) on August 4, 2004, to modify a boiler controlled by a low NOx burner in the City of Reading, **Berks County**.

**22-03055A: Kimmel's Coal and Packaging, Inc.** (Machamer Avenue, P. O. Box 1, Wiconisco, PA 17097) on August 2, 2004, to replace the fluidized bed dryer with a rotary dryer and to change the venting of two baghouses at their coal preparation facility in Wiconisco Township, **Dauphin County**.

**22-05012A: ISG Steelton, LLC** (215 South Front Street, Steelton, PA 17113) on August 3, 2004, to construct a natural gas fired boiler, rated at 99.33 mmBtu/hr, to replace central boiler 2 rated at 200 mmBtu/hr at their Steelton Plant in the Borough of Steelton, **Dauphin County**.

**36-03019A: Flury Foundry Co.** (1160 Elizabeth Avenue, Lancaster, PA 17601) on August 3, 2004, to construct a molding line controlled by a fabric filter in Manheim Township, **Lancaster County**.

**36-05015C: Dart Container Corp.** (P. O. Box 546, Leola, PA 17540) on August 2, 2004, to use landfill gas as a fuel in the facility's boilers at their Leola plant in Upper Leacock Township, **Lancaster County**.

**38-05019B: AES Ironwood, LLC** (305 Prescott Road, Lebanon, PA 17042) on August 4, 2004, to modify the plan approval definitions for start-up and shutdown of two combustion turbines at their facility in South Lebanon Township, **Lebanon County**.

**67-05012A: Transcontinental Gas Pipeline Corp.** (P. O. Box 1396, Houston, TX 77251-1396) on August 2,

2004, to install NOx controls on two Nordberg FSE-16 engines in Peach Bottom Township, **York County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**AMS 03007: Clean Earth of Philadelphia Inc.** (3201 South 61st Street, Philadelphia, PA 19153) on August 5, 2004, to authorize use of no. 2 fuel oil in their thermal destruction unit and to carry out process modifications in Philadelphia, **Philadelphia County**.

**AMS 03200: Wayne Industries** (130 W. Berkley Street, Philadelphia, PA 1914) on August 5, 2004, to install a 200 hp no. 4 oil fired boiler in Philadelphia, **Philadelphia County**.

**AMS 03236: Park Plaza Condominium** (3900 Ford Road, Philadelphia, PA 1913) on August 5, 2004, to install two 400 hp no. 4 oil fired boilers in Philadelphia, **Philadelphia County**.

**AMS 04043: Philadelphian Condominium** (2401 Pennsylvania Avenue, Philadelphia, PA 19130) on August 5, 2004, to use 100% no. 2 fuel oil for 90 days in a 2,200 hp dual fuel IC engine and use natural gas in two existing boilers in Philadelphia, **Philadelphia County**.

**AMS 04072: Naval Surface Warfare Center** (5001 South Broad Street, Philadelphia, PA 19112) on August 5, 2004, to transfer 30.5 tons of NOx and 249.66 tons of VOC emission reduction credits for use as offsets for the P-104 project in Philadelphia, **Philadelphia County**.

**AMS 04088: City of Philadelphia Capital Programs Office** (1515 Arch Street, Philadelphia, PA 19101) on August 5, 2004, to install two chillers in Philadelphia, **Philadelphia County**.

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**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**09-0123: Better Materials Corp.** (P. O. Box 231, Easton, PA 18044) on August 5, 2004, to operate a batch asphalt plant in Nockamixon Township, **Bucks County**.

**09-0124B: Fairless Energy, LLC** (5000 Dominion Blvd., Glen Allen, VA 01742) on August 10, 2004, to operate a combined cycle combustion turbine in Falls Township, **Bucks County**.

**09-0124E: Fairless Energy, LLC** (5000 Dominion Blvd., Glen Allen, VA 01742) on August 10, 2004, to operate a two natural gas preheater in Falls Township, **Bucks County**.

**46-0232: Cemco Lift, Inc.** (P. O. Box 500, 2801 Township Line Road, Hatfield, PA 19440) on August 6, 2004, to operate a spray paint booth in Hatfield Township, **Montgomery County**.

**46-0232A: Cemco Lift, Inc.** (P. O. Box 500, 2801 Township Line Road, Hatfield, PA 19440) on August 6, 2004, to operate two spray booths and manual brush painting in Hatfield Township, **Montgomery County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**36-03145: NTN-BCA Corp.** (401 West Lincoln Avenue, P. O. Box 1400, Lititz, PA 17543-7020) on August 1, 2004, to install a batch vapor-cleaning machine (degreaser) in Lititz Borough, **Lancaster County**. This plan approval was extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**60-310-006A: Eastern Industries, Inc.** (P. O. Box 177, Winfield, PA 17889) on August 3, 2004, to operate a stone crushing operation and associated air cleaning devices (two water spray dust suppression systems) on a temporary basis, until December 1, 2004, in Buffalo Township, **Union County**. The plan approval has been extended.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Devendra Verma, New Source Review Chief, (814) 332-6940.*

**37-013E: Cemex, Inc.** (2001 Portland Park, Wampum, PA 16157) on June 30, 2004, to change the slag feeding equipment in Wampum, **Lawrence County**.

**43-277B: George and Thomas Cone Co.—Joy Cone** (3435 Lamor Road, Hermitage, PA 16148) on July 31, 2004, for an incinerator in Hermitage, **Mercer County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**AMS 03159: Bro-Tech Corp.** (150 Monument Road, Bala Cynwyd, PA 19004) on August 5, 2004, was terminated upon notification by the company that they do not intend to proceed with modifications as authorized in the City of Philadelphia, **Philadelphia County**. The plan approval was issued on November 28, 2003.

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**Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**46-00013: Hatfield Quality Meats, Inc.—Sub Clemens Family Corp.** (2700 Funks Road, P. O. Box 902, Hatfield, PA 19440) on August 4, 2004, a renewal to operate a facility Title V Operating Permit in Hatfield Township, **Montgomery County**.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**46-00118: Ursinus College** (P. O. Box 1000, Colledgeville, PA 19426) on August 3, 2004, to operate a Synthetic Minor Operating Permit in Colledgeville Borough, **Montgomery County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**63-00883: PA Transformer Technology, Inc.** (P. O. Box 440, Canonsburg, PA 15317) on August 2, 2004, for operation of transformer manufacturing at Canonsburg Facility in Canonsburg Borough, **Washington County**. This is a Synthetic Minor Facility.



**63-00899: Pleiger Plastics Co.—Washington Plant** (P. O. Box 1271, Crile Road, Washington, PA 15301-1271) on July 29, 2004, for their Washington Plant, **Washington County**. The facility's sources of emissions include polyurethane molding operations that primarily emit nonmajor levels of VOC compounds.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**10-00287: Minterq International, Inc.** (395 Grove City Road, Slippery Rock, PA 16057) on August 4, 2004, for a Natural Minor Permit to operate nonclay refectories in Slippery Rock Township, **Butler County**. Emissions sources associated with this facility include mixers, dryers and mold shop.

**37-00307: Slippery Rock Salvage** (214 Gardner Avenue, New Castle, PA 16107) on August 5, 2004, for a Natural Minor Operating Permit for a scrap steel cutting facility in the City of New Castle, **Lawrence County**.

**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**38-05028: Curwood Specialty Films** (5 Keystone Drive, Lebanon Valley Business Park, Lebanon, PA 17042) on August 4, 2004, to operate a flexible packaging printing facility in South Lebanon Township, **Lebanon County**. The State-only operating permit was administratively amended to incorporate the conditions of Plan Approval 38-05028A. This is Revision No. 1 of the operating permit.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 823-7584.*

**N96-021: The Curtis Center** (625 Walnut Street, Philadelphia, PA 19106) on July 29, 2004, administratively amended to add conditions for one emergency generator and one fire pump in the City of Philadelphia, **Philadelphia County**. The Natural Minor Operating Permit was originally issued September 4, 2001.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).**

*Coal Permits Actions*

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**03930108 and NPDES Permit No. PA0200816. Mears Enterprises, Inc.** (P. O. Box 157, Clymer, PA 15728). Permit revised to change the land use from forestland to pastureland at an existing bituminous surface mine in Wayne and Cowanshannock Townships, **Armstrong County**, affecting 281.7 acres. Receiving streams: unnamed tributaries to South Fork Pine Creek. Application received May 11, 2004. Revised permit issued August 3, 2004.

**03990109 and NPDES Permit No. PA0202673. Mears Enterprises, Inc.** (P. O. Box 157, Clymer, PA 15728). Permit revised to change the land use from forestland to pastureland at an existing bituminous surface mine in Wayne Township, **Armstrong County**, affecting 58 acres. Receiving streams: unnamed tributaries to South Fork Pine Creek and South Fork Pine Creek. Application received May 11, 2004. Revised permit issued August 3, 2004.

**03990107 and NPDES Permit No. PA0202622. AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA 15650). Application received to add 60 acres to an existing bituminous surface mining site in Washington and East Franklin Townships, **Armstrong County**, now affecting 263.8 acres. Receiving streams: unnamed tributaries of Limestone Run to Limestone Run. Application received July 9, 2003. Revised permit issued August 5, 2004.

*Knox District Mining Office: P. O. Box 669, Knox, PA 16232, (814) 797-1191.*

**33980110. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767). Revision to an existing bituminous strip operation to change the post mining land use from forestland to unmanaged natural habitat on the Benjamin Z. Means property in Perry Township, **Jefferson County**. Receiving streams: unnamed tributary to Mahoning Creek. Application received April 29, 2004. Permit issued July 28, 2004.

**24930101 and NPDES Permit No. PA0211770. Fairview Coal Company** (P. O. Box R, Ridgway, PA 15853). Renewal of an existing bituminous strip, auger and beneficial use of residual waste operation in Horton Township, **Elk County** affecting 65.3 acres. Receiving streams: Johnson Run. Application received June 10, 2004. Permit issued July 27, 2004.

**1465-24880103-E-1. Energy Resources, Inc.** (P. O. Box 259, Brockway, PA 15824). Application for a stream encroachment to allow for the construction and maintenance of a retention pond within the drainage course and floodway of unnamed tributary no. 19 to Vineyard Run in Horton Township, **Elk County**. Receiving streams: unnamed tributary to Mead Run, unnamed tributary to Vineyard Run, two unnamed tributaries to Laurel Run and two unnamed tributaries to West Branch Walburn Run. Application received July 7, 2003. Permit issued July 29, 2004.

**16880104 and NPDES Permit No. PA0104710. Terry Coal Sales, Inc.** (P. O. Box 58, Distant, PA 16223). Renewal of an existing bituminous strip and tippel refuse disposal operation in Limestone, Porter and Monroe Townships, **Clarion County** affecting 156.2 acres. Receiving streams: one unnamed tributary to Sloan Run, one unnamed tributary to Parsons Run, three unnamed

tributaries to Leatherwood Creek. This renewal issued for reclamation only. Application received June 7, 2004. Permit issued August 4, 2004.

*California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**56971301. NPDES Permit No. PA0214973, GM&S Coal Corporation** (P. O. Box 99, Boswell, PA 15531), to revise the permit for the Geronimo Mine in Jenner Township, **Somerset County** to add permit and subsidence control plan acres, Underground Acres Proposed 41.80, SCP Acres Proposed 41.80. No additional discharges. Permit issued July 30, 2004.

**03851303. NPDES Permit No. PA0213462, McVilleville Mining Company** (301 Market Street, Kittanning, PA 16201-9642), to revise the permit for the Clementine No. 1 Mine in North Buffalo and South Buffalo Townships, **Armstrong County** to add underground permit and subsidence control plan acres, Underground Acres Proposed 2192, SCP Acres Proposed 2,192. No additional discharges. The first downstream potable water supply intake from the point of discharge is the Buffalo Township Municipal Authority at Freeport. Permit issued August 3, 2004.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866.*

**17030110 and NPDES Permit No. PA020243540. Swisher Contracting, Inc.** (P. O. Box 1223, Clearfield, PA 16830). Commencement, operation and restoration of a bituminous surface mine-auger permit in Lawrence Township, **Clearfield County** affecting 116.8 acres. Receiving streams: unnamed tributaries to Montgomery Creek and West Branch Susquehanna River. Application received August 7, 2003. Permit issued July 28, 2004.

**17-03-01. Junior Coal Contracting, Inc.** (2330 Six Mile Road, Philipsburg, PA 16866). The Moshannon District Mining Office awarded a Government Financed Construction Contract to Junior Coal Contracting, Inc. on June 17, 2004, that will result in incidental coal removal necessary to accomplish reclamation of an abandoned mine land site affecting 3 acres in Decatur Township, **Clearfield County**. Under the terms of the contract, no reprocessing of the coal refuse may take place and no coal refuse materials may be returned to the site once removed. The contract requires total reclamation and revegetation of the project area. This project was made possible under a program developed by the Department which allows for expedited removal and reclamation of old coal refuse piles which are generally eyesores as well as major sources of siltation and pollution to the streams of this Commonwealth. Application received August 29, 2004. Permit issued June 17, 2004.

**17-03-02. Junior Coal Contracting, Inc.** (2330 Six Mile Road, Philipsburg, PA 16866). The Moshannon District Mining Office awarded a Government Financed Construction Contract to Junior Coal Contracting, Inc. on June 17, 2004, that will result in incidental coal removal necessary to accomplish reclamation of an abandoned mine land site affecting 5.4 acres in Decatur Township, **Clearfield County**. Under the terms of the contract no reprocessing of the coal refuse may take place and no coal refuse materials may be returned to the site once removed. The contract requires total reclamation and revegetation of the project area. This project was made possible under a program developed by the Department which allows for expedited removal and reclamation of old coal refuse piles which are generally eyesores as well as major sources of siltation and pollution to the streams of

this Commonwealth. Application received August 29, 2003. Permit issued June 17, 2004.

