

# PENNSYLVANIA BULLETIN

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**Agencies in this issue**

The Courts

Department of Aging

Department of Banking and Securities

Department of Conservation and Natural  
Resources

Department of Environmental Protection

Department of Human Services

Environmental Hearing Board

Insurance Department

State Board of Dentistry

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

**No. 530, January 2019**

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

## *Pennsylvania Bulletin*

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

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

The following documents are published in the *Pennsylvania Bulletin*: Governor's Executive Orders; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Pennsylvania Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

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

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

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

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

The agency then allows sufficient time for public comment before taking final action. A Final Rulemaking must be published in the *Pennsylvania Bulletin* before the changes can take effect. If the agency wishes to adopt changes to the Proposed Rulemaking to enlarge the scope, it must repropose.

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

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

## ***Pennsylvania Code***

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

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

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government.

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

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

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

A chronological table of the history of *Pennsylvania Code* sections may be found at [www.legis.state.pa.us/cfdocs/legis/CH/Public/pcde\\_index.cfm](http://www.legis.state.pa.us/cfdocs/legis/CH/Public/pcde_index.cfm).

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

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

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

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

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

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

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

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

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

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

### Fiscal Notes

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

A fiscal note provides the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the 5 succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the 5 succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; and (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years. In item (8) the recommendation, if any, made by the Secretary of the Budget is published with the fiscal note. "No fiscal impact" means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended. See 4 Pa. Code Chapter 7, Subchapter R (relating to fiscal notes).

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## List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2019.

<p><b>210 Pa. Code (Appellate Procedure)</b></p> <p><b>Proposed Rules</b></p> <p>3 ..... 10</p> <p><b>225 Pa. Code (Rules of Evidence)</b></p> <p><b>Proposed Rules</b></p> <p>Article IX ..... 165</p> <p><b>231 Pa. Code (Rules of Civil Procedure)</b></p> <p><b>Adopted Rules</b></p> <p>200 ..... 169</p> <p>1910 ..... 170</p>	<p><b>234 Pa. Code (Rules of Criminal Procedure)</b></p> <p><b>Adopted Rules</b></p> <p>4 ..... 190</p> <p><b>Proposed Rules</b></p> <p>5 ..... 197</p> <p>10 ..... 197</p> <p><b>237 Pa. Code (Juvenile Rules)</b></p> <p><b>Adopted Rules</b></p> <p>1 ..... 208</p> <p>5 ..... 208</p> <p>11 ..... 208</p> <p><b>255 Pa. Code (Local Court Rules)</b></p> <p>Unclassified ..... 12, 13, 14, 214, 215, 216</p>
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# THE COURTS

## Title 225—RULES OF EVIDENCE

[ 225 PA. CODE ART. IX ]

### Proposed Adoption of Pa.R.E. 902(13) and Pa.R.E. 902(14)

The Committee on Rules of Evidence propose the adoption of Pennsylvania Rule of Evidence 902(13) and 902(14) concerning the self-authentication of certified records generated by an electronic process or system and certified data copied from an electronic device, storage medium, or file, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

Daniel A. Durst, Counsel  
Committee on Rules of Evidence  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717.231.9536  
evidencerules@pacourts.us

All communications in reference to the proposal should be received by February 22, 2019. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Committee on  
Rules of Evidence*

JOHN P. KRILL, Jr.,  
*Chair*

#### Annex A

### TITLE 225. RULES OF EVIDENCE

#### ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

##### Rule 902. Evidence That is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed But Are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute or a rule prescribed by the Supreme Court.

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* Material purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Authorized by Statute.* A signature, document, or anything else that a statute declares to be presumptively or *prima facie* genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic

record that meets the requirements of Rule 803(6)(A)—(C), as shown by a certification of the custodian or another qualified person that complies with Pa.R.C.P. No. 76. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(13) *Certified Records Generated by an Electronic Process or System.* **A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).**

(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* **Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).**

(15) *Certificate of Non-Existence of a Public Record.* A certificate that a document was not recorded or filed in a public office as authorized by law if certified by the custodian or another person authorized to make the certificate.

#### Comment

This rule permits some evidence to be authenticated without extrinsic evidence of authentication or identification. In other words, the requirement that a proponent must present authentication or identification evidence as a condition precedent to admissibility, as provided by Pa.R.E. 901(a), is inapplicable to the evidence discussed in Pa.R.E. 902. The rationale for the rule is that, for the types of evidence covered by Pa.R.E. 902, the risk of forgery or deception is so small, and the likelihood of discovery of forgery or deception is so great, that the cost of presenting extrinsic evidence and the waste of court time is not justified. Of course, this rule does not preclude the opposing party from contesting the authenticity of the evidence. In that situation, authenticity is to be resolved by the finder of fact.

Pa.R.E. 902(1), (2), (3), and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3), and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law. These paragraphs are consistent with Pennsylvania statutory law. *See, e.g.* 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

The admission of a self-authenticating record of a prior conviction also requires sufficient evidence, either direct or circumstantial, to prove that the subject of the record

is the same person for whom the record is offered in a proceeding. *See, e.g., Commonwealth v. Boyd*, 344 A.2d 864 (Pa. 1975).

Pa.R.E. 902(5), (6) and (7) are identical to F.R.E. 902(5), (6), and (7). There are no corresponding statutory provisions in Pennsylvania; however, 45 Pa.C.S. § 506 (judicial notice of the contents of the *Pennsylvania Code* and the *Pennsylvania Bulletin*) is similar to Pa.R.E. 902(5).

Pa.R.E. 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. *See Sheaffer v. Baeringer*, 29 A.2d 697 (Pa. 1943); *Williamson v. Barrett*, 24 A.2d 546 (Pa. Super. 1942); 21 P.S. §§ 291.1—291.13 (Uniform Acknowledgement Act); 57 Pa.C.S. §§ 301—331 (Revised Uniform Law on Notarial Acts). An acknowledged document is a type of official record and the treatment of acknowledged documents is consistent with Pa.R.E. 902(1), (2), (3), and (4).

Pa.R.E. 902(9) is identical to F.R.E. 902(9). Pennsylvania law treats various kinds of commercial paper and documents as self-authenticating. *See, e.g.*, 13 Pa.C.S. § 3505 (evidence of dishonor of negotiable instruments).

Pa.R.E. 902(10) differs from F.R.E. 902(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law. In some Pennsylvania statutes, the self-authenticating nature of a document is expressed by language creating a “presumption” of authenticity. *See, e.g.*, 13 Pa.C.S. § 3505.

Pa.R.E. 902(11) and (12) permit the authentication of domestic and foreign records of regularly conducted activity by verification or certification. Pa.R.E. 902(11) is similar to F.R.E. 902(11). The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. No. 76 rather than to Federal law. Pa.R.E. 902(12) differs from F.R.E. 902(12) in that it requires compliance with a Pennsylvania statute rather than a Federal statute.