**17-03-07. Larson Enterprises, Inc.** (P. O. Box 96, Kylertown, PA 16847). The Moshannon District Mining Office awarded a Government Financed Construction Contract to Larson Enterprises, Inc. on July 21, 2004, that will result in incidental coal removal necessary to accomplish reclamation of an abandoned mine land site affecting 3.7 acres in Graham Township, **Clearfield County**. Under the terms of the contract no reprocessing of the coal refuse may take place and no coal refuse materials may be returned to the site once removed. The contract requires total reclamation and revegetation of the project area. This project was made possible under a program developed by the Department which allows for expedited removal and reclamation of old coal refuse piles which are generally eyesores as well as major sources of siltation and pollution to the streams of this Commonwealth. Application received February 24, 2004. Permit issued July 21, 2004.

#### *Noncoal Permits Actions*

*Pottsville District Mining Office: 5 West Laurel Blvd., Pottsville, PA 17901-2454, (570) 621-3118.*

**58040824. G. K. Flagstone, Inc.** (R. R. 1 Box 1132, Nicholson, PA 18446), commencement, operation and restoration of a quarry operation in Lenox Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: East Branch of Tunkhannock Creek. Application received April 19, 2004. Permit issued August 6, 2004.

**09890301C10 and NPDES Permit No. PA0594466. Naceville Materials** (1371 West Street Road, P. O. Box 161, Warminster, PA 18974), renewal of NPDES Permit for discharge of treated mine drainage in West Rockhill Township, **Bucks County**, receiving stream: unnamed tributary to Ridge Valley Creek. Application received May 27, 2004. Renewal issued August 6, 2004.

**58010803T and NPDES Permit No. PA0224171. Reading Materials, Inc.** (P. O. Box 1467, Skippack, PA 19474), transfer of an existing quarry operation in Bridgewater Township, **Susquehanna County** affecting 41.96 acres, receiving stream: unnamed tributary to South Branch Creek. Application received March 12, 2004. Transfer issued August 6, 2004.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**33042803. Glenn Brothers Quarry** (P. O. Box 281, Corsica, PA 15829) Commencement, operation and restoration of a small noncoal sandstone operation in Union Township, **Jefferson County** affecting 7.3 acres. Receiving streams: Simpson Run. Application received April 15, 2004. Permit issued August 3, 2004.

#### **ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (73 P.S. §§ 151–161) 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.**

*Pottsville District Mining Office: 5 West Laurel Blvd., Pottsville, PA 17901-2454, (570) 621-3118.*

**28044032. David H. Martin, Inc.** (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting at Penn National Development Lot Q31 in Guilford

Township, **Franklin County** with an expiration date of July 31, 2005. Permit issued August 3, 2004.

**01044011. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting at Drummer Boy Campground in Straban Township, **Adams County** with an expiration date of July 31, 2005. Permit issued August 3, 2004.

**01044012. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting at Links at Gettysburg in Mount Joy Township, **Adams County** with an expiration date of July 31, 2005. Permit issued August 3, 2004.

**22044025. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting at Milton Hershey Schools in Derry Township, **Dauphin County** with an expiration date of July 30, 2005. Permit issued August 3, 2004.

**06044035. Doli Construction Corporation** (120 Independence Lane, Chalfont, PA 18914), construction blasting at Steever's Glen Sewer Project in Cumru Township, **Berks County** with an expiration date of February 27, 2005. Permit issued August 3, 2004.

**54044007. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting at Delaware Valley Subdivision in Wayne Township, **Schuylkill County** with an expiration date of July 30, 2005. Permit issued August 3, 2004.

**15044031. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting at Hidden Way Subdivision in Tredyffrin Township, **Chester County** with an expiration date of July 30, 2005. Permit issued August 3, 2004.

**67044039. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Equilibrium Equities for a warehouse in Fairview Township, **York County** with an expiration date of August 31, 2005. Permit issued August 5, 2004.

**01044010. Geological Technologies, Inc.** (715 Baltimore Street, Martinsburg, WV 25401), construction in Gettysburg Borough and Cumberland Township, **Adams County** with an expiration date of August 31, 2004. Permit issued August 5, 2004.

**67044038. ABEL Construction Co., Inc.** (3925 Columbia Avenue, Mountville, PA 17554), construction blasting for Stone Hill in York Township, **York County** with an expiration date of July 31, 2005. Permit issued August 5, 2004.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**14034002. Paradise Contracting** (223 Paradise Road, Bellefonte, PA 16823), for construction blasting in Spring Township, **Centre County**, with an extended duration of 34 days. Permit issued July 27, 2004.

**14044003. C. D. G. Properties, LLC** (P. O. Box 11172, State College, PA 16805), for construction blasting in Benner Township, **Centre County**, with an extended duration of 59 days. Permit issued July 27, 2004.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931-4119, (814) 472-1900.*

**56044005. Sheehan Pipe Line Construction** (P. O. Box 950, Waynesburg, PA 15370). Blasting activity permit issued for a pipeline construction project in Brothersvalley and Allegheny Townships, **Somerset County**. Duration of blasting is 180 days. Permit issued July 30, 2004.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E15-692. Upper Uwchlan Township**, 140 Pottstown Pike, Chester Springs, PA 19425, Upper Uwchlan Township, **Chester County**, ACOE Philadelphia District.

To construct and maintain the water obstructions and encroachments associated with the construction of a 1.01-mile three-lane loop road by-pass and to extend Park Road 0.23 mile to improve traffic flows in the vicinity of the Village of Eagle. The Eagle Loop Road will intersect Pottstown Pike (SR 0100) south of the Wolfington Tract

(Downingtown, PA Quadrangle N: 13.3 inches; W: 8.3 inches), traverse east and parallel Pottstown Pike rejoining it north of the intersection with Park Road (Downingtown, PA Quadrangle N: 16.2 inches; W: 9.5 inches) in Upper Uwchlan Township, Chester County.

The work involves the following:

1. To relocate 450 linear feet of an intermittent reach of an unnamed tributary of Pickering Creek (HQ-TSF) by constructing 540 linear feet of new stream channel along station 34+00 to 38+50 of the proposed Eagle Loop Road.

2. To construct and maintain approximately 32 linear feet of twin 29-inch by 42-inch CMP arch culverts in the relocated channel referenced in Item 1 associated with the construction of a pedestrian trail.

3. To relocate and modify approximately 1,170 linear feet of an intermittent reach of an unnamed tributary of Pickering Creek associated with the construction of the Park Road extension to connect Pottstown Pike (SR 0100) with the proposed Eagle Loop Road.

4. To construct and maintain approximately 94 linear feet of a 78-inch CMP culvert crossing of an intermittent reach of an unnamed tributary of Pickering Creek which will be relocated as referenced in Item 3 at station 38+40 of the proposed Eagle Loop Road. In addition to the 78-inch CMP culvert, an energy dissipation apron will be placed with the extents of Endwall 3.

5. To construct and maintain approximately 99 linear feet of 54-inch CMP culvert conveying stormwater runoff from the north and west of the intersection of Park Road and the Eagle Loop Road. In addition to the 54-inch CMP culvert, R-3 riprap will be placed within the extents of Endwall 4 for energy dissipation.

6. To place and maintain fill in 0.17 acre of wetland (PFO) at road station 19+50 to 21+50.

The project proposes to temporarily impact approximately 1,620 linear feet of stream, permanently impact approximately 200 linear feet of intermittent reaches of an unnamed tributary of Pickering Creek and 0.17 acre of adjacent wetland (PFO). The permittee will compensate for wetland losses by providing the construction of 0.34 acre of replacement wetlands (PEM/FO) offsite.

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

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

**E48-350. Department of Conservation and Natural Resources, Bureau of State Parks**, P. O. Box 8451, Harrisburg, PA 17105-8451. City of Easton, **Northampton County**, Army Corps of Engineers Philadelphia District, Subbasin 2C.

To remove the existing structures and to construct and maintain a visitor center and associated parking areas in the 100-year, right side floodplain of the Delaware River at the site of the former Canal Museum. The project is in Delaware Canal State Park, southwest of the confluence of the Lehigh and Delaware Rivers (Easton, PA-NJ Quadrangle N: 12.0 inches; W: 11.7 inches).

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

**E07-386: Department of Transportation, District 9-0**, 1620 North Juniata Street, Hollidaysburg, PA 16648 in Freedom Township, **Blair County**, ACOE Baltimore District.

To remove the existing bridges and then to construct and maintain: (1) a single clear span bridge of 45.32 feet on a 60 degree skew with an underclearance of 5.0 feet across Poplar Run (CWF) and related outfalls; and (2) a single clear span bridge of 41.0 feet on a 60 degree skew with an underclearance of 4.13 feet across Blue Knob Run (CWF) and related outfalls on SR 3010, Section 002, Segment 0140, Offsets 0446 and 0670, to improve the traffic safety conditions at the Village of Puzzletown (Hollidaysburg, PA Quadrangle N: 0.5 inch; W: 16.0 inches) in Freedom Township, Blair County.

**E29-090: Department of Transportation, District 9-0**, 1620 North Juniata Street, Hollidaysburg, PA 16648 in Wells Township, **Fulton County**, ACOE Baltimore District.

To remove the existing bridge and then to construct and maintain: (1) a 21.3-foot by 5.25-foot concrete box culvert on a 70 degree skew at the channel of Roaring Run (HQ-CWF) on SR 4010, Segment 0060, Offset 0000 to improve the roadway condition; and (2) temporarily relocate the channel of same stream and construct a 36-inch diameter pipe and a twin 48-inch diameter temporary road crossing. Described activities are about 2.2 miles northeast of Wells Tannery Village (Wells Tannery, PA Quadrangle N: 20.3 inches; W: 1.0 inch) in Wells Township, Fulton County.

**E38-135: Department of Transportation, Engineering District 8-0**, 2140 Herr Street, Harrisburg, PA 17103 in South Londonderry Township, **Lebanon County**, ACOE Baltimore District.

To remove the existing bridge and then to construct and maintain a 20-foot by 7-foot box culvert at the channel of Conewago Creek (TSF) on SR 0241, Section 005, Segment 0060, Offset 0000, to improve the condition of the roadway, about 0.75 mile north of the Village of Lawn (Elizabethtown, PA Quadrangle N: 19.3 inches; W: 4.8 inches) in South Londonderry Township, Lebanon County.

**E22-476: Department of Transportation, District 8-0**, 2140 Herr Street, Harrisburg, PA 17103 in Upper Paxton Township, **Dauphin County**, ACOE Baltimore District.

To remove the existing bridge and then to construct and maintain a new single span bridge of 91.5 feet on a 35 degree skew with a minimum underclearance of 6 feet across Little Wiconisco Creek (WWF) to be 35 feet downstream of the existing bridge to improve roadway alignment and safety of SR 4008, Section 012, Segment 0010, Offset 0843, 0.3 mile south of Killingier Village (Millersburg, PA Quadrangle N: 10.2 inches; W: 6.53 inches) in Upper Paxton Township, Dauphin County.

**E22-478: Mary Esquivel**, 1630 Fishing Creek Valley Road, Harrisburg, PA 17112 in Middle Paxton Township, **Dauphin County**, ACOE Baltimore District.

To construct and maintain a 208 square foot addition to an existing dwelling within the floodway of Fishing Creek East (WWF), for the purpose of enlarging livable space, approximately 700 feet north of Route 443 (Harrisburg East, PA Quadrangle N: 21.4 inches; W: 16.2 inches) in Middle Paxton Township, Dauphin County.

**E36-775: Centerville Associates Limited, Baron's Ridge Subdivision**, 987 Chapel Forge Court, Lancaster, PA 17601 in Penn and Rapho Townships, **Lancaster County**, ACOE Baltimore District.

To construct and maintain: (1) a wetland road crossing; (2) an educational nature trail crossing wetlands; and (3) a sewer line crossing over a UNT, all tributaries to

Chickies Creek (WWF), for the purpose of constructing the proposed Baron's Ridge residential subdivision on the Manheim, PA Quadrangle (Latitude—40°10'46", Longitude—76°23'12") in Penn and Rapho Townships, Lancaster County. The permittee is required to provide a minimum of 0.38 acre of replacement wetlands.

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

**E18-374. Steven S. Sanders**, 208 Green Street, Lock Haven, PA 17745. Sanders deck in Woodward Township, **Clinton County**, ACOE Baltimore District (Lock Haven, PA Quadrangle N: 5.55 inches; W: 12.77 inches).

To construct and maintain a 25-foot by 20-foot wooden deck, covered by a metal clad roof on top of four 6-inch by 6-inch, 8-foot high wooden posts, extending from an existing 30-foot by 30-foot at-grade concrete pad on an upper bench of ground out over the lower bench of ground onto two 6-inch by 6-inch wooden posts in the left 100-year floodway of the West Branch Susquehanna River, 220 feet downstream from the intersection of the Monsey Drive and Water Valley Road. This permit was issued under section 105.13(e) "Small Projects."

**E19-240. Mifflin Township Supervisors**, P. O. Box 170, Mifflinville, PA 18631. Sewer line river crossing in Mifflin Township, **Columbia County**, ACOE Baltimore District (Mifflinville, PA Quadrangle N: 6.00 inches; W: 8.50 inches).