**Pa.R.E. 902(13) is identical to F.R.E. 902(13). This rule establishes a procedure by which parties can authenticate certain electronic evidence other than through the testimony of a foundation witness. The rule specifically allows the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.**

**A certification under this rule can establish only that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, a certification authenticating a computer output, such as a spreadsheet or a print-out of a webpage, does not preclude an objection that the information produced is unreliable—the authentication establishes only that the output came from the computer.**

**The reference to the “certification requirements of Rule 902(11) or (12)” is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this rule to prove the requirements of Rule 803(6). Rule 902(13) is solely limited to authentication of a record generated by an electronic process or system and any attempt to satisfy a hearsay exception must be made independently.**

**A challenge to the authenticity of electronic evidence may require technical information about the**



system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

Nothing in Rule 902(13) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including though judicial notice where appropriate.

Pa.R.E. 902(14) is identical to F.R.E. 902(14). This rule establishes a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, using a certificate rather than through the testimony of a foundation witness. A proponent establishing authenticity under this rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record of the certifying person testified, then authenticity is not established under this rule.

Today, data copied from electronic devices, storage media, and electronic files are ordinarily authenticated by “hash value.” A hash value is a number that is often represented as a sequence of characters and is produced by an algorithm based upon the digital contents of a drive, medium, or file. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is highly improbable that the original and copy are not identical. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates. This Rule allows self-authentication by a certification of a qualified person that she checked the hash value of the proffered item and that it was identical to the original. The Rule is flexible enough to allow certifications through processes other than comparison of hash value, including by other reliable means of identification provided by future technology.

A certification under this rule can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, in a criminal case in which data copied from a hard drive is proffered, the defendant can still challenge hearsay found in the hard drive, and can still challenge whether the information on the hard drive was placed there by the defendant.

The reference to the “certification requirements of Rule 902(11) or (12)” is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this rule to prove the requirements of Rule 803(6). Rule 902(14) is solely limited to authentication, and any attempt to satisfy a hearsay exception must be made independently.

A challenge to the authenticity of electronic evidence may require technical information about the system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

Nothing in Rule 902(14) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including though judicial notice where appropriate.

Pa.R.E. [ 902(13) ] 902(15) has no counterpart in the Federal Rules. This rule provides for the self-authentication of a certificate of the non-existence of a public record, as provided in Pa.R.E. 803(10)(A).

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 7, 2016, effective January 1, 2017; amended June 12, 2017, effective November 1, 2017; **amended** , **2018, effective** , **2018.**

*Committee Explanatory Reports:*

Final Report explaining the November 2, 2001 amendments adding paragraphs (11) and (12) published with Court’s Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the February 23, 2004 amendment of paragraph (12) published with Court’s Order at 34 Pa.B. 1429 (March 13, 2004).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 9, 2016 addition of paragraph (13) published with the Court’s Order at 46 Pa.B. 7438 (November 26, 2016).

Final Report explaining the June 12, 2017 amendment of the Comment published with the Court’s Order at 47 Pa.B. 3491 (June 24, 2017).

**Final Report explaining the** , **2018 amendment of paragraphs (4), (6), and (12) published with the Court’s Order at 48 Pa.B.** ( 2018).

**REPORT**

**Proposed Adoption of Pa.R.E. 902(13) & Pa.R.E. 902(14)**

The Committee on Rules of Evidence is considering proposing the adoption of Pennsylvania Rule of Evidence 902(13) and 902(14) concerning the self-authentication of certified records generated by an electronic process or system and certified data copied from an electronic device, storage medium, or file.

The Federal Advisory Committee on Evidence considered the expense and inconvenience of producing a witness to authenticate an item of electronic evidence given that the adversary often either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. In light of business records able to be self-authenticated by certification, see F.R.E. 902(11) & (12), the Advisory Committee proposed rule amendments in 2015 that would provide for a similar procedure where the parties can determine in advance of trial whether a real challenge to authenticity will be made to electronic evidence, and can then plan accordingly.

As approved by the Rules Committee of the Judicial Conference, F.R.E. 902(13) & (14) were adopted, effective December 1, 2017. Specifically, F.R.E. 902(13) states:

*Certified Records Generated by an Electronic Process or System.* A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that

complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

To establish authenticity under this Rule, the proponent must present a certification containing information that would be sufficient to establish authenticity if that information was provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule. The Rule specifically allows the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

Illustrations of how F.R.E. 902(13) can be used include:

1. *Proving that a USB device was connected to (i.e., plugged into) a computer:* In a hypothetical civil or criminal case in Chicago, a disputed issue is whether Devera Hall used her computer to access files stored on a USB thumb drive owned by a co-worker. Ms. Hall's computer uses the Windows operating system, which automatically records information about every USB device connected to her computer in a database known as the "Windows registry." The Windows registry database is maintained on the computer by the Windows operating system in order to facilitate the computer's operations. A forensic technician, located in Dallas, Texas, has provided a printout from the Windows registry that indicates that a USB thumb drive, identified by manufacturer, model, and serial number, was last connected to Ms. Hall's computer at a specific date and time.

*Without Rule 902(13):* Without Rule 902(13), the proponent of the evidence would need to call the forensic technician who obtained the printout as a witness, in order to establish the authenticity of the evidence. During his or her testimony, the forensic technician would typically be asked to testify about his or her background and qualifications; the process by which digital forensic examinations are conducted in general; the steps taken by the forensic technician during the examination of Ms. Hall's computer in particular; the process by which the Windows operating system maintains information in the Windows registry, including information about USB devices connected to the computer; and the steps taken by the forensic examiner to examine the Windows registry and to produce the printout identifying the USB device.

*Impact of Rule 902(13):* With Rule 902(13), the proponent of the evidence could obtain a written certification from the forensic technician, stating that the Windows operating system regularly records information in the Windows registry about USB devices connected to a computer; that the process by which such information is recorded produces an accurate result; and that the printout accurately reflected information stored in the Windows registry of Ms. Hall's computer. The proponent would be required to provide reasonable written notice of its intent to offer the printout as an exhibit and to make the written certification and proposed exhibit available for inspection. If the opposing party did not dispute the accuracy or reliability of the process that produced the exhibit, the proponent would not need to call the forensic technician as a witness to establish the authenticity of the exhibit. (There are many other examples of the same types of machine-generated

information on computers, for example, Internet browser histories and Wi-Fi access logs.)

\* \* \* \* \*

3. *Proving that a person was or was not near the scene of an event:* Hypothetically, Robert Jackson is a defendant in a civil (or criminal) action alleging that he was the driver in a hit-and-run collision with a U.S. Postal Service mail carrier in Atlanta at 2:15 p.m. on March 6, 2015. Mr. Jackson owns an iPhone, which has software that records machine-generated dates, times, and GPS coordinates of each picture he takes with his iPhone. Mr. Jackson's iPhone contains two pictures of his home in an Atlanta suburb at about 1 p.m. on March 6. He wants to introduce into evidence the photos together with the metadata, including the date, time, and GPS coordinates, recovered forensically from his iPhone to corroborate his alibi that he was at home several miles from the scene at the time of the collision.

*Without Rule 902(13):* The proponent would have to call the forensic technician to testify about Mr. Jackson's iPhone's operating system; his search of the phone; how the metadata was created and stored with each photograph; and that the exhibit is an accurate record of the photographs.

*With Rule 902(13):* The proponent would obtain the forensic technician's certification of the facts establishing authenticity of the exhibits and provide the certification and exhibit to the opposing party with reasonable notice that it intends to offer the exhibit at trial. If the opposing party does not timely dispute the reliability of the process that produced the iPhone's logs, then the proponent would not have to call the technician to establish authenticity.

Hon. Paul W. Grimm *et. al.*, *Authenticating Digital Evidence*, 69 Baylor L. Rev. 1, 42–44 (2017).

F.R.E. 902(9) states:

(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

This Rule sets forth a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, other than through the testimony of a foundation witness. A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity if that information was provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule.

The Committee considered whether adoption of rules similar to the new Federal Rules would be consistent with purpose of the Pennsylvania Rules of Evidence "to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." Pa.R.E. 102. At the risk of oversimplification, the Committee notes that the Federal Rules do not alter the requirement of authentication; they merely permit an out-of-court certification to replace in-court testimony.

Pursuant to Pa.R.E. 901(a), the proponent is required to produce sufficient extrinsic evidence to authenticate or attribute evidence as being what the proponent claims it to be. For example, when a proponent wishes to introduce a voice recording and connect the voice to a specific speaker, the proponent can have a witness familiar with the speaker's voice testify as to the witness's opinion whether the voice on the recording is that of the speaker. See Pa.R.E. 901(b)(5).

Likewise, if the proponent wishes to introduce evidence of a result of a process or system, then the proponent must introduce extrinsic evidence describing the process or system and show that it produces an accurate result. See Pa.R.E. 901(b)(9). For example, an x-ray, unlike a photograph or videotape, cannot be authenticated by the operator of the imaging equipment because the operator cannot accurately see what is being depicted on the x-ray. Hence, the x-ray can be authenticated pursuant to Rule 901(b)(9) through evidence regarding the capability of the imaging equipment, the operation of equipment, the training of the operators, and the accuracy and clarity of the resulting image. However, in current practice, seldom is authenticity challenged with long established, well-known, and understood processes or systems where results are generally accepted as accurate.

Rule 901(b)(9) also has application to computer generated records. See, e.g., *Wachovia Bank, N.A. v. Gemini Equipment Co.*, 2006 WL 5429543 (Dauphin Co. 2006). While Pennsylvania precedent is scant, F.R.E. 902(b)(6), the analogue to Pa.R.E. 901(b)(9), has been more definitively applied to computer output. See 5 Federal Evidence § 9:20 (4th ed.) (discussing application to, *inter alia*, computer output).

As reliance on electronic processes and systems increases, so does a sense of familiarity and trustworthiness that records generated by same are done so without the potential bias or error inherent when records are generated by human involvement. An accurate record generated by computation requires only an understanding of the computation process or system to be authenticated. Pa.R.E. 902(13) would permit this task to be accomplished by certification rather than live testimony.

Similarly, a comparison of a unique identifier produced by an algorithm (*i.e.*, hashtag) in the source data with the copied data can be used to authenticate the copied data as being identical to the source data. Pa.R.E. 902(14) allows the authentication to be accomplished by certification and without the need for extrinsic evidence.

Broadly stated, the use of certifications in lieu of testimony is not foreign concept in Pennsylvania. See, e.g., Pa.R.Crim.P. 574 (permitting the admission of forensic lab reports by certification in lieu expert testimony). More specifically, the use of certifications in lieu of authentication testimony has long been acceptable by the Rules of Evidence and statute. See Pa.R.E. 902(4), (11), & (12); 42 Pa.C.S. § 6106 (self-authentication of documents filed in public offices).

Borrowing language largely from F.R.E. 902(13) and F.R.E. 902(14), together with their commentary, the Committee seeks comment about the utility of incorporating these provisions into the Pennsylvania Rules of Evidence.

[Pa.B. Doc. No. 19-37. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 200 ]

#### Damages for Delay

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

\* \* \* \* \*

#### Addendum to Explanatory Comment (2019)

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. No. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 2, 2019	5 1/2
January 2, 2018	4 1/2
January 3, 2017	3 3/4
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

**Official Note:** The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the [ *Pennsylvania Bulletin*, volume 33, page 634 (2/1/03) ] *Pennsylvania Bulletin*, 33 Pa.B. 634 (February 1, 2003), and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

*By the Civil Procedural Rules Committee*

DAVID L. KWASS,  
*Chair*

[Pa.B. Doc. No. 19-38. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 1910 ]

Order Amending Rules 1910.11, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.16-6, 1910.18 and 1910.19 and Rescinding Rule 1910.16 of the Pennsylvania Rules of Civil Procedure; No. 687 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 28th day of December, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee, the proposal having been published for public comment in the *Pennsylvania Bulletin*, 48 Pa.B. 4214 (July 21, 2018) and 48 Pa.B. 5831 (September 22, 2018):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.11, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.16-6, 1910.18, and 1910.19 of the Pennsylvania Rules of Civil Procedure are amended, and Rule 1910.16 is rescinded, in the following form.

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

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

**Rule 1910.11. Office Conference. Subsequent Proceedings. Order.**

[ (a)(1) The office conference shall be conducted by a conference officer. ]

##### (a) Office Conference.

(1) A conference officer shall conduct the office conference.

(2) [ Any ] A lawyer serving as a conference officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, permanent or standing master, or judge of the same judicial district.

**Official Note:** Conference officers preside at office conferences under [ Rule ] Pa.R.C.P. No. 1910.11. Hearing officers preside at hearings under [ Rule ] Pa.R.C.P. No. 1910.12. The appointment of masters to hear actions in divorce or for annulment of marriage is authorized by [ Rule ] Pa.R.C.P. No. 1920.51.

(b) If [ either ] a party fails to appear at the conference [ before the officer ] as directed by the court, the conference may proceed.