To construct and maintain: (1) approximately 1,250 linear feet of 6-inch diameter ductile iron pipe force main a minimum of 3 feet below the streambed across the Susquehanna River (WWF) on the downstream side of the Market Street Bridge; (2) approximately 10 linear feet of 8-inch diameter sewer line a minimum of 3 feet below the streambed of an unnamed tributary to the Susquehanna River (WWF) approximately at the intersection of a point 600 feet north of Kline Street and 200 feet east of West Street; and (3) 225 linear feet of 8-inch diameter sewer line under a PEM/SS wetland system along the west side of John Street. The project will temporarily impact approximately 0.1 acre of wetland while impacting approximately 1,270 feet of waterway.

**E41-537. Edward and Janet Newman**, 166 Kendal Avenue, Jersey Shore, PA 17740. Small Projects Water Obstruction and Encroachment Joint Permit Application in Watson Township, **Lycoming County**, ACOE Susquehanna River Basin District (Jersey Shore, PA Quadrangle N: 20.2 inches; W: 11.9 inches).

To remove two existing structures totaling 541 square feet of enclosed area and construct and maintain a two story addition totaling 1,026 square feet of enclosed area in the floodway of Pine Creek, which is 5.0 miles north of the intersection of SR 0220 and SR 0044 along Torbert Lane in Watson Township, Lycoming County. This permit was issued under section 105.13(e) "Small Projects."

**E55-198. Kenneth E. Wright**, Box 334, Shamokin Dam, PA 17876. Water Obstruction and Encroachment Permit application in Monroe Township, **Snyder County**, ACOE Susquehanna River Basin District (Sunbury, PA Quadrangle N: 17.68 inches; W: 8.75 inches).

To construct and maintain an 18-foot by 21-foot metal carport in the floodway of the Susquehanna River in Monroe Township, Snyder Township. This permit was issued under section 105.13(e) "Small Projects."

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

**E43-311. David B. Aldridge**, 137 Briar Hill Road, Zelenople, PA 16063-9661. Aldridge Property Dam on Indian Run Road in Springfield Township, **Mercer County**, ACOE Pittsburgh District (Greenfield, PA Quadrangle N: 1.3 inches; W: 0.7 inch).

To maintain approximately 0.48 acre of fill material placed within a palustrine emergent/palustrine scrub-shrub wetland area during the construction of a dam along the east side of Indian Run Road, 3,100 feet southeast of the intersection of Indian Run Road and Leesburg Station Road. The permittee is required to provide 1.0 acre of replacement wetlands.

#### DAM SAFETY

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

**D11-047A. West Carroll Water and Sewer Authority**, P. O. Box 328, Elmora, PA 15737-0374. To modify, operate and maintain Bakerton Dam across West Branch Susquehanna River (CWF), impacting approximately 2.7 acres of the reservoir by dredging to increase storage volume and approximately 200 feet of stream channel for the purpose of water supply (Carrolltown, PA Quadrangle N: 16.5 inches; W: 14.5 inches), West Carroll Township **Cambria County**.

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## SPECIAL NOTICES

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### Pennsylvania Wetland Replacement Project

The Department of Environmental Protection (Department) has approved the following wetland restoration project for funding under the Pennsylvania Wetland Replacement Project (PWRP). The PWRP is a jointly managed fund between the Department and the National Fish and Wildlife Foundation established to offset wetland losses. Construction for the following project is anticipated to begin in the fall 2004. For further information, contact Alissa Myers, Department of Environmental Protection, Division of Waterways, Wetlands and Erosion Control, P. O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827, [almyers@state.pa.us](mailto:almyers@state.pa.us).

Project No. D03G23-002. Sponsored by Radnor Township, the primary objective of this two-phase, 1.0+ acre emergent wetland creation in the Valley Run Watershed of the Delaware River drainage is wildlife habitat and education. The project is in Radnor Township, Delaware County.

### BUREAU OF DEEP MINE SAFETY

#### Approval of Request for Variance

The Department of Environmental Protection, Bureau of Deep Mine Safety (Bureau) has approved AMFIRE Mining Company's request for a variance from the requirements of section 242(c) of the Pennsylvania Bituminous Coal Mine Act (act) at the Madison Mine. This notification contains a summary of this request and the basis for the Department's approval. A complete copy of the variance request may be obtained from Allison Gaida, (724) 439-7469 or from the Bureau's website: [www.dep.state.pa.us/dep/deputate/minres/dms/dms.htm](http://www.dep.state.pa.us/dep/deputate/minres/dms/dms.htm).

*Summary of the Request:* AMFIRE Mining Company, LLC requested a variance from section 242(c) of the act to allow for the common ventilation of belt conveyor entry with other entries at the Madison Mine. The proposal accords protections to persons and property substantially equal to or greater than the requirements set forth in the act.

The basis for the Bureau's tentative approval is summarized as follows:

1. The Pyott-Boone 9500 CO Monitoring System will provide advance warning of a developing mine fire originating in the conveyor belt entry. When maintained and operating correctly, this system provides warnings much earlier than the point type heat sensors.

2. Common entries would permit the larger section mantrip and scoops access to belt entry for transportation of personnel and supplies.

3. The operator will maintain a separate isolated intake escapeway that is at a higher air pressure than the belt and common entries.

4. The plan provides for the common entries to serve as an alternate intake escapeway. There will be a total of three separate, isolated escape routes.

This approval is limited to a variance from section 242(c) of the act requiring that the belt entry is isolated from other entries. All other terms and requirements of section 242(c) of the act shall remain in effect. Continued authorization for operation under the approval is contingent upon compliance with the measures described in the plan and the following conditions:

1. All mine employees shall be task trained in the Pyott Boone Model 9500 CO monitoring system alert and alarm response procedures. These procedures shall also be included in the 8-hour annual retraining.

2. A test button shall be installed to allow a daily function check of the outside surface alarm system. A competent person shall make this daily function test and a record of this test shall be maintained on file at the mine.

3. As part of the requirements of section 228 of the act, all belt entries, common entries and unfenced roadways shall be preshifted in their entirety.

4. A preshift date board should be placed at each CO sensor location.

5. Designated areas shall be established at strategic locations along the belt entry and common entry to determine whether the air is traveling in the proper course and normal volume. This air reading shall be taken by a scientific means (anemometer, chemical smoke tube and velometer).

[Pa.B. Doc. No. 04-1553. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Availability of General NPDES Permit for Discharges from Hydrostatic Testing of Tanks and Pipelines (PAG-10)

The Department of Environmental Protection (Department) announces the availability of the renewed National Pollutant Discharge Elimination System General Permit for Discharges from Hydrostatic Testing of Tanks and Pipelines (PAG-10). This General Permit is issued under the authority of The Clean Streams Law (35 P.S. §§ 691.1—691.101) and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20). The renewed General Permit will be effective immediately and will expire 5 years from the date of its issuance.

The General Permit package is available upon request by contacting the Department of Environmental Protection, Bureau of Water Supply and Wastewater Management, Division of Wastewater Management, Rachel Carson State Office Building, P. O. Box 8774, 11th Floor, Harrisburg, PA 17105-8774, (717) 787-8184, gmaduka@state.pa.us. The final General Permit package, including the comment and response document, is also available on the Department's website: [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: NPDES Permits; choose "General Permits").

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 04-1554. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Coastal Zone Management Program; Coastal Zone Grants for Federal Fiscal Year 2005

The Coastal Zone Management Program's (program) mission is to "protect and enhance fragile natural resources by reducing conflicts between competing land and water uses while representing a comprehensive approach to managing the impacts of development and other activities on coastal areas." Applications for Federal Fiscal Year 2005 Coastal Zone grants (grants) will be accepted from August 23, 2004, through October 25, 2004. Grants are available for planning, design, engineering and research projects as authorized by the Federal Coastal Zone Management Act (act). Grants are also available for certain construction and acquisition projects as authorized by section 306A of the act and for various Coastal Nonpoint Source Pollution Program projects. These funds would be available for projects that support the program's mission, beginning October 1, 2005.

The use and availability of these funds is subject to Federal and State statutes, rules and applicable regulations. Federal funding is provided through the National Oceanic and Atmospheric Administration.

To request an application or to obtain more information concerning grants, visit the Department of Environmental Protection's website: [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: Coastal Zone) or contact the Department of Environmental Protection, Water Planning Office, 15th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-4785.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 04-1555. Filed for public inspection August 20, 2004, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Brookville Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Brookville Hospital has requested an exception to the requirements of 28 Pa. Code § 51.6(b) (relating to identification of personnel).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of

Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

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 and address previously listed.

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 Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 04-1556. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Application of Lancaster General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Lancaster General Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards in the *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exception from the following standard contained in this publication: 7.10.H2 (relating to cardiac catheterization procedure).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

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, (717) 783-8980, for speech and/or hearing impaired persons V/TT: (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 04-1557. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Application of UPMC Monroeville Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Monroeville Surgery Center has requested an exception to the requirements of 28 Pa. Code § 571.2(d) (relating to modifications to HHS requirements).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

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 and address previously listed.

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 Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 04-1558. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Application of UPMC Passavant for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Passavant has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

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 and address previously listed.

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 Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 04-1559. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Application of York Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that York Hospital has requested an exception to the requirements of 28 Pa. Code § 51.6(b) (relating to identification of personnel).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

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 and address previously listed.

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 Division at the previously listed address or phone number, for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 04-1560. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Governor's Council on Physical Fitness and Sports Meeting

The Governor's Council on Physical Fitness and Sports will hold a meeting on Wednesday, September 15, 2004, from 9 a.m. to 12 p.m. in Room 427, Health and Welfare Building, 7th and Forster Streets, Harrisburg, PA.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Kevin Alvarnaz, Chief, Cardiovascular Health Section, Room 1011, Health and Welfare Building, Harrisburg, PA, (717) 787-2957, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 04-1561. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Hearing Aid Advisory Council Meeting

The Hearing Aid Advisory Council, established by section 201 of the Hearing Aid Sales Registration Law (35 P.S. § 6700-201), is scheduled to hold a meeting on September 17, 2004, from 9:30 a.m. to 12 p.m. at 132 Kline Plaza, Suite A, Harrisburg, PA 17104.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodations to do so, contact Carol Williams, Director, Bureau of Community Program Licensure and Certification, (717) 783-8665. Speech and/or hearing impaired persons should call V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 04-1562. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Requests for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.2(9) (relating to requirements):

Bloomsburg Health Care Center  
211 East First Street  
Bloomsburg, PA 17815

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions):

Broad Mountain Nursing & Rehab. Center  
50 West Laurel Street  
Frackville, PA 17931

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(k) (relating to prevention, control and surveillance of tuberculosis (TB)):

HRH Transitional Care Unit  
1648 Huntingdon Pike  
Meadowbrook, PA 19046  
FAC ID 083902

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Saint Mary's East  
607 East 26th Street  
Erie, PA 16504

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36(h) (relating to bathing facilities):



The Jewish Home of Eastern Pennsylvania  
1101 Vine Street  
Scranton, PA 18510

The following long-term care nursing facility is seeking an exception to 28 Pa. Code §§ 205.21, 205.36(h) and 205.38 (relating to special care room; bathing facilities; and toilet facilities):

Bethany Village Retirement Center  
325 Wesley Drive  
Mechanicsburg, PA 17055

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the division and address previously listed.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotape or Braille) should contact the Division of Nursing Care Facilities at the previous address, for speech and/or hearing impaired persons, V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 04-1563. Filed for public inspection August 20, 2004, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Ongoing List of Behavioral Health Managed Care Organizations

The Department of Public Welfare (Department) is maintaining an ongoing list of qualified behavioral health managed care organizations (BH-MCO) as potential contractors for the HealthChoices Behavioral Health Program (HCBHP). New submissions are being requested from MCOs which are not currently on the list. The development of this list was introduced at 31 Pa.B. 888 (February 10, 2001) as the first step in a two-step process for obtaining a behavioral health contractor, should the need arise. The HCBHP is a mandatory managed care program for Medicaid recipients in this Commonwealth. Additional information about the HCBHP is available on the Department's website: [www.dpw.state.pa.us/omhsas/dpwmh.asp](http://www.dpw.state.pa.us/omhsas/dpwmh.asp).

The list of qualified BH-MCOs would be utilized in the following circumstances, including:

- \* Contract negotiations with a potential contractor selected through a Request for Proposal (RFP) process fail.

- \* A potential contractor selected through an RFP process fails the Readiness Review process.

- \* An existing contractor terminates the contract or is terminated by the Department.

As stated at 31 Pa.B. 888, the list of qualified BH-MCOs will be opened periodically to new submissions which are not currently on the list. MCOs selected for the list of qualified bidders will remain active on the list for 2 years. After 2 years they will be required to resubmit information for consideration to remain on the list.

The following is a list of requirements necessary to qualify as a potential HCBHP contractor:

- \* One year experience with a State behavioral health Medicaid program.

- \* Not currently under suspension or debarment by the Commonwealth or any other state or the Federal government.

- \* Licensed by the Department of Health and the Insurance Department.

- \* Management Information System (MIS) experience in processing HIPAA-compliant 837 files.

To apply as a potential HCBHP contractor, submit a letter of interest on official corporate letterhead by September 10, 2004, to Mike Root, Office of Mental Health and Substance Abuse Services, Room 238, Beechmont Building, P. O. Box 2675, Harrisburg, PA 17105, fax (717) 772-7964.

Submit the following information by 2 p.m. on September 24, 2004, to the Department of Public Welfare, Attn: Daniel Boyd, Division of Procurement, Room 106, Health and Welfare Building, Commonwealth and Forster Sts., Harrisburg, PA 17120.

#### List of Deliverables

1. Describe experience in providing services to Medicaid recipients including:

- \* Type of behavioral health (mental health and drug and alcohol) services covered.

- \* Description of categories of aid/population covered.

- \* Number of years experience with Medicaid programs.

2. Provide a report on the number of claims processed (for Medicaid population) in the most recent 6-month period, including timeliness of processing clean claims and the number of claims paid/rejected.

3. Provide a flow chart of the MIS.

4. Provide evidence of capacity to submit HIPAA-compliant 837 files.

5. Provide a copy of current Commonwealth license from the Department of Health and the Insurance Department.

6. Provide a copy of the most recent audited, annual filing with a state insurance department.

7. Provide a copy of the most recent annual audited company financial statement.

8. Outline a plan to start up or expand (if currently operating in this Commonwealth) operations in this Commonwealth.

9. Provide the name, address and phone number of three references familiar with the MCO operations (one must provide reference from a State Medicaid program).

Department staff will verify the information submitted by the MCOs. As part of the verification process, the Department may conduct an onsite visit. Each MCO will be notified of its qualification status.

The second step of the process is outlined in the event that the list is utilized to obtain a contractor. The Department will:

- \* Contact the vendors on the list and verify their continued interest in obtaining an HCBHP contract.
- \* Inform the vendors of the county or counties requiring a BH-MCO contractor.
- \* Release a procurement document that contains the requirements for the HCBHP to the interested vendors on the list along with instructions on how to submit a bid.
- \* Evaluate all responses to the procurement document and select a contractor.

The previous two-step process will not replace the RFP process to obtain a HCBHP contract in the remainder of this Commonwealth. The procurement process for the

expansion of the HCBHP into future zones will follow a similar procedure as established in the Southeast, Southwest and Lehigh/Capital Zones, which required a response to an RFP.

Questions should be directed to Karen Ulp, Office of Mental Health and Substance Abuse Services, Room 236, Beechmont Building, P. O. Box 2675, Harrisburg, PA 17105, (717) 705-8297, fax (717) 772-7964. Persons with a disability who require an auxiliary aid or service should submit comments using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

[Pa.B. Doc. No. 04-1564. Filed for public inspection August 20, 2004, 9:00 a.m.]

### 2004 Group One Exception Requests; Medical Assistance Long Term Care Participation Review

By this notice, published under 55 Pa. Code § 1187.21a(e)(4) (relating to nursing facility exception requests—statement of policy), the Department of Public Welfare (Department) announces the 2004 Group One Exception Requests covering the submission period of January 1, 2004, through June 30, 2004.

#### New Facility Requests

<i>Number</i>	<i>Facility</i>	<i>Address</i>	<i>County</i>	<i>Beds</i>
JJ04002	Fox Subacute—Hershey	Hershey, PA 17033	Dauphin	60
JJ04004	Lutheran Social Services Luther Ridge	2735 Luther Drive Chambersburg, PA 17201	Franklin	40
JJ04006	Devon Manor	235 Lancaster Avenue Devon, PA 19333	Chester	131

#### Expansion Requests

<i>Number</i>	<i>Facility</i>	<i>Address</i>	<i>County</i>	<i>Beds</i>
JJ04001	Fox Subacute at Clara Burke	251 Stenton Avenue Plymouth Meeting, PA 19462	Montgomery	30
JJ04003	Jameson Care Center	3349 Wilmington Road New Castle, PA 16105	Lawrence	22
JJ04005	Pinnacle Health Skilled Nursing Unit at Seidle	120 South Filbert Street Mechanicsburg, PA 17055	Cumberland	21
JJ04007	Manorcare Health Services—York South	200 Pauline Drive York, PA 17402	York	9
JJ04008	Manorcare Health Services—Lebanon	900 Tuck Street Lebanon, PA 17042	Lebanon	13

Copies of the previously listed exception requests are available for review by the public during regular business hours. To schedule an appointment to review a request, call (717) 705-3705.

#### *Fiscal Impact*

This notice will have no fiscal impact.

#### *Public Comment*

Interested persons are invited to submit written comments related to this notice within 30 days of publication to the Department of Public Welfare, Bureau of LTC Programs, Attention: Gail Weidman, P. O. Box 2675, Harrisburg, PA 17105. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

[Pa.B. Doc. No. 04-1565. Filed for public inspection August 20, 2004, 9:00 a.m.]

# FISH AND BOAT COMMISSION

## Opening of Tacony Access Area, Philadelphia County

By notice published at 31 Pa.B. 3370 (June 23, 2001), the Executive Director of the Fish and Boat Commission (Commission) temporarily closed the Tacony Access Area, Philadelphia County, to all public access and use, effective 12 a.m. on June 30, 2001. The Executive Director of the Commission will reopen the Tacony Access Area to the public subject to the following restrictions. Acting under the authority of 58 Pa. Code § 53.4(a) (relating to limiting access to Commission property and other restrictions), the Executive Director will close the Tacony Access Area to the public from 10 p.m. to 5 a.m. and will annually close it to the public during the winter season when posted. These restrictions are effective when posted at the site. It is unlawful for persons to enter or remain upon Commission property during the times it is closed to public use without the express written consent of the Executive Director or a designee.

The Executive Director, acting under the authority of 58 Pa. Code § 53.4(c), has prohibited the use or possession of beer and alcoholic beverages at the Tacony Access Area. This restriction is effective when posted at the site. It is unlawful to violate restrictions imposed by the Executive Director on behalf of the Commission under 58 Pa. Code § 53.4(c).

DOUGLAS J. AUSTEN, Ph.D.,  
Executive Director

[Pa.B. Doc. No. 04-1566. Filed for public inspection August 20, 2004, 9:00 a.m.]

## Proposed Change to the List of Class A Wild Trout Waters; Young Womans Creek

The Fish and Boat Commission (Commission) is considering a change to the list of Class A Wild Trout Streams. Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of this Commonwealth's naturally reproducing trout fisheries. The Commission manages these stream sections solely for the perpetuation of the wild trout fishery with no stocking.

Criteria developed for Class A Wild Trout fisheries are species specific. Wild Trout Abundance Class Criteria include provisions for:

(i) *Wild Brook Trout Fisheries.*

(A) Total brook trout biomass of at least 30 kg/ha (26.7 lb/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lb/acre).

(C) Brook trout biomass must comprise at least 75% of the total trout biomass.

(ii) *Wild Brown Trout Fisheries.*

(A) Total brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lb/acre).

(C) Brown trout biomass must comprise at least 75% of the total trout biomass.

(iii) *Mixed Wild Brook and Brown Trout Fisheries.*

(A) Combined brook and brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lb/acre).

(C) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lb/acre).

(D) Brook trout biomass must comprise less than 75% of the total trout biomass.

(E) Brown trout biomass must comprise less than 75% of the total trout biomass.

(iv) *Wild Rainbow Trout Fisheries.*

Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 2.0 kg/ha (1.78 lbs/acre).

For a water to be removed from the Class A Wild Trout Streams designation, total trout biomass must be documented below the set criteria for two consecutive stream examinations. At its meeting on October 4 and 5, 2004, the Commission intends to consider removing the following water from the current list of Class A Wild Trout Streams: Young Womans Creek, Section 02, Clinton County, from Beechwood Trail downstream to 1.2 km upstream of the confluence with the Left Branch of Young Womans Creek, a distance of 5.7 miles. This stream is currently listed as a Class A wild brown trout water. The Commission is considering removing Young Womans Creek from the list because the Commission has documented the total brown trout biomass to be below the criterion of at least 40 kg/ha for two consecutive stream examinations.

The Commission surveyed the stream in September 2000 and July 2003. In September 2000, the total brown trout biomass was 24.6 kg/ha. The total brown trout biomass in July 2003 was 26.84 kg/ha. By removing this water from the Class A wild trout streams list, the Commission will increase its flexibility in how it manages the stream.

Persons with comments, objections or suggestions concerning the removal are invited to submit comments in writing to Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Comments also may be submitted to [rapfbcregs@state.pa.us](mailto:rapfbcregs@state.pa.us). A subject heading of the proposal and a return name and address must be included in each transmission. In addition, electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

The Commission also intends to hold a public meeting regarding this issue on August 26, 2004, from 7 p.m. to 9 p.m. in the Chapman Township Volunteer Fire Company, Park Avenue, North Bend, PA (a short distance off Route 120 at North Bend).

DOUGLAS J. AUSTEN, Ph.D.,  
Executive Director

[Pa.B. Doc. No. 04-1567. Filed for public inspection August 20, 2004, 9:00 a.m.]

# INDEPENDENT REGULATORY REVIEW COMMISSION

## Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
19-6	Department of Corrections Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs (34 Pa.B. 3010 (June 12, 2004))	7/12/04	8/11/04

### Department of Corrections Regulation # 19-6 (IRRC # 2403)

#### Administration, State Correctional Institutions and Facilities and Release and Prerelease Programs

August 11, 2004

We submit for consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Department of Corrections (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on July 12, 2004. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

#### 1. Section 91.6. Use of force and restraints.— Reasonableness; Clarity.

##### *Subsection (a)*

Subsection (a)(2)(i) allows for the use of deadly force if an inmate attempts to "escape from a correctional facility or while in immediate pursuit of an inmate escaping from a correctional facility." The term "correctional facility" is not defined. The term "facility" is defined under § 91.6 as "An institution, motivational boot camp or community corrections center operated or contracted by the Department." The Department has indicated that this provision does not apply to an escape from a community corrections center. For clarity, the final-form regulation should define the term "correctional facility" and it should not include the term community corrections center. Alternatively, the defined term "facility" should be substituted for "correctional facility" and subsection (a)(2)(i) should be amended to specifically exempt community corrections centers.

Subsection (a)(2)(ii) allows the use of deadly force if an inmate who has been convicted of a forcible felony attempts to "escape from a work detail, transport or other approved temporary absence when deadly force is necessary to prevent the escape . . ." The term "forcible felony" is not defined in regulation or statute. However, it is defined in Department Policy Statement No. DC ADM-201—Use of Force as "an offense involving the threat of physical force or violence against any individual." The Department should include this definition in the final-form regulation.

##### *Subsection (c)*

This subsection establishes the procedures for the use of chemical munitions. It requires staff to follow procedures in Administrative Directives. The Department should include the name and form number of the applicable documents in the final-form regulation.

#### 2. Section 93.2. Inmate correspondence.—Clarity.

Subsection (f) relates to the rejection of correspondence. It states, in part, "The letter may be held for at least 7 business days after mailing of the notification to permit reasonable opportunity to protest the decision." The word "may" suggests that this provision is optional. The Department has indicated that they routinely hold letters for 7 business days. The final-form regulation should make this provision a requirement by changing the word "may" to "will."

#### 3. Section 93.3. Inmate visiting privileges.—Reasonableness; Clarity.

##### *Subsection (a)*

This subsection relates to the approved list of visitors. We have three areas of concern.

First, the opening sentence is being amended to state "A list of approved visitors may contain at least 20 names or more if permitted by the Department." This change seems to require an inmate to have at least 20 visitors on the list. To avoid this confusion, the Department should retain the existing language that stated, in part, "A list of approved visitors may contain up to 20 names . . ."

Second, under the existing regulation, a child under 12 years of age may visit an inmate when accompanied by an adult. The proposed amendment would require a child under 18 years of age to be accompanied by a parent, legal guardian or county children/youth services agency staff. The Department's current policy statement and handbook are inconsistent with this provision in the proposed regulation.

Section (VI)(A)(2)(f) of Department Policy Statement No. DC ADM-812—Inmate Visiting Privileges provides that an immediate family member approved by the parent or legal guardian may accompany a minor when visiting an inmate. In addition, section (VI)(C)(2) allows a minor to visit only when accompanied by a parent/legal guardian, county children/youth services agency staff or an adult approved by the parent/legal guardian.

The *Handbook for the Families and Friends of Pennsylvania Department of Corrections Prison Inmates* permits an adult on an inmate's approved visiting list to accompany a child visiting an inmate. The Department should explain the inconsistencies between the proposed regulation and the documents previously noted.

Third, the provision regarding the removal of visitors from an approved list is being amended by deleting the phrase "for good cause." The Department should retain this phrase, or explain the basis on which the facility manager will remove the name of a visitor.

*Subsections (b), (c) and (j)*

These subsections relate to visitations by religious advisers, attorneys and media representatives. They all contain the phrase "... the total designated by the Department." The Department has indicated that they do not "designate" lists of visitors. Instead, they approve lists of visitors. These subsections should be amended to read "... the total approved by the Department."

*Subsection (h)*

Subsection (h)(1) and (2) provides that visiting days and hours will be "at the discretion of the facility manager." Representative Kathy Manderino, a member of the House Judiciary Committee, is concerned that this new language would make it more difficult for family members to visit inmates who are confined to facilities far from their homes. She suggests the Department establish minimum standards for all facilities that would allow reasonable access for family visits. We agree that visiting days and hours should reasonably accommodate family members.

**4. Section 93.6. Religious activities.—Reasonableness; Clarity.**

*Subsection (a)*

This subsection is being amended to delete language which permits inmates to "possess approved religious items" and be granted "reasonable accommodation for dietary restrictions." The Department should explain the reason for deleting this language.

*Subsection (b)*

This subsection relates to religious advisers. The rule-making is deleting a provision that allows qualified representatives of a faith from the outside community to hold regular services in the correctional facility if the facility contains a sufficient number of inmates of the same faith. This provision is being replaced with the following sentence: "Staff or volunteers will be permitted to hold services that are consistent with the security needs and orderly administration of the facility." The Department has indicated that qualified representatives who have received endorsement from their faith group will still be allowed to hold services. The final-form regulation should be amended to reflect this fact.