[ (c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses, and proof of medical coverage that they may have or have available to them. In addition,

the parties shall provide copies of their Income Statements and Expense Statements in the forms required by Pa.R.C.P. No. 1910.27(c) and completed as set forth in (1) and (2) of this subdivision.

**Official Note:** See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply.

(1) For cases which can be determined according to the guideline formula, the Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks apportionment of expenses pursuant to Rule 1910.16-6. In a support case that can be decided according to the guidelines, even if the support claim is raised in a divorce complaint, no expense form is needed unless a party claims unusual needs or unusual fixed expenses or seeks apportionment of expenses pursuant to Rule 1910.16-6. However, in the divorce action, the Expense Statement at Rule 1910.27(c)(2)(B) may be required.

(2) For cases which are decided according to Rule 1910.16-3.1, the Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) must be submitted. ]

(c) At the conference, the parties shall provide to the conference officer the following documents:

- the most recently filed individual federal income tax returns, including all schedules, W-2s, and 1099s;

- the partnership or business tax returns with all schedules, including K-1, if the party is self-employed or a principal in a partnership or business entity;

- pay stubs for the preceding six months;

- verification of child care expenses;

- child support, spousal support, alimony pendente lite, or alimony orders or agreements for other children or former spouses;

- proof of available medical coverage; and

- an Income Statement and, if necessary, an Expense Statement on the forms provided in Pa.R.C.P. No. 1910.27(c) and completed as set forth in subdivisions (c)(1) and (2).

**Official Note:** See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* shall apply.

(1) The parties shall provide the conference officer with a completed:

(i) Income Statement as set forth in Pa.R.C.P. No. 1910.27(c)(1) in all support cases, including high-income cases under Pa.R.C.P. No. 1910.16-3.1; and

(ii) Expense Statement as set forth in Pa.R.C.P. No. 1910.27(c)(2)(A), if a party:

(A) claims that unusual needs and unusual fixed expenses may warrant a deviation from the guideline support amount pursuant to Pa.R.C.P. No. 1910.16-5; or

(B) seeks expense apportionment pursuant to Pa.R.C.P. No. 1910.16-6.

(2) For high-income support cases as set forth in Pa.R.C.P. No. 1910.16-3.1, the parties shall provide to the conference officer the Expense Statement in Pa.R.C.P. No. 1910.27(c)(2)(B).

[ (d)(1) ] (d) Conference Officer Recommendation.

(1) The conference officer shall [ make a recommendation to the parties of an amount of support calculated in accordance with the guidelines ] calculate and recommend a guideline support amount to the parties.

[ (2) If an agreement for support is reached at the conference, the officer shall prepare a written order substantially in the form set forth in Rule 1910.27(e) and in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter the order in accordance with the agreement without hearing the parties. ]

(2) If the parties agree on a support amount at the conference, the conference officer shall:

(i) prepare a written order consistent with the parties' agreement and substantially in the form set forth in Pa.R.C.P. No. 1910.27(e), which the parties shall sign; and

(ii) submit to the court the written order along with the conference officer's recommendation for approval or disapproval.

(iii) The court may enter the order in accordance with the agreement without hearing from the parties.

(3) In all cases in which one or both parties are unrepresented, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed.

\* \* \* \* \*

Rule 1910.16. [ Support Order. Allocation ] Re-scinded.

[ (a) In an order awarding child support and spousal support or child support and alimony *pendente lite*, the court may on its own motion or upon the motion of either party:

(1) Make an unallocated award in favor of the spouse and one or more children; or

(2) State the amount of support allocable to the spouse and the amount allocable to each child.

*Official Note:* See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.

(b) An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

*Official Note:* The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

Explanatory Comment—1994

The decision to allocate a support order has federal income tax consequences and an effect upon subsequent modification of an order. Allocation of an order, as well as other factors, will determine which party pays the federal income tax, and thus the actual cost of the support to the payor and the amount of money available to the payee. Allocation of the order permits the court to determine more easily whether modification of the order is warranted.

Explanatory Comment—2018

Subdivision (b) resolves the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares the orders are final and appealable. Not only is the unallocated support order final and appealable, so are the other claims covered in the order, irrespective of whether those would be final and appealable had the claims not been a part of the order awarding unallocated support. ]

Rule 1910.16-1. Amount of Support. Support Guidelines.

\* \* \* \* \*

(b) [ *Amount of* ] *Support Amount*. The [ amount of ] support amount (child support, spousal support or alimony [ *pendente lite* ] to be ] *pendente lite* awarded pursuant to the [ procedures under Rules ] Pa.R.C.P. Nos. 1910.11 and 1910.12 [ shall ] procedures must be determined in accordance with the support guidelines, which consist of the guidelines expressed as the child support schedule [ set forth in Rule ] in Pa.R.C.P. No. 1910.16-3, the [ formula set forth in Rule ] Pa.R.C.P. No. 1910.16-4 formulas, and the operation of the guidelines as set forth in these rules.

(c) *Spousal Support and Alimony Pendente Lite*.

(1) [ Orders for spousal support and alimony *pendente lite* shall ] Spousal support and alimony *pendente lite* orders must not be in effect simultaneously.

(2) In determining [ the duration of an award for spousal support or alimony *pendente lite*, the trier of fact ] a spousal support or alimony *pendente lite* award's duration, the trier-of-fact shall consider the [ duration of the marriage from ] marriage's duration, i.e., the date of marriage to the date of final separation.

(d) *Rebuttable Presumption*. [ If it has been determined that there is an obligation to pay support, there shall be a rebuttable presumption that the amount of the award determined from the guidelines is the correct amount of support to be awarded. The support guidelines are a rebuttable presumption and must be applied taking into con-

sideration the special needs and obligations of the parties. The trier of fact must consider the factors set forth in Rule 1910.16-5. The presumption shall be rebutted if the trier of fact makes a written finding, or a specific finding on the record, that an award in the amount determined from the guidelines would be unjust or inappropriate. ] If the trier-of-fact determines that a party has a duty to pay support, there is a rebuttable presumption that the guideline-calculated support amount is the correct support amount.

(1) The presumption is rebutted if the trier-of-fact concludes in a written finding or states on the record that the guideline support amount is unjust or inappropriate.

(2) The trier-of-fact shall consider the children's and parties' special needs and obligations, and apply the Pa.R.C.P. No. 1910.16-5 deviation factors, as appropriate.

(e) *Guidelines Review.* The guidelines [ shall ] must be reviewed at least [ once ] every four years to [ insure ] ensure that [ application results in the determination of appropriate amounts of support ] their application determines appropriate support amounts.

\* \* \* \* \*

**Explanatory Comment—2017**

Pursuant to Pa.R.C.P. No. 1910.3(a), a person having custody of a child or caring for a child may initiate a support action against the child's parent(s). Previously, this rule only addressed when a public body or private agency had custody of a child but was silent with regard to an individual third party, e.g., grandparent, seeking support. The rule has been amended by adding a new subdivision (a)(2) and renumbering the previous (a)(2) to (a)(3). In addition, an example illustrating the new (a)(2) calculation has been included.

Subdivision (a)(2) excludes the income of the third party/obligee, as that person does not have a duty of support to the child; instead, the rule uses the combined monthly net income of the parents to determine the basic child support amount, which is then apportioned between the parents consistent with their respective percentage of the combined monthly net income in the same manner as a parent vs. parent support action. However, under this rule, each parent would be a separate obligor, would pay the obligee their proportionate share under a separate support order, and would be subject to separate enforcement proceedings. Under (a)(2), the exclusion of the third party's income is consistent with Pa.R.C.P. No. [ 1910.16-2(b)(2)(B) ] **1910.16-2(b)(2)(ii)** as that rule relates to an action for support by a third party against a surviving parent in which the child receives a Social Security derivative benefit due to the death of the other parent.

In accordance with Pa.R.C.P. No. 1910.16-6(c), payment of the first \$250 of unreimbursed medical expenses per year per child is applicable to third party/obligees in support actions governed by (a)(2). The first \$250 of unreimbursed medical expenses is built into the Basic Child Support Schedule.

**Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income.**

Generally, the support amount [ of support to be ] awarded is based [ upon ] on the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based [ upon ] on at least a six-month average of [ all of ] a party's income. The [ term "income" is defined by the ] support law, 23 [ Pa.C.S.A. ] Pa.C.S. § 4302, defines the term "income" and includes income from any source. The statute lists many types of income including, but not limited to:

- (1) wages, salaries, bonuses, fees, and commissions;
- (2) net income from business or dealings in property;
- (3) interest, rents, royalties, and dividends;
- (4) pensions and all forms of retirement;
- (5) income from an interest in an estate or trust;
- (6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation, and unemployment compensation;

(7) alimony if, in the trier-of-fact's discretion [ of the trier of fact ], inclusion of part or all of it is appropriate; and

**Official Note: In determining the appropriateness of including alimony in gross income, the trier-of-fact shall consider whether the party receiving the alimony must include the amount received as gross income when filing his or her federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the trier-of-fact may include in the party's monthly net income the alimony received, as appropriate. See Pa.R.C.P. No. 1910.16-2(c)(2)(ii).**

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

(8) other entitlements to money or lump sum awards, without regard to source, including:

- (i) lottery winnings;
- (ii) income tax refunds;
- (iii) insurance compensation or settlements;
- (iv) awards and verdicts; and

(v) [ any form of payment ] payments due to and collectible by an individual regardless of source.

**Official Note: The [ trial court has discretion to determine ] trier-of-fact determines the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or [ they may be ] averaged over a shorter or longer period [ of time ] depending on the case's circumstances [ of the case ]. [ They may also be escrowed in an amount sufficient ] The trier-of-fact may order all or part of the lump sum award escrowed to secure the support obligation during that period [ of time ].**

**[ Income tax refunds should not be included as income to the extent they were already factored**

into the party's actual tax obligation for purposes of arriving at his or her net income.] The trier-of-fact shall not include income tax refunds in a party's income, if the trier-of-fact factored in the tax refund when calculating the party's actual tax obligation and monthly net income.

(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

(1) *Public Assistance and SSI Benefits.* Neither public assistance nor Supplemental Security Income (SSI) benefits shall be [ counted ] included as income for [ purposes of ] determining support.

(2) Child's Social Security Derivative Benefits [ for a Child ].

[ (A) This subdivision (A) shall be applied if a child for whom support is sought is receiving Social Security derivative benefits as a result of either parent's retirement or disability.

(i) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement or disability, the amount of the benefit shall be added to the income of the party receiving the benefit on behalf of the child to calculate child support. Next, apportion the amount of basic child support set forth in the schedule in Rule 1910.16-3 between the parties based upon each party's percentage share of their combined net monthly income, including the child's benefit in the income of the party receiving it.

(ii) If the child's benefit is being paid to the obligee, the amount of the child's benefit shall be deducted from the basic support obligation of the party whose retirement or disability created the child's benefit. If the child's benefit is being paid to the obligor, the child's benefit shall not be deducted from the obligor's obligation, even if the obligor's retirement or disability created the child's benefit. In cases of equally shared custody, first determine which party has the higher income without the benefit, and thus is the obligor, before adding the child's benefit to the income of the party receiving it.

(iii) In cases in which the obligor is receiving the child's benefits, the domestic relations sections shall provide the parties with two calculations theoretically assigning the benefit to each household.

(iv) In allocating additional expenses pursuant to Rule 1910.16-6, the allocation shall be based upon the parties' incomes before the addition of the child's benefit to the income of the party receiving it.

(B) This subdivision (B) shall be applied when determining the support obligation of a surviving parent when the child for whom support is sought is receiving Social Security derivative benefits as a result of the other parent's death. The income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child, including the Social Security derivative benefits if they are being paid to the obligee. If the benefits are being paid to the surviving parent,

the amount of the benefit shall be added to that parent's income to calculate child support. ]

(i) If a child is receiving Social Security derivative benefits due to a parent's retirement or disability:

(A) The trier-of-fact shall determine the basic child support amount as follows:

(I) add the child's benefit to the monthly net income of the party who receives the child's benefit;

(II) calculate the parties' combined monthly net income, including the child's benefit;

(III) determine the basic child support amount set forth in the Pa.R.C.P. No. 1910.16-3 schedule; and

(IV) apportion the basic child support amount between the parties based on the party's percentage of the combined monthly net income.

(B) If the obligee receives the child's benefit, the trier-of-fact shall deduct the child's benefit from the basic support obligation of the party whose retirement or disability created the child's benefit.

(C) If the obligor receives the child's benefit, the trier-of-fact shall not deduct the child's benefit from the obligor's basic support obligation, even if the obligor's retirement or disability created the child's benefit. To illustrate for the parties the impact of the obligor receiving the benefit instead of the obligee, the domestic relations section shall provide the parties with two calculations theoretically assigning the benefit to each household.

(D) The trier-of-fact shall allocate the additional expenses in Pa.R.C.P. No. 1910.16-6 based on the parties' monthly net incomes without considering the child's benefit.

(E) In equally shared custody cases, the party with the higher monthly net income, excluding the child's benefit, is the obligor.

(ii) If a child is receiving Social Security derivative benefits due to a parent's death:

(A) The trier-of-fact shall determine the surviving parent's basic child support amount as follows:

(I) The non-parent obligee's monthly net income shall include only those funds the obligee is receiving on the child's behalf, including the Social Security derivative benefit.