*Subsection (c)*

This subsection in the existing regulation specifies how requests for accommodations of faith will be handled. Why is this subsection being deleted?

**5. Section 93.7. Telephone calls.—Clarity.**

Subsection (a) references 18 Pa.C.S. Chapter 57 (relating to wiretapping and electronic surveillance). The Department has indicated that the applicable provision is 18 Pa.C.S. § 5704. The final-form regulation should be amended to include a reference to 18 Pa.C.S. § 5704.

**6. Section 93.9. Inmate complaints.—Reasonableness; Clarity.**

This section has been amended to add that an inmate who submits a "frivolous" grievance may be subject to appropriate disciplinary procedures. The definition of "frivolous grievance" is in DC-ADM 804—Inmate Grievance System. The final-form regulation should include this definition. Also, the Department should reference DC-ADM 804, which explains who determines if a grievance is frivolous and when that determination is made.

**7. Section 93.10. Inmate discipline.—Reasonableness; Clarity.**

*Subsection (a)*

This subsection states, in part, that "Rules which define expectations and prohibitions for inmate behavior will be established by the Department and *made available* to the inmate population." (Emphasis added.) This sentence implies that rules will be established sometime in the future. However, the Department indicated that rules have been established and are contained in the *Department of Corrections Inmate Handbook (Handbook)*. The final-form regulation should include a reference to that document.

Representative Manderino has expressed concern over the insertion of the phrase "made available" which replaces the existing term "distributed." The concern is that since inmates will be held responsible for complying with the rules and may be disciplined for infractions, they should receive a complete copy of the rules. We agree.

Additionally, we note that the phrase "made available" or "available" appears in subsection (b)(2), as well as the following sections of the proposed regulation: the definition of "contraband" in § 91.1; § 93.2(e)(1); § 93.3(h)(6); and § 94.3(a)(1) and (6). The same concern applies to these sections. The final-form regulation should specify when the complete *Handbook* will be provided to inmates and how inmates will be informed of updates to the *Handbook* and other Department policy statements.

*Subsection (b)*

Subsection (b)(2) adds language pertaining to an "informal resolution process" for inmate misconduct charges. The Department should explain how this process will be implemented.

Under existing subsection (b)(5), written statements of a decision and the reasoning of the hearing body must be based on the "preponderance of the evidence." The Department is proposing to replace "preponderance of the evidence" with "some evidence." However, "some evidence" is not a legal standard for basing a finding of guilt. The Department should explain why it is not substituting another legal standard, such as "substantial evidence," on which a finding of guilt will be based.

**8. Section 93.12. Prison Medical Services Program.—Need; Reasonableness; Clarity.**

*Subsection (d)*

This subsection lists medical services that will be provided to an inmate without charge. Subsection (d)(8) states that "Infirmity care in a Department facility excluding organ transplantation." Based on discussion with Department staff, we understand that this provision was intended to address organ donation by an inmate. However, this procedure would not take place in a Department facility. Therefore, the exclusion listed in this subsection is unnecessary and should be deleted.

*Subsection (e)*

Under this subsection, the fee for medical services is being increased from \$2 to \$3 with subsequent increases of an additional \$1 on July 1, 2005, and July 1, 2007. The Department should explain the basis for the fee increases.

**9. Section 94.3. Procedures for participating in prerelease programs.—Clarity**

Subsection (a) establishes the criteria for eligibility for prerelease programs. Subsection (a)(1) is being amended to add that inmates sentenced to "other offenses as specified in State or Federal statutes or specified by the Department in the Commonwealth of Pennsylvania *Department of Corrections Inmate Handbook*" are not eligible. The final-form regulation should include references to the applicable State and Federal statutes.

**10. Section 94.5. Notification process.—Clarity.**

Subsection (b) establishes the procedures to be followed if a judge or court objects to the prerelease of an inmate. If the Department and the judge or court cannot reach an agreement, the Department will refer the matter to the Board for "a hearing." The existing regulation uses the word "arbitration." Why has "arbitration" been replaced with "a hearing"? Also, what does the arbitration process entail?

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 04-1568. Filed for public inspection August 20, 2004, 9:00 a.m.]

## INSURANCE DEPARTMENT

**Conseco Senior Health Insurance Company; Rate Increase Filing for Long Term Care Policy Forms ATL-FQ-LTC, ATL-FQ-NH and ATL-FQ-HHC; Rate Filing**

Conseco Senior Health Insurance Company is requesting approval to increase the premium 25% for the Long Term Care Forms ATL-FQ-LTC, ATL-FQ-NH, ATL-FQ-HHC and the associated riders. The American Travelers Life Insurance Company originally issued these forms. The average premium will increase from \$1,668 to \$2,060 and will affect 1,657 policyholders in this Commonwealth.

Unless formal administrative action is taken prior to November 4, 2004, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website: [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, select "Consumer Information" on the

left side. Under "General Information," click on "Notices." The pdf copy is at the "Filing.pdf" link following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1569. Filed for public inspection August 20, 2004, 9:00 a.m.]

**Erie Insurance Exchange; Private Passenger Rules and Rates Filing**

On August 6, 2004, the Insurance Department (Department) received from Erie Insurance Exchange a filing for a rate level change for private passenger automobile insurance.

The company requests an overall 1.0% increase amounting to \$9.397 million annually, to be effective January 1, 2005.

Unless formal administrative action is taken prior to October 5, 2004, the subject filing may be deemed approved by operation of law.

The filing is available for review on the Department's website: [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, under "Quick Links," click "Rate filings published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional offices in Harrisburg, Philadelphia and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Ken Creighton, ACAS, Insurance Department, Insurance Product Regulation and Market Enforcement, 1311 Strawberry Square, Harrisburg, PA 17120, [kcreighton@state.pa.us](mailto:kcreighton@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1570. Filed for public inspection August 20, 2004, 9:00 a.m.]

**Notice to Medical Malpractice Insurance Carriers and Self-Insured Health Care Providers**

Insurance companies that offer basic limits medical malpractice coverage are required to report medical malpractice claims information to the Insurance Department (Department) for insureds who are subject to the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. §§ 1303.101—1303.910). Organizations and physicians that self-insure their medical malpractice ex-

posures are also required to report this claims information. These reports are required under section 743 of the act (40 P. S. § 1303.743).

The claims information must be reported to the Fund and to the Department. The following calendar year 2003 claims information is due to the Fund and the Insurance Department by October 15, 2004:

- The aggregate amount of premium earned.
- The aggregate amount of losses paid.
- The aggregate amount of losses incurred.
- The aggregate amount of loss reserves outstanding.
- The aggregate amount of loss adjustment expenses paid.
- The aggregate amount of loss adjustment expenses incurred.
- The aggregate amount of loss adjustment expense reserves outstanding.
- A table showing separately by accident year and county the number of claims first reported (or arising) in 2003.
- A table showing separately by accident year and disposition (that is, judgement of arbitration panel, judgement of court, settlement or other) the number of claims closed by county (or disposed) in 2003.
- A separate table for each type of disposition previously identified showing for claims closed (or disposed) in 2003 separately by accident year: the number of claims closed (or disposed) with payment; the total losses incurred for those claims closed with payment; and the basic coverage premiums collected.

Reports must be submitted as an Excel spreadsheet. A letter has been mailed instructing medical malpractice carriers to submit their 2003 data.

Medical malpractice carriers who have not received a letter should contact Brenna Murphy, Actuarial Associate, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 783-2114, brmurphy@state.pa.us. Questions should be directed to Brenna Murphy.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1571. Filed for public inspection August 20, 2004, 9:00 a.m.]

### **Pennsylvania Compensation Rating Bureau; Temporary Staffing Classifications Filing**

On August 4, 2004, the Insurance Department (Department) received from the Pennsylvania Compensation Rating Bureau (PCRB) a filing to revise the procedures used in determining loss cost values for temporary staffing classifications. This filing is made in accordance with section 705 of the act of July 2, 1993 (P. L. 190, No. 44). The PCRB requests these changes to be effective April 1, 2005, on a new and renewal basis.

Twenty-four temporary staffing classifications are currently in use, each being a one-to-one equivalent of a counterpart direct employment classification. Each temporary staffing classification has been using its counterpart direct employment classification's rating value until sufficient data had been collected and developed to allow meaningful comparison of temporary staffing and direct

employment experience. The PCRB has now collected 5 full policy years of data for those temporary staffing classifications allowing comparisons to be made with direct employment experience.

The filing is available for review on the Department's website: [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, under "Quick Links," click "Rate filings published in the PA Bulletin."

The filing is also available for review on the PCRB's website: [www.pcrb.com](http://www.pcrb.com) (click "Filings").

Copies of the filing are also available for public inspection during normal working hours, by appointment, at the Department's regional offices in Harrisburg, Philadelphia and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Ken Creighton, ACAS, Insurance Department, Insurance Product Regulation and Market Enforcement, 1311 Strawberry Square, Harrisburg, PA 17120, [kcreighton@state.pa.us](mailto:kcreighton@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1572. Filed for public inspection August 20, 2004, 9:00 a.m.]

### **Review Procedure Hearings; Cancellation or Refusal of Insurance**

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Grant L. Hess; file no. 04-124-06320; Erie Insurance Group; doc. no. P04-08-003; September 21, 2004, 1:30 p.m.

The following hearing will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Lena Panich; file no. 04-210-02780; Nationwide Mutual Insurance Company; doc. no. PH04-08-002; September 14, 2004, 11:30 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured

for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1573. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearings will be held in the Insurance Department's regional offices in Philadelphia and Pittsburgh, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of A. T. Ormai, S. Ormai Flinn and Christina Ormai Osb; file no. 04-210-80301; State Auto Property and Casualty Insurance; doc. no. PH04-08-001; September 14, 2004, 10 a.m.

The following hearing will be held in the Pittsburgh Regional Office, Room 304 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of Rena F. Venditti; file no. 04-308-71423; Allstate Insurance Company; doc. no. PI04-08-004; September 9, 2004, 2:30 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or

their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 04-1574. Filed for public inspection August 20, 2004, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board leases will expire:

Allegheny County, Wine & Spirits Shoppe # 0263, 418 East Ohio Street, Pittsburgh, PA 15212.

*Lease Expiration Date:* June 30, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 to 4,500 net useable square feet of new or existing retail commercial space on East Ohio Street serving the lower north side section of the City of Pittsburgh.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

Bedford County, Wine & Spirits Shoppe # 0501, 409 East Pitt Street, Bedford, PA 15222.

*Lease Expiration Date:* May 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,300 net useable square feet of new or existing retail commercial space serving the Town of Bedford. The site must provide free off-street parking and rear access for tractor-trailer deliveries.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Bruce VanDyke, (412) 565-5130

Blair County, Wine & Spirits Shoppe # 0701, Station Mall, 1613 9th Avenue, Altoona, PA 16602.

*Lease Expiration Date:* May 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 net useable square feet of new or existing retail commercial space serving downtown Altoona. The site must have free parking with rear-door loading facilities.

*Proposals due:* September 10, 2004, at 12 p.m.



**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

Erie County, Wine & Spirits Shoppe # 2506, Corry Plaza, 350 W. Columbus Avenue, Corry, PA 16407.

*Lease Expiration Date:* June 30, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 2,000 to 2,500 net useable square feet of new or existing retail commercial space serving the Town of Corry. The site must have free parking and rear-door loading facilities.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

Indiana County, Wine & Spirits Shoppe # 3203, 560 Franklin Street, Clymer, PA 15728.

*Lease Expiration Date:* July 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Town of Clymer.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

Potter County, Wine & Spirits Shoppe # 5301, 14 E. Second Street, Coudersport, PA 16915.

*Lease Expiration Date:* May 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,800 net useable square feet of new or existing retail commercial space serving the Town of Coudersport. The site must provide rear access for tractor-trailer deliveries.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Bruce VanDyke, (412) 565-5130

Somerset County, Wine & Spirits Shoppe # 5601, 686 Market Square, Meyersdale, PA 15552.

*Lease Expiration Date:* May 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Meyersdale area. Facilities with off-street parking and good loading are preferred.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Joseph Molhoek, (412) 565-5130

Philadelphia County, Wine & Spirits Shoppe # 5133, 401 Franklin Mills Circle, Philadelphia, PA 19154.

*Lease Expiration Date:* December 31, 2011

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 15,000 net useable square feet of new or existing retail commercial space in a 1/2-mile radius of the intersection of Route 95 and Route 63, Philadelphia.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128  
**Contact:** Robert Jolly, (215) 482-9671

Lancaster County, Wine & Spirits Shoppe # 3614, Hawthorne Centre Shopping Center, 2076 Fruitville Pike, Lancaster, PA 17601.

*Lease Expiration Date:* August 31, 2008

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 15,000 to 17,000 net useable square feet of new or existing retail commercial space within the proximity of the intersection of Fruitville Pike and Roseville Road, north of U. S. Route 30, Manheim Township.