(II) If the surviving-parent obligor receives the Social Security derivative benefit, the benefit shall be added to the parent's monthly net income to calculate child support.

(3) *Foster Care Payments.* If either party to a support action is a foster parent and/or is receiving payments from a public or private agency for the care of a child who is not his or her biological or adoptive child, those payments shall not be included in the income of the foster parent or other caretaker for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

\* \* \* \* \*

(c) *Monthly Net Income.*

(1) Unless [ otherwise provided in ] these rules provide otherwise, the [ court ] trier-of-fact shall deduct

only the following items from monthly gross income to arrive at **monthly** net income:

- [ (A) ] (i) federal, state, and local income taxes;
- [ (B) ] (ii) unemployment compensation taxes and Local Services Taxes (LST);
- [ (C) ] (iii) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;
- [ (D) ] (iv) mandatory union dues; and
- [ (E) ] (v) alimony paid to the other party.

(2) In computing a spousal support or alimony [ **pendente lite** ] **pendente lite** obligation, the [ **court** ] **trier-of-fact** shall:

(i) deduct from the obligor's monthly net income [ **all of his or her child support obligations and any amounts of** ] **child support**, spousal support, alimony [ **pendente lite** ] **pendente lite**, or alimony [ **being** ] **amounts** paid to **children and** former spouses [ **.** ], **who are not part of this action; and**

(ii) **include in a party's monthly net income alimony pendente lite or alimony received from a former spouse that was not included in the party's gross income, as provided in subdivision (a).**

**Official Note: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying \$1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.**

\* \* \* \* \*

(e) *Net Income Affecting Application of the Support Guidelines.*

(1) [ **Low Income** ] **Low-Income** Cases.

[ (A) ] (i) If the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Pa.R.C.P. No. 1910.16-3, the basic child support obligation shall be calculated initially by using the obligor's monthly net income only. For example, if the obligor has **monthly net** income of \$1,100, the presumptive [ **amount of** ] support **amount** for three children is \$110 per month. This amount is determined directly from the schedule in Pa.R.C.P. No. 1910.16-3. Next, [ **calculate** ] the obligor's child support obligation **is calculated** by using the parties' combined monthly net incomes and the **appropriate** formula in Pa.R.C.P. No. 1910.16-4. The lower of the two calculated amounts shall be the obligor's basic child support obligation.

\* \* \* \* \*

[ (B) ] (ii) In computing a basic spousal support or alimony **pendente lite** obligation, the presumptive [ **amount of** ] support **amount** shall not reduce the obligor's monthly net income below the Self-Support Reserve of \$981 per month.

*Example 2:* If the obligor earns \$1,000 per month and the obligee earns \$300 per month, the formula in [ **Part IV of** ] Pa.R.C.P. No. [ **1910.16-4** ] **1910.16-4(a)(1)(Part B)** would result in a support obligation of [ **\$280** ] **\$213** per month [ ( [ **\$1,000 - \$300 = \$700 × 40%** ] ) ( **\$1,000 × 33%** ) **or \$333 minus (\$300 × 40%) or \$120 for a total of \$213** ]. Since this amount leaves the obligor with only [ **\$720** ] **\$787** per month, it must be adjusted so that the obligor retains at least \$981 per month. The presumptive minimum [ **amount of** ] spousal support **amount**, therefore, is \$19 per month in this case.

[ (C) **When** ] (iii) **If** the obligor's monthly net income is \$981 or less, the [ **court** ] **trier-of-fact** may award support only after consideration of the parties' actual financial resources and living expenses.

(2) [ **High Income** ] **High-Income** Cases. [ **When** ] **If** the parties' combined **monthly** net income exceeds \$30,000 per month, [ **calculation of** ] child support, spousal support, and alimony [ **pendente lite** ] **pendente lite calculations** shall be pursuant to [ **Rule** ] Pa.R.C.P. No. 1910.16-3.1.

**Official Note: See Hanrahan v. Bakker, 186 A.3d 958 (Pa. 2018)**

(f) [ **Dependency Tax Exemption** ] **Child Tax Credit**. In order to maximize the total income available to the parties and children, the [ **court** ] **trier-of-fact** may [ **,** as justice and fairness require, award the federal child dependency tax exemption ] **award, as appropriate, the federal child tax credit** to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 [ **U.S.C.A.** ] **U.S.C. § 152(e)**. The tax consequences [ **resulting from an award of the child dependency exemption** ] **associated with the federal child tax credit** must be considered in calculating [ **each** ] **the** party's **monthly net** income available for support.

[ **Explanatory Comment—2010**

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S.A. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits, Social Security derivative benefits and foster care payments.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) relates to awards of spousal support or alimony **pendente lite** when there are multiple families. In these cases, a party's net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony **pendente lite** or



alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income and the imputing of earning capacity. Statutory provisions at 23 Pa.C.S.A. § 4322, as well as case law, are clear that a support obligation is based upon the ability of a party to pay, and that the concept of an earning capacity is intended to reflect a realistic, rather than a theoretical, ability to pay support. Amendments to subdivision (d) are intended to clarify when imposition of an earning capacity is appropriate.

Subdivision (e) has been amended to reflect the updated schedule in Rule 1910.16-3 and the increase in the Self-Support Reserve (“SSR”). The schedule now applies to all cases in which the parties’ combined net monthly income is \$30,000 or less. The upper income limit of the prior schedule was only \$20,000. The amount of support at each income level of the schedule also has changed, so the examples in Rule 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor’s net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate the obligor’s support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee’s income. The obligee’s income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 sets forth basic child support only, subdivision (e)(1)(B) is necessary to reflect the operation of the SSR in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation, which would otherwise be calculated under the formula in Rule 1910.16-4, so that the obligor’s income does not fall below the SSR amount in these cases.

Previously, the SSR required that the obligor retain at least \$748 per month. The SSR now requires that the obligor retain income of at least \$867 per month, an amount equal to the 2008 federal poverty level for one person. When the obligor’s monthly net income is less than \$867, subsection (e)(1)(C) provides that the court must consider the parties’ actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Rule 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider a party’s contribution to

additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only \$900 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of the SSR, however, the court should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also has been amended to eliminate the application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), in high income child support cases. In cases in which the parties’ combined net monthly income exceeds \$30,000, child support will be calculated in accordance with the three-step process in new rule 1910.16-3.1(a).

#### Explanatory Comment—2013

The SSR has been increased to \$931, the 2012 federal poverty level for one person. Subdivision (e) has been amended to require that when the obligor’s income falls into the shaded area of the basic child support schedule in Rule 1910.16-3, two calculations must be performed. One calculation uses only the obligor’s income and the other is a regular calculation using both parties’ incomes, awarding the lower amount to the obligee. The two step process is intended to address those cases in which the obligor has minimal income and the obligee’s income is substantially greater.