*Proposals due:* September 10, 2004, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Charles D. Mooney, (717) 657-4228

JONATHAN H. NEWMAN,  
*Chairperson*

[Pa.B. Doc. No. 04-1575. Filed for public inspection August 20, 2004, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Insurance Coverage Requirements for Motor Carriers

Public Meeting held  
 August 5, 2004

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli; Wendell F. Holland

*Insurance Coverage Requirements for Motor Carriers;*  
*Doc. No. M-00041816*

#### Order

*By the Commission:*

In 1995, we issued a declaratory order delineating various insurance requirements mandated by our regulations. *Petition of Thomas Redfield*, Doc. No. P-00950951

(Order entered October 4, 1995). Specifically, we determined that when a claimant is involved in an accident with a motor carrier, the motor carrier's insurance coverage is available to the claimant, even if the particular carrier vehicle involved in the accident was not listed on the insurance policy. We based our decision mandating coverage on the requirements of State law and our regulations,<sup>1</sup> as well as the Certificate of Insurance<sup>2</sup> filed with the Commission by the motor carrier's insurer (the Form E certificate), along with the endorsement<sup>3</sup> to the motor carrier's insurance policy referenced in Form E. That certification and endorsement to the insurance policy, coupled with the statutory and regulatory provisions governing insurance requirements for motor carriers, led us to conclude that coverage was available to claimants, regardless of whether the particular carrier vehicle was listed on the insurance policy.

Notwithstanding our *Redfield* order, we are aware that an insurer providing coverage to motor carriers may be denying coverage based on the unlisted vehicle theory previously rejected in *Redfield*. In addition, we are also aware that an insurer may be denying coverage based on a similar unlisted driver theory. Apparently, this insurer is relying on recent case law, *Lebanon Coach Co. v. Carolina Casualty Insurance Co.*, 675 A. 2d 279 (Pa. Super., 1996), to support a result contrary to our decision in *Redfield*.

Given our paramount concern that insurance coverage is available to individuals involved in accidents with motor carriers, as required by State law and Commission regulations, we will take this opportunity to readdress the *Redfield* issue. We find that this matter may merit issuance of a declaratory order in light of the significant public protection issues involved and the apparent uncertainty that exists. 66 Pa.C.S. § 331(f). Specifically, we will address the issue of claims being denied based on exclusionary language, such as vehicle and driver lists, allegedly found in insurance policies issued to motor carriers. Notwithstanding our prior decision in *Redfield*, we will invite comment from the insurance industry, the motor carrier industry, the public and any other interested party to address alleged uncertainties and legal controversies; *Therefore*,

*It Is Ordered That:*

1. A declaratory order proceeding is hereby initiated to address the effect of exclusionary clauses possibly found in insurance policies issued to motor carriers, and the effect of those clauses on coverage mandated by statute and regulation.

2. This order shall be served on all motor carrier insurers actively providing coverage in this Commonwealth.

3. This order shall be published in the *Pennsylvania Bulletin*.

4. Comments are to be filed within 20 days of the date of publication. An original and nine copies of comments

<sup>1</sup>66 Pa.C.S. § 512 (pertaining to power of Commission to require insurance) and 52 Pa. Code §§ 32.2 and 32.11 (pertaining to motor carrier insurance requirements).

<sup>2</sup>Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, Form E.

<sup>3</sup>Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, Form F.

must be filed with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA, 17105-3265.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 04-1576. Filed for public inspection August 20, 2004, 9:00 a.m.]

## Order

Public Meeting held  
August 5, 2004

*Commissioners Present:* Terrance J. Fitzpatrick; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Piz-zingrilli; Wendell F. Holland

*Pennsylvania Public Utility Commission v. Verizon  
Pennsylvania Inc. Tariff No. 216 Revisions Regarding  
Four Line Carve-Out; Doc. No. R-00049524*

## Order

*By the Commission:*

On June 8, 2004, Verizon Pennsylvania Inc. (Verizon) filed a tariff revision to its Services for Other Telephone Companies Tariff-Pa. PUC No. 216, effective August 7, 2004, to eliminate Unbundled Network Elements (UNE) for switching and transport, including UNE-Platforms (UNE-P), for four or more lines.<sup>1</sup> Verizon indicates that it is seeking to implement the Federal Communications Commission's (FCC) Four Line Carve-Out Rule<sup>2</sup> in the areas served by the 12 central offices in Density Cell 1 (Philadelphia and Pittsburgh).

Specifically, Verizon's instant filing adds language to Tariff No. 216 to cease provisioning new orders from Competitive Local Exchange Carriers (CLEC) after September 9, 2004, for the following UNEs in Density Cell 1:

- 1) Four or More Lines Switching Line Ports.
- 2) Four or More Lines Local Switching Line Port Features.
- 3) Local Switching (End Office) Trunk Ports for use with Four or More lines Local Switching Line Ports.
- 4) Common (Shared) Transport for use with Four or More Lines Local Switching Line Ports.
- 5) Platforms that include Four or More Lines Local Switching Line Ports.
- 6) Combinations that include Four or More Lines local Switching Line Ports.

Verizon provided notice to CLECs under existing inter-connection agreements that after September 9, 2004, Verizon will offer CLECs the option to receive these UNEs on a resale basis under 47 U.S.C.A. § 251(c)(4) or under commercially-negotiated agreements.

Verizon claims its filing complies with the FCC's Triennial Review Order (TRO)<sup>3</sup> and in particular removes an

<sup>1</sup> Verizon also made a separate filing on the same date to eliminate enterprise switching for high capacity loops and related UNE-Ps, docketed at R-00049425.

<sup>2</sup> 47 CFR 53.319(c)(2)

<sup>3</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, FCC 03-36, as corrected by FCC 03-227, CC Doc. No. 01-338, Report and Order (rel. Aug. 21, 2003), vacated-in-part, remanded-in-part and affirmed-in-part by *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), petitions for cert. pending.

existing conflict with Federal law. Verizon also refers to the Commission's May 28, 2004, Order: *In re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market*, Doc. No. I-00030100 (May 28th Order).<sup>4</sup>

On June 24, 2004, the Office of Small Business Advocate (OSBA) filed a complaint against Verizon's filing. The OSBA alleges that Verizon's tariff filing is misleading because they omit pertinent information putting into context procedural steps to be taken to resolve the alleged conflict with Federal law. The OSBA also states the tariff filing is contrary to the Commission's existing Orders and against Commission's latest mandate in the Reconsideration Order to maintain status quo established in its Global Order.

The OSBA claims that the proper venue for contesting the alleged conflict between State and Federal law and the Commission's interpretation of Section 271 is in the Federal courts. Accordingly, the OSBA requests Verizon's tariff revisions be denied and to direct Verizon to seek relief from the Federal district court or, in the alternative, suspend the tariff revisions for an investigation.

On July 2, 2004, AT&T filed on behalf of its affiliated CLECs, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG Delaware Valley, a complaint against the proposed tariff revision. In its complaint, AT&T avers that implementing a Four Line Carve-Out rule would preclude CLECs from obtaining or continuing to lease local circuit switching to serve four or more lines and is aimed at inhibiting competitive choice for small and medium business customers in the Philadelphia and Pittsburgh areas.

AT&T states that the Commission, in its Global Order, required Verizon to make UNE-P available in this Commonwealth without limitation to residential customers and to business customers generating less than \$80,000 annual total billed revenue. Moreover, Verizon's effort to limit the availability of UNE-P through the imposition of the Four Line Carve-Out rule violates the prior decision of the Commission.

AT&T claims Verizon's suggestion that the FCC's TRO authorizes the Four Line Carve Out rule is without merit as the FCC explicitly recognized that specific market factors could result in a different cut-off threshold than the four line proxy. AT&T asserts that the FCC required the status quo be maintained until the states establish new thresholds for defined markets. AT&T argues that while the FCC expected states might elect to reapply the four line limit, there could be significant evidence to the contrary that would justify a higher limit. According to AT&T, the FCC expressly recognized a cross over point may exist where it makes economic sense for a multi-line customer to be served by a DS1 loop. AT&T claims the economically efficient cross-over point in this Commonwealth is between 14 and 16 lines, not the 4 lines proposed by Verizon. Therefore, AT&T states Verizon's proposed tariff is not authorized by the TRO.

On July 12, 2004, in response to Verizon's instant filing, the Pennsylvania Carriers Coalition (PCC) filed a Complaint and Request for Suspension of Tariff Supplements (Complaint).<sup>5</sup> In its Motion to Dismiss, PCC claims

that the instant filings eliminate certain services or regulatory obligations and, as indicated by Verizon, that the revisions are filed in response to the Commission's May 28th Order which directed Verizon to file non-TELRIC rates for enterprise switching under 66 Pa.C.S. §§ 1301 and 1308. However, although described differently by Verizon, the tariff revisions do nothing more than request the Commission to relieve Verizon from certain of the Global Order's unbundling obligations. PCC contends the proper procedural vehicle for Verizon to seek relief from its unbundling obligations is an application to abandon service under 66 Pa.C.S. § 1102(a)(2), and that accordingly, the tariff revisions should be dismissed. Specifically, PCC feels that rather than filing tariff supplements under 66 Pa.C.S. § 1308, Verizon should have filed a pleading seeking relief from the Global Order's unbundling obligations.

PCC's Complaint states that Verizon's instant filing disregards recent Commission Orders wherein Verizon's request was denied to relieve it of the Global Order obligations and, therefore, Verizon must continue to offer UNE-P to CLECs for all customers having less than \$80,000 in total billed revenue. PCC also asserts that the FCC Four Line Carve-Out rule is not binding on the states and should be treated as a presumption not a requirement and that the tariff revision should be summarily rejected.

Further, PCC claims that Verizon has continued obligation to offer unbundling local switching under 47 U.S.C.A. § 271(c)(2)(B)(vi). PCC adds Verizon is bound by the just and reasonable and nondiscriminatory rate standard provided in 47 U.S.C.A. § 202 which is the same standard the Commission applied under State law in approving Verizon's existing Tariff 216 rates, and to charge anything above cost-based rates would be discriminatory under both 47 U.S.C.A. § 202 and 66 Pa.C.S. § 1304. Furthermore, Verizon has agreed to similar unbundling obligations as a condition of its merger with GTE Inc.

PCC also claims the Commonwealth Court upheld the \$80,000 TBR rule and specifically found that there was nothing to suggest that the classification was a "mismatch" or otherwise conflict with Federal law. PCC also contends that the Commission, in its December 18, 2003, Order, which was further reiterated in the May 28th, Order made legal determinations that under Federal law, local circuit switching must continue to be unbundled by Verizon under 47 U.S.C.A. § 271, that under State law and the Global Order UNE-P must continue to be offered to serve all customers at or below the \$80,000 TBR threshold, and that Verizon must continue to offer network elements and UNE-P to CLECs at the current rates contained in Verizon Tariff 216.

The PCC professes that the Commission in its DS1 Switching Order and the Reconsideration Order has envisioned the filing of a pleading in the form of a Petition which would be followed by a development of a full evidentiary record in seeking a relief from its Global Order unbundling obligation. PCC further states that Verizon's tariff revisions under 66 Pa.C.S. §§ 1301 and 1308, which are reserved for rate changes, should be dismissed and required to file a pleading requesting relief from the Global Order's unbundling obligations under the Global Order standards for relief.

In its Complaint, PCC claims that since Verizon has not proposed a change of rates and that it is proposing to abandon certain services to its CLEC customers, that the

<sup>4</sup> This order disposed of Verizon's Petition for Reconsideration of that Section of Commission's December 18, 2003, Order distinguishing Verizon's distinct access obligation stemming from Global Order, the Pennsylvania 271 Order and the TRO.

<sup>5</sup> On July 12, 2004, PCC also filed a complaint and Motion to Dismiss Verizon's tariff revisions to Tariff 216 regarding elimination of enterprise switching UNES at Doc. No. R-00049524.

proper procedural vehicle for Verizon to seek relief from its unbundling obligations is an application under 66 Pa.C.S. § 1102(a)(2).

Our review of the proposed tariff filing indicates that it may be unlawful, unjust, unreasonable and contrary to the public interest. Further, in a related filing of Verizon at Doc. No. R-00049525, filed concurrently with the instant filing, we are ordering a new proceeding providing an opportunity for Verizon to demonstrate whether it can be relieved of its Global Order obligation to provision UNE-P to CLECs. The decision we make in that proceeding will invariably have an effect in the final determination in this case. Accordingly, we will suspend this filing for investigation and for the purposes of a Recommended Decision on the relevant factual and legal issues. To expedite resolution of this proceeding, the recommended decision should be issued by December 2, 2004, if practicable; *Therefore,*

*It Is Ordered That:*

1. An investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness and reasonableness of the rates, rules and regulations contained in the revision to Verizon's Tariff-Telephone Pa. PUC No. 216, filed on June 8, 2004, to become effective on August 7, 2004.

2. The proposed revision to Verizon's Tariff-Telephone Pa. PUC No. 216, filed on June 8, 2004, to become effective on August 7, 2004, to remove UNEs for switching and transport including UNE-Ps for four or more lines from the available UNEs in Density Cell 1 (Philadelphia and Pittsburgh), is suspended for a period not to exceed 6 months, or until February 6, 2005, under 66 Pa.C.S. § 1308(b), but without prejudice to Pennsylvania Carrier Coalition's Motion to Dismiss, pending the outcome of this investigation, unless otherwise directed by Order of the Commission.

3. Verizon shall file the appropriate tariff suspension supplements and shall continue to apply the existing rates, rules and regulations in Tariff-Telephone Pa. PUC No. 216 during the suspension period.

4. The Office of Administrative Law Judge (OALJ) shall assign this matter to an Administrative Law Judge for proceedings as shall be deemed necessary and the issuance of a Recommended Decision to be issued by December 2, 2004, if practicable. The OALJ shall coordinate, and if appropriate consolidate, this matter with the proceeding at Doc. No. R-00049525.

5. The Administrative Law Judge's Recommended Decision shall include an analysis of the relationship, if any, between the disposition of this case and disposition of the issue pending in Doc. No. R-00049525 as to whether Verizon can be relieved from the Global Order obligation to provision UNE-P to CLECs.