#### Explanatory Comment—2015

The rule has been amended to provide that a party’s support obligation will be reduced by the amount of a child’s Social Security derivative benefit if that party’s retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most cases, payment of the benefit to the obligee’s household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child’s benefits be paid to the obligee. ]

#### Explanatory Comment—2010

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits, Social Security derivative benefits, and foster care payments.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party’s net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Pa.R.C.P. No. 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor’s gross income pursuant to Pa.R.C.P. No. 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) re-

lates to spousal support or alimony *pendente lite* awards when there are multiple families. In these cases, a party's monthly net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony *pendente lite* or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income and the imputing of earning capacity. Statutory provisions at 23 Pa.C.S. § 4322, as well as case law, are clear that a support obligation is based upon the ability of a party to pay, and that the concept of an earning capacity is intended to reflect a realistic, rather than a theoretical, ability to pay support. Amendments to subdivision (d) are intended to clarify when imposition of an earning capacity is appropriate.

Subdivision (e) has been amended to reflect the updated schedule in Pa.R.C.P. No. 1910.16-3 and the increase in the Self-Support Reserve ("SSR"). The schedule now applies to all cases in which the parties' combined monthly net income is \$30,000 or less. The upper income limit of the prior schedule was only \$20,000. The support amount at each income level of the schedule also has changed, so the examples in Pa.R.C.P. No. 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's monthly net income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Pa.R.C.P. No. 1910.16-3. There is no need to use the formula in Pa.R.C.P. No. 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Pa.R.C.P. No. 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Pa.R.C.P. No. 1910.16-6.

Since the schedule in Pa.R.C.P. No. 1910.16-3 sets forth basic child support only, subdivision (e)(1)(ii) is necessary to reflect the operation of the SSR in spousal support and alimony *pendente lite* cases. It adjusts the basic guideline obligation, which would otherwise be calculated under the formula in Pa.R.C.P. No. 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the SSR required that the obligor retain at least \$748 per month. The SSR now requires that the obligor retain income of at least \$867 per month, an amount equal to the 2008 federal poverty level for one person. When the obligor's monthly net income is less than \$867, subdivision (e)(1)(iii) provides that the trier-of-fact must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, there-

fore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Pa.R.C.P. No. 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the trier-of-fact may deviate from that amount under Pa.R.C.P. No. 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Pa.R.C.P. No. 1910.16-6. If, for example, the obligor earns only \$900 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the trier-of-fact may consider an upward deviation under Pa.R.C.P. No. 1910.16-5(b)(3) or may order the party to contribute to the additional expenses under Pa.R.C.P. No. 1910.16-6. Consistent with the goals of the SSR, however, the trier-of-fact should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also has been amended to eliminate the application of *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), in high-income child support cases. In cases in which the parties' combined net monthly income exceeds \$30,000, child support will be calculated in accordance with the three-step process in Pa.R.C.P. No. 1910.16-3.1(a).

#### Explanatory Comment—2013

The SSR has been increased to \$931, the 2012 federal poverty level for one person. Subdivision (e) has been amended to require that when the obligor's income falls into the shaded area of the basic child support schedule in Pa.R.C.P. No. 1910.16-3, two calculations must be performed. One calculation uses only the obligor's income and the other is a regular calculation using both parties' incomes, awarding the lower amount to the obligee. The two-step process is intended to address those cases in which the obligor has minimal income and the obligee's income is substantially greater.

#### Explanatory Comment—2015

The rule has been amended to provide that a party's support obligation will be reduced by the child's Social Security derivative benefit amount if that party's retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most cases, payment of the benefit to the obligee's household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child's benefits be paid to the obligee.

#### Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.

The following schedule represents the amounts spent on children of intact families by combined monthly net income and number of children. Combined monthly net income is on the schedule's vertical axis [ of the schedule ] and the number of children is on the schedule's horizontal axis [ of the schedule ]. This schedule [ is used to find ] determines the basic child support obligation. Unless [ otherwise provided in these

rules ] these rules provide otherwise, the obligor's share of the basic support obligation shall be computed using either the formula set forth in [ Part I of ] Pa.R.C.P. No. [ 1910.16-4 ] 1910.16-4(a)(1)(Part C) or (2)(Part I).

\* \* \* \* \*

Rule 1910.16-3.1. Support Guidelines. [ High Income ] High-Income Cases.

(a) *Child Support Formula*. If the parties' combined monthly net income exceeds \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The [ amount of ] support amount calculated pursuant to this three-step process shall not be less than the [ amount of ] support amount that would have been awarded if the parties' combined monthly net income was \$30,000. The calculated amount [ shall be ] is the presumptive minimum [ amount of ] support amount.

(1) [ First, the ] The following formula shall be applied as a preliminary analysis in calculating the [ amount of ] basic child support [ to be ] amount apportioned between the parties according to their respective monthly net incomes:

One child: \$2,839 + 8.6% of combined monthly net income above \$30,000.

Two children: \$3,902 + 11.8% of combined monthly net income above \$30,000.

Three children: \$4,365 + 12.9% of combined monthly net income above \$30,000.

Four children: \$4,824 + 14.6% of combined monthly net income above \$30,000.

Five children: \$5,306 + 16.1% of combined monthly net income above \$30,000.

Six children: \$5,768 + 17.5% of combined monthly net income above \$30,000;

(2) [ And second, the trier of fact ] The trier-of-fact shall apply [ Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments ] the formulas in Pa.R.C.P. No. 1910.16-4(a)(1)(Part D) and (Part E) or (2)(Part II) and (Part III), adjusting for substantial or shared custody pursuant to [ Rule ] Pa.R.C.P. No. 1910.16-4(c) and [ allocations of ] allocating additional expenses pursuant to [ Rule ] Pa.R.C.P. No. 1910.16-6, as appropriate;

(3) [ Then, third, the trier of fact ] The trier-of-fact shall consider the factors in [ Rule ] Pa.R.C.P. No. 1910.16-5 in making a final child support award and shall make findings of fact on the record or in writing. After considering [ all of ] the factors in [ Rule ] Pa.R.C.P. No. 1910.16-5, the [ trier of fact ] trier-of-fact may adjust the amount calculated pursuant to subdivisions (1) and (2) [ above upward or downward ], subject to the presumptive minimum.

(b) *Spousal Support and Alimony Pendente Lite*. In cases in which the parties' combined monthly net income exceeds \$30,000, the [ trier of fact ] trier-of-fact shall apply the formula in [ Part IV of Rule 1910.16-4(a) ] either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV) as a preliminary analysis in calculating spousal support or alimony [ pendente lite ] pendente

lite. In determining [ the amount and duration of ] the final spousal support or alimony [ pendente lite award ] pendente lite amount and duration, the [ trier of fact ] trier-of-fact shall consider the factors in [ Rule ] Pa.R.C.P. No. 1910.16-5 and shall make findings of fact on the record or in writing.