6. The Motion to Dismiss Tariff Revision filed by the Pennsylvania Carriers Coalition shall be addressed by the Administrative Law Judge in limine.

7. If it becomes clear that a final Commission order disposing of the proposed tariff revision will not be entered by the end of the 6-month suspension period established in ordering paragraph 2, the Administrative Law Judge assigned to this case shall issue an Interim Order suspending this filing for an additional 3 months or until May 6, 2005.

8. A copy of this Order be served upon Verizon, AT&T, the PCC, the Office of Consumer Advocate, the OSBA, the Office of Trial Staff, the OALJ and published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 04-1577. Filed for public inspection August 20, 2004, 9:00 a.m.]

Order

Public Meeting held  
August 5, 2004

*Commissioners Present:* Terrance J. Fitzpatrick; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Piz-zingrilli; Wendell F. Holland

*Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc. Tariff No. 216 Revisions Regarding Switching, Transport and Platform for High Capacity Loops; Doc. No. R-00049525*

Order

*By the Commission:*

On June 8, 2004, Verizon Pennsylvania Inc. (Verizon) filed a tariff revision to its Services for Other Telephone Companies Tariff-Pa. PUC No. 216, effective August 7, 2004, to eliminate Unbundled Network Elements (UNE) for switching and transport, including UNE-Platforms (UNE-P) for high capacity loops<sup>1</sup> for the enterprise market.

Specifically, Verizon's instant filing adds language to Tariff No. 216 to cease provisioning new orders from Competitive Local Exchange Carriers (CLEC) after September 9, 2004, for the following UNEs:

- 1) ISDN-PRI Local Switching Port.
- 2) ISDN-PRI Local Switching Port Features.
- 3) Local Switching (End Office) Trunk Ports for use with ISDN-PRI Local Switching Port.
- 4) Common (Shared) Transport for use with ISDN-PRI Local Switching Port.
- 5) UNE Primary Rate Interface (PRI) ISDN Platform.
- 6) UNE Primary Rate Interface (PRI) ISDN Foreign Exchange Platform.
- 7) Switched DS1 Local Switching Port Features.
- 8) Switched DS1 Local Switching Port Features.
- 9) Local Switching (End Office) Trunk Ports for use with Switched DS1 Local Switching Port.
- 10) Common (Shared) Transport for use with Switched DS1 Local Switching Port.
- 11) UNE DS1 DID/DOD/PBX Platform.
- 12) UNE DS1 DID/DOD/PBX Foreign Exchange Platform.

Verizon provided notice to CLECs under existing interconnection agreements that after September 9, 2004, Verizon will offer CLECs the option to receive these UNEs on a resale basis under 47 U.S.C.A. § 251(c)(4) or under commercially-negotiated agreements.

<sup>1</sup> ISDN-PRI, DS1

Verizon claims its filing complies with the Federal Communications Commission's (FCC) Triennial Review Order (TRO)<sup>2</sup> and in particular removes an existing conflict with Federal law. Verizon also refers to the Commission's May 28, 2004, Order: *In re: Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market*, Doc. No. I-00030100 (May 28th Order).<sup>3</sup> Verizon requests the instant tariff revision be considered as a request for the elimination of the current tariff provisions and rates for enterprise switching.

On June 24, 2004, the Office of Small Business Advocate (OSBA) filed a complaint against Verizon's filing. The OSBA alleges that Verizon's tariff filing is misleading because they omit pertinent information putting into context procedural steps to be taken to resolve the alleged conflict with Federal law. The OSBA also states the tariff filing is contrary to the Commission's existing Orders and against Commission's latest mandate in the Reconsideration Order to maintain status quo established in its Global Order.

The OSBA claims that the proper venue for contesting the alleged conflict between State and Federal law and the Commission's interpretation of Section 271 is in the Federal courts. Accordingly, the OSBA requests Verizon's tariff revisions be denied and to direct Verizon to seek relief from the Federal district court or, in the alternative, suspend the tariff revisions for an investigation.

On July 12, 2004, the Pennsylvania Carriers Coalition (PCC) filed a Compliant and Request for Suspension Tariff Supplements (Compliant) and a Motion to Dismiss Tariff Supplements (Motion to Dismiss) Verizon's filing to eliminate Enterprise Switching. PCC claims the instant filings eliminate certain services or regulatory obligations and as indicated by Verizon that the revisions are filed in response to the Commission's Reconsideration Order of May 28, 2004. Further, according to PCC, the proper procedure for Verizon to seek relief from its unbundling obligations is an application to abandon service under 66 Pa.C.S. § 1102(a)(2).

PCC's Complaint states that Verizon's filing to eliminate the availability of UNE-P to CLECs to serve various business customers in its territory is in disregard to recent Commission Orders that refused Verizon's request to relieve it of the Global Order requirements to continue to offer UNE-P to CLECs to serve all customers with under \$80,000 in total billed revenue (TBR rule). PCC requests that Verizon's filing be summarily rejected, or at least suspended, for the conduct of hearings to apply the Global Order standard for modifying Verizon's unbundling requirements.

PCC also claims the Commonwealth Court upheld the \$80,000 TBR rule and specifically found that there was nothing to suggest that the classification was a "mis-match" or otherwise conflict with Federal law. PCC asserts that the Commission, in its December 18, 2003, Order, which was further reiterated in the May 27, 2004, Reconsideration Order, made legal determinations that under Federal law, local circuit switching must continue to be unbundled by Verizon under 47 U.S.C.A. § 271; that under State law and the Global Order UNE-P must

continue to be offered to serve all customers at or below the \$80,000 TBR threshold; and that Verizon must continue to offer network elements and UNE-P to CLECs at the current rates contained in Verizon Tariff 216.

PCC also claims that Verizon continues to have an unbundling obligation pertaining to local switching and transport under 47 U.S.C.A. § 271 wherein its wholesale service to CLECs must be provided at just and reasonable rates and in a nondiscriminatory manner. Furthermore, that Verizon agreed to similar unbundling obligations as a condition of its merger with GTE Inc.

Consistent with our decision in our July 8, 2004, Order at R-00038871C0001 (addressing the material the question as to whether this Commission lacks independent authority under section 271 of the act to relieve Verizon's line sharing requirement), we conclude that it is premature to eliminate the UNEs that are still required under Section 271. If the FCC makes a determination as to Verizon's ongoing obligation as part of its Section 271 commitment, Verizon may then petition the Commission for such further action as may be appropriate.<sup>4</sup>

Meanwhile, we shall initiate a proceeding to provide an opportunity for Verizon to make its case as to why it should be relieved of its obligation to provide UNE-P to CLECs. In the Global Order we set the following requirements to eliminate UNE-P:

Thereafter UNE-P and EELs will continue to be offered to CLECS, except where BA-PA can demonstrate to the Commission, by a preponderance of the evidence, that collocation space is available that it can be provisioned in a timely manner, and that considerations of the number of customers and revenues from the customers served by the CLEC from a collocation in that central office represents a valid reasonable economic alternative to the provision of UNE-P and/or EELs to that CLEC.

(Global Order Pg. 90)

Accordingly, we shall treat Verizon's instant filing as its request for a proceeding to determine whether Verizon can meet its burden to demonstrate, consistent with our Global Order entered September 30, 1999, at Nos. P-00991648 and P-00991649, that collocation space is available, that it can be provisioned in a timely manner and that considerations of the number of customers and revenues from the customers served by the CLEC from a collocation in that central office represents a valid reasonable economic alternative to the provision of UNE-P to that CLEC.

Our review of the proposed tariff filing indicates that it may be unlawful, unjust, unreasonable and contrary to the public interest. Further, the proceeding we are instituting today will provide Verizon with the opportunity to demonstrate whether there are valid reasonable economic alternatives for CLECs to the provisioning of UNE-P as was required in the Commission's Global Order. Verizon shall continue to offer UNEs for switching and transport, including UNE-P for high capacity loops, for the enterprise market at tariffed rates until otherwise ordered. Accordingly, we will suspend this filing for investigation and for the purposes of a Recommended Decision on the relevant factual and legal issues. To expedite resolution of this proceeding, the recommended decision should be issued by December 2, 2004, if practicable; *Therefore,*

<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, FCC 03-36, as corrected by FCC 03-227, CC Doc. No. 01-338, Report and Order (rel. Aug. 21, 2003), vacated-in-part, remanded-in-part and affirmed-in-part by *USTA v. FCC*, 359 F.3d 554 (D. C. Cir. 2004), petitions for cert. pending.

<sup>3</sup> This Order disposed of Verizon's Petition for Reconsideration of that Section of Commission's December 18, 2003, Order distinguishing Verizon's distinct access obligation stemming from Global Order, the Pennsylvania 271 Order and the TRO.

<sup>4</sup> As noted that on October 24, 2003, the Verizon telephone companies filed a petition asking the FCC to forebear from Section 271 obligations. See Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); CC Doc. No. 01-338. The matter is pending further FCC action from Federal court remand.

*It Is Ordered That:*

1. An investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness and reasonableness of the rates, rules and regulations contained in the revision to Verizon's Tariff-Telephone Pa. PUC No. 216, filed on June 8, 2004, to become effective on August 7, 2004.

2. The proposed revision to Verizon's Tariff-Telephone Pa. PUC No. 216, filed on June 8, 2004, to become effective on August 7, 2004, to eliminate enterprise switching including Platforms from the available UNEs in Pennsylvania, is suspended for a period not to exceed 6 months, or until February 6, 2005, under 66 Pa.C.S. § 1308(b), but without prejudice to PCC's Motion to Dismiss, pending the outcome of this investigation, unless otherwise directed by Order of the Commission.

3. This investigation shall include, inter alia, consideration of whether Verizon can meet its burden to demonstrate, consistent with our Global Order entered September 30, 1999, at Nos. P-00991648 and P-00991649, that collocation space is available, that it can be provisioned in a timely manner and that considerations of the number of customers and revenues from the customers served by the CLEC from a collocation in that central office represents a valid reasonable economic alternative to the provision of UNE-P to that CLEC.

4. Verizon shall file the appropriate tariff suspension supplements and shall continue to apply the existing rates, rules and regulations in Tariff-Telephone Pa. PUC No. 216 during the suspension period.

5. The Office of Administrative Law Judge (OALJ) shall assign this matter to an Administrative Law Judge for proceedings as shall be deemed necessary and the issuance of a Recommended Decision to be issued by December 2, 2004, if practicable. The OALJ shall coordinate, and if appropriate consolidate, this matter with the proceeding at Doc. No. R-00049524.

6. The Motion to Dismiss Tariff Revision filed by the PCC shall be addressed by the Administrative Law Judge in limine.

7. If it becomes clear that a final Commission order disposing of the proposed tariff revision will not be entered by the end of the 6-month suspension period established in Ordering Paragraph No. 2, the Administrative Law Judge assigned to this case shall issue an Interim Order suspending this filing for an additional 3 months or until May 6, 2005.

8. A copy of this Order be served upon Verizon, the PCC, the Office of Consumer Advocate, the OSBA, the Office of Trial Staff, the OALJ and published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 04-1578. Filed for public inspection August 20, 2004, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility

Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by September 13, 2004. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

#### **Application of the following for approval to *begin operating as common carriers* for transportation of persons as described under the application.**

**A-00120986. A Classy Limousine Service, LLC** (655 Mountain Street, Enola, Cumberland County, PA 17025), a limited liability company of the Commonwealth—persons, in limousine service, between points in the Counties of Dauphin, York, Cumberland and Perry, and from points in said counties, to points in Pennsylvania, and return.

#### **Application of the following for certificate of public convenience approving the operation of motor vehicles as *common carriers* for the transportation of household goods by transfer as described under the application.**

**A-00120984. Sigmund Transfer Company, LLC** (2606 Fifth Avenue, McKeesport, Allegheny County, PA 15132), a limited liability company of the Commonwealth—(1) household goods in use: (a) between points in the County of Allegheny; and (b) from points in the County of Allegheny, to points in Pennsylvania, and vice versa; and (2) property, excluding household goods in use, between points in Pennsylvania; which is to be a transfer of all the rights authorized under the certificate issued at A-00105669 to B. H. Stumpf, Co., Inc., subject to the same limitations and conditions. *Attorney:* William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219.

#### **Application of the following for approval of the *beginning of the exercise of the right and privilege of operating motor vehicles as contract carriers* for the transportation of household goods as described under the application.**

**A-00115326, Folder 3. Galil Moving & Storage, Inc.** (111 Linnet Street, Bayonne, NJ 07002), a corporation of the State of Delaware—household goods in use, for REO Allegiance, Inc., between points in Pennsylvania; subject to the following condition: that all service shall be limited to transportation performed under eviction and foreclosure services. *Attorney:* Joel B. Albert, Two Bala Plaza, Suite 300, Bala Cynwyd, PA 19004.

#### **Application of the following for the approval of the *transfer of stock* as described under the application.**

**A-00108299, Folder 5000. J. E. T. Enterprises, Inc. t/d/b/a Londonderry Limousines, Ltd.** (320 Plaza Drive, Palmyra, Lebanon County, PA 17078), a corporation of the Commonwealth—for the approval of the transfer of 100 shares of issued and outstanding shares

held by Eric G. Shank and 30 shares of issued and outstanding shares held by E. Wilfred Light to John J. Gross. *Attorney:* Keith D. Wagner, 6 E. Main Street, P. O. Box 323, Palmyra, PA 17078.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 04-1579. Filed for public inspection August 20, 2004, 9:00 a.m.]

## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #04-109.1, Install Concrete Floor at Tioga Marine Terminal (TMT), until 2 p.m. on Thursday, September 9, 2004. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available August 24, 2004. Additional information and project listings can be found at [www.philaport.com](http://www.philaport.com). The cost of the bid document is \$35 (includes 7% Pennsylvania sales tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations.

A mandatory prebid job site meeting will be held on September 2, 2004, at 10 a.m. at the TMT (inside the gate), Delaware Ave. and Tioga Street, Philadelphia, PA 19134. Bidders must provide the Procurement Department, in writing, with the names of individuals that will be attending the prebid meeting. The information must be faxed, 24 hours prior to the meeting, to (215) 426-6800, Attn: Procurement Department.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 04-1580. Filed for public inspection August 20, 2004, 9:00 a.m.]

## STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania Bureau of Professional and Occupational Affairs v. Gregory Alan Johnson, M.D., Respondent; Doc. No. 0892-49-02; File No. 01-49-04770

### Notice

Formal disciplinary action has been filed against you. You may lose your license, certificate, registration or

permit to practice your profession or occupation. You may be subject to civil penalties of up to \$1,000 for each violation.

If you wish to defend against the charges in the order to show cause or to present evidence to mitigate any penalty that may be imposed, the procedures for doing so are explained in the order to show cause.

You have the right to retain an attorney. Although you may represent yourself without an attorney, you are advised to seek the help of an attorney.

All proceedings are conducted under the Administrative Agency Law and the General Rules of Administrative Practice and Procedures.

You are directed to respond to the charges by filing a written answer within 30 days of the date on the order to show cause. IF YOU DO NOT FILE AN ANSWER, DISCIPLINARY ACTION MAY BE TAKEN AGAINST YOU WITHOUT A HEARING. To file your answer, you must bring or send an original and three copies of your answer and any pleadings or other documents related to this matter to the following address:

Deanna S. Walton, Prothonotary  
Bureau of Professional and Occupational Affairs  
124 Pine Street, Suite 200  
Harrisburg, PA 17101

You must also send a separate copy of your answer and any other pleadings or documents related to this case to the prosecuting attorney named in the order to show cause.

### Order to Show Cause

*And Now*, this 22nd day of July, 2002, Gregory Alan Johnson, M.D. (Respondent) is hereby *Ordered to Show Cause* why the State Board of Medicine (Board), upon consideration of the Factual Allegations and the applicable law, should not suspend, revoke or otherwise restrict Respondent's license, certificate, registration or permit, or impose a civil penalty. This action is brought pursuant to the Medical Practice Act, Act of December 20, 1985, P. L. 457, No. 112, as amended, (Act), 63 P. S. § 422.1 et seq., and will be conducted in accordance with the Administrative Agency Law, 2 Pa.C.S. §§ 501—508, 701—704, 63 P. S. §§ 2201—2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1—35.251.

*It Is Further Ordered* that Respondent file an Answer to this Order to Show Cause in writing within thirty (30) days of the date of this Order stated above, in accordance with 1 Pa. Code § 35.37.

CHARLES D. HUMMER, Jr., M.D.,  
*Chairperson*

[Pa.B. Doc. No. 04-1581. Filed for public inspection August 20, 2004, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.


Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:  
 The payment date specified in the contract.  
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.  
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center  
 PA Department of Community and Economic Development  
 374 Forum Building  
 Harrisburg, PA 17120  
 800-280-3801 or (717) 783-5700

### Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department:	General Services			
Location:	Harrisburg, Pa.			
Duration:	12/1/93-12/30/93			
Contact:	Procurement Division			
	787-0000			

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:  
 Vendor Services Section  
 717-787-2199 or 717-787-4705

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.  
  
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705



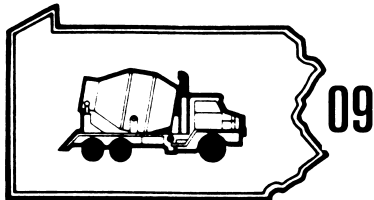
## PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Services are free except for the cost of photocopying contracts (15 cents per page); postage; redaction, and certified copies. The bureau may assess reasonable fees for labor and other expenses necessary to comply with the request. A free brochure explains how to take advantage of available services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room 201 Finance Building  
 Harrisburg, PA 17120  
 717-787-4586  
 1-800-252-4700  
 BizOutlet@patreasury.org

BARBARA HAFER,  
*State Treasurer*

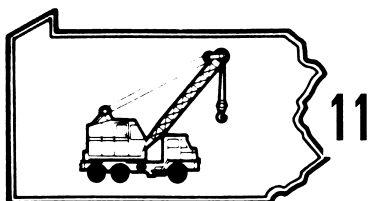
## SERVICES



### Construction & Construction Maintenance

**cn00010249** This contract will provide manpower, equipment and incidental guiderail material for installation of approximately 17,000 linear feet of strong post and approximately 35,000 linear feet of weak post guiderail at various locations throughout McKean County. All guiderail will be supplied by the Dept. All bidders must be prequalified to bid on this project. Pa. prevailing wage act does apply.

**Department:** Transportation  
**Location:** Various locations in McKean County  
**Duration:** One Year  
**Contact:** Warren Buchanan, (814) 465-7754



### Demolition—Structural Only

**0065-A11** The Pennsylvania Department of Transportation will be accepting sealed bids for the sale and removal of both commercial and residential dwellings located along State Route 65 (also known as Ohio River Boulevard) in the Borough of Avalon, Allegheny County. Contractors will be required to demolish or remove all structures, outbuildings, and site improvements. The contractor will also be required to comply with FHWA and State regulations. For bid information, specifications, and further information, please contact Mr. Michael Sudar, District Property Manager at (412) 429-4830.

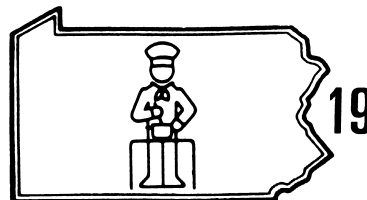
**Department:** Transportation  
**Location:** Borough of Avalon  
**Duration:** 30 days from Notice to Proceed  
**Contact:** Michael Sudar, (412) 429-4830

**0019-A27** The Pennsylvania Department of Transportation will be accepting sealed bids for the sale and removal of both industrial, commercial and residential dwellings located along State Route 0019 (also known as the West End Approach) in the City of Pittsburgh, Allegheny County. Contractors will be required to demolish or remove all structures, outbuildings and site improvements. They will also be required to comply with FHWA and State regulations. For bid information, specifications and further information, please contact Mr. Michael Sudar, District Property Manager at (412) 429-4830.

**Department:** Transportation  
**Location:** City of Pittsburgh  
**Duration:** 30 days from Notice to Proceed  
**Contact:** Michael Sudar, (412) 429-4830

**0008-A05** The Pennsylvania Department of Transportation will be accepting sealed bids for the sale and removal of both commercial and residential dwellings located along State Route 0008 (also known as William Flynn Highway) in the Borough of Etna and Shaler Township, Allegheny County. Contractors will be required to demolish or remove all structures, outbuildings and site improvements. They will also be required to comply with FHWA and State regulations. For bid information, specifications and further information, please contact Mr. Michael Sudar, District Property Manager at (412) 429-4830.

**Department:** Transportation  
**Location:** Borough of Etna and Shaler Township  
**Duration:** 30 days from Notice to Proceed  
**Contact:** Michael Sudar, (412) 429-4830



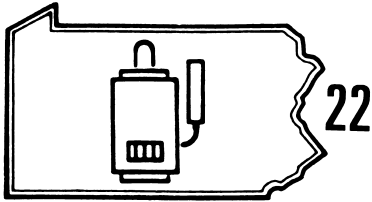
### Food

**L-2-04** Frozen fruits and vegetables: Interested vendors should fax Request for Bid L-2-04 to (570) 443-4177. Tentative bid opening date is scheduled for Tuesday September 7, 2004 at 2:00 PM EST. Please include vendor name, mailing address, phone number and SAP Vendor Number.

**Department:** Public Welfare  
**Location:** White Haven Center, 827 Oley Valley Road, White Haven, PA 18661  
**Duration:** October 1, 2004 through December 31, 2004  
**Contact:** Sandra Repak, A03, (570) 443-4232

**M-891** Fresh/frozen/chilled meats and meat products; poultry and poultry products; fish; and, cheeses, to be delivered only at request of facility.

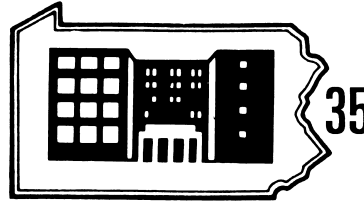
**Department:** Labor and Industry  
**Location:** Hiram G. Andrews Center (FOB Shipping Platform), 727 Goucher St., Johnstown, PA 15905  
**Duration:** October, November, December 2004  
**Contact:** Christine A. Sloan, Pur. Agt., (814) 255-8228



### HVAC Services

**FM8831** Provide emergency and routine repair work for the heating, air-conditioning, electrical, and plumbing systems. Contractor must respond to the call within four (4) hours of receipt either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty of parts, where applicable, and further agrees to guarantee workmanship and replacement parts, provided by their firm for ninety (90) days. Materials and parts are to be charged at cost. Remarks: bidding to be done on labor rate per hour for mechanic and helper plus travel.

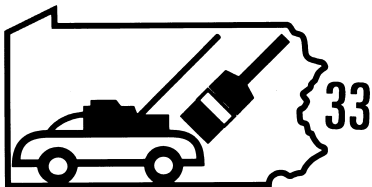
**Department:** State Police  
**Location:** Troop N, Hazleton Headquarters and Garage, 250 Dessen Drive, Hazleton, PA 18201  
**Duration:** September 1, 2004 through June 30, 2007  
**Contact:** Helen Fuhrman, (717) 705-5952



### Real Estate Services

**098459** Application for the lease of right-of-way. Notice is hereby given pursuant to 67 Pa. Code § 495.4(d), an application to lease highway right-of-way has been submitted to the Department by Picking Treece-Bennett Mortuary, Inc., Thomas L. Dixon, President, of 514 Somerset Street, Johnstown, PA 15901, seeking to lease highway right-of-way located at Somerset Street and Peden Alley in the City of Johnstown, Cambria County, containing 16,782 square feet adjacent to SR 56 Section 012, for the purposes of parking. Interested persons are invited to submit, within thirty (30) days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to Thomas A. Prestash, P. E., Acting District Executive, Engineering District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648

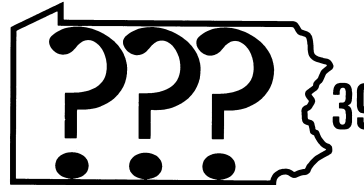
**Department:** Transportation  
**Location:** Somerset St., Peden Alley, City of Johnstown  
**Duration:** 25 Years  
**Contact:** Barry Clancy, (814) 696-7211



### Property Maintenance

**SSHE 401-BL-746** Work included under this project consists of supplying all labor, tools, materials, equipment, services and appurtenances to accomplish disassembling Boiler #4, Williamson McClive Chain Grate Stoker, and rebuild with new parts. One prime contract. To obtain a copy of the bid documents send a request by fax to Diann Shamburg at 570-389-2017. The pre-bid conference will be held on September 1, 2004 at 10:00 am in Waller Administration Building, Room 38A, Bloomsburg, PA 17815. The bid will be due September 20, 2004 at 1:00 p.m. in Waller Administration Building, Room 38, Bloomsburg, PA 17815.

**Department:** State System of Higher Education  
**Location:** Bloomsburg University, Heating Plant, 400 East Second Street, Bloomsburg, PA 17815  
**Duration:** 90 days from Notice to Proceed  
**Contact:** Diann Shamburg, (570) 389-4312



### Miscellaneous

**CN000010205/NOTIFIER FIRE ALARM SYSTEM** The State Correctional Institution at Somerset will be soliciting bids for SCI Forest, a new correctional facility, for Notifier Fire Alarm System Maintenance. Vendors are required to make a site visit to the institution prior to submitting a bid. Only vendors certified with factory training on the Notifier system may bid. Interested vendors must be registered with the Commonwealth so that they have the ability to receive bids and purchase orders. Vendors should contact the individual listed below for a bid package or for information on how to become registered.

**Department:** Corrections  
**Location:** State Correctional Institution at Forest, 1 Woodland Drive, P. O. Box 307, Marienville, PA 16239-0307  
**Duration:** 8/5/04 through 12/31/04  
**Contact:** Theresa Solarczyk, Purchasing Agent II, (814) 443-8100, x311

**2004-ACS-2** PennSERVE: The Governor's Office of Citizen Service is accepting applications for grants to operate an AmeriCorps National service program. AmeriCorps provides Federal funding to help communities engage volunteers who will address needs related to education, public safety, homeland security, human services, and the environment. Eligible applicants include not-for-profit agencies, higher education institutions, and government entities. A local cash match is required, in addition to in-kind matching funds. AmeriCorps application instructions, along with AmeriCorps Program Guidelines, can be accessed on the PennSERVE website - [www.pennserve.state.pa.us](http://www.pennserve.state.pa.us) - or by calling 717-787-1971. Applications must be received at PennSERVE, 1306 Labor and Industry Bldg., by the application deadline which is 4 p.m., Friday, Sept. 17, 2004.

**Department:** Labor and Industry  
**Location:** 1306 Labor and Industry Bldg., Seventh and Forster Streets, Harrisburg, PA 17120  
**Duration:** One year  
**Contact:** Renee Johnson, 717-772-4426

[Pa.B. Doc. No. 04-1582. Filed for public inspection August 20, 2004, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.  
*Secretary*