#### [ Explanatory Comment—2010 ]

New Rule 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). Economic data supports the amounts in the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined net monthly income is above \$30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony pendente lite awards in high income cases are preliminarily calculated pursuant to the formula in Part IV of Rule 1910.16-4(a). However, in both high income child support and spousal support/alimony pendente lite cases, the trier of fact is required to consider the factors in Rule 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Rule 1910.11(c)(2), in all high income cases, the parties must submit an Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) to enable the trier of fact to consider the factors in Rule 1910.16-5.

#### Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable. ]

#### Explanatory Comment—2010

Pa.R.C.P. No. 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high-income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984). Economic data support the basic child support schedule up to combined net incomes of \$30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined monthly net income is above \$30,000, the formula first applies a fixed percentage to calculate the support amount. The formula is an extrapolation of the available eco-

conomic data to high-income cases. Spousal support and alimony *pendente lite* awards in high-income cases are preliminarily calculated pursuant to the formulas in either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV). However, in both high-income child support and spousal support and high-income child support and alimony *pendente lite* cases, the trier-of-fact is required to consider the factors in Pa.R.C.P. No. 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Pa.R.C.P. No. 1910.11(c)(2), in all high-income cases, the parties must submit an Income Statement and the Expense Statement at Pa.R.C.P. No. 1910.27(c)(2)(B) to enable the trier-of-fact to consider the factors in Pa.R.C.P. No. 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Pa.R.C.P. No. 1910.16-4(c), regarding support adjustments if the obligor has substantial or shared custody, apply in high-income cases. Previously, when high-income cases were decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), case law held that because the time and resources each parent provided to a child were factored into the Melzer formula, the substantial or shared parenting time reductions did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008); *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high-income cases, the prohibition against substantial or shared parenting time reductions in such cases is no longer applicable.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

(a) The [ following formula shall be used ] trier-of-fact shall use either the subdivision (1) or subdivision (2) formula to calculate the obligor’s share of basic child support, either from the schedule in [ Rule ] Pa.R.C.P. No. 1910.16-3 or the formula in [ Rule ] Pa.R.C.P. No. 1910.16-3.1(a), as well as spousal support and alimony [ *pendente lite* ] *pendente lite* obligations. In [ high income ] high-income cases, [ Part IV shall be used ] the trier-of-fact shall use either the subdivision (1)(Part B) or subdivision (2)(Part IV) formula, as appropriate, as a preliminary analysis in the calculation of spousal support or alimony [ *pendente lite* ] *pendente lite* obligations[ : ].

(1) The formula in Parts A through E is for an order entered on or after January 1, 2019, or for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply.

Official Note: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction—the amount of spousal support, alimony *pendente lite*, and alimony paid or received—from the payor’s gross income and the alimony inclusion into the payee’s gross income.

See subdivision (2) for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) do not apply to the modification.

PART A. CALCULATION OF MONTHLY NET INCOME

	<u>OBLIGOR</u>	<u>OBLIGEE</u>
1. <u>Total Gross Income per pay period</u> <u>(See Pa.R.C.P. No. 1910.16-2(a))</u>	_____	_____
2. <u>Deductions</u> <u>(See Pa.R.C.P. No. 1910.16-2(c))</u>	(_____)	(_____)
3. <u>Net Income</u> <u>(line 1 minus line 2)</u>	_____	_____
4. <u>Conversion to Monthly Net Income</u> <u>(if pay period is other than monthly)</u>	_____	_____

PART B. SPOUSAL SUPPORT OR ALIMONY PENDENTE LITE

	<u>Without</u> <u>Dependent</u> <u>Children</u>	<u>With</u> <u>Dependent</u> <u>Children</u>
5. <u>Obligor’s Monthly Net Income</u> <u>(line 4)</u>	_____	_____
6. <u>Obligor’s child support, spousal support, alimony <i>pendente lite</i> or alimony obligations to children or former spouses who are not part of this action, if any.</u> <u>(See Pa.R.C.P. No. 1910.16-2(c)(2))</u>	(_____)	(_____)
7. <u>Obligor’s Net Income available for spousal support or alimony <i>pendente lite</i></u> <u>(line 5 minus line 6)</u>	_____	_____

	<u>Without Dependent Children</u>	<u>With Dependent Children</u>
8. <u>Obligor's Net Income percentage for spousal support or alimony <i>pendente lite</i></u>	x <u>33%</u>	x <u>25%</u>
9. <u>Obligor's proportionate share of spousal support or alimony <i>pendente lite</i> (line 7 multiplied by line 8)</u>	=====	=====
10. <u>Obligee's Monthly Net Income (line 4)</u>	=====	=====
11. <u>Obligee's Net Income percentage for spousal support or alimony <i>pendente lite</i></u>	x <u>40%</u>	x <u>40%</u>
12. <u>Obligee's proportionate share of spousal support or alimony <i>pendente lite</i> (line 10 multiplied by line 11)</u>	=====	=====
13. <u>Preliminary Monthly Spousal Support or Alimony <i>Pendente Lite</i> amount (line 9 minus line 12—if the result is less than zero, enter a zero on line 13)</u>	=====	=====
14. <u>Adjustments for Part E Additional Expenses (See Pa.R.C.P. No. 1910.16-6)</u>	=====	=====
15. <u>Total Monthly Spousal Support or Alimony <i>Pendente Lite</i> Amount (line 13 plus or minus line 14, as appropriate)</u>	=====	=====

**PART C - BASIC CHILD SUPPORT**

	<u>OBLIGOR</u>	<u>OBLIGEE</u>
16. <u>Monthly Net Income (line 4 and add the child's monthly Social Security Disability or Retirement Derivative benefit amount, if any, to the Monthly Net Income of the party receiving the benefit pursuant to Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii).</u>	=====	=====
17. <u>Preliminary Monthly Spousal Support or Alimony <i>Pendente Lite</i> amount, if any. (line 13)</u>	(=====)	+=====
18. <u>Adjusted Monthly Net Income (for obligor, line 16 minus line 17; for obligee, line 16 plus line 17)</u>	=====	=====
19. <u>Combined Monthly Net Income (obligor's line 18 plus obligee's line 18)</u>	=====	=====
20. <u>Basic Child Support Obligation (determined from child support schedules in Pa.R.C.P. No. 1910.16-3 based on the number of children and line 19)</u>	=====	=====
21. <u>Net Income expressed as a percentage of Combined Monthly Net Income (line 18 divided by line 19 and multiplied by 100)</u>	===== %	===== %
22. <u>Preliminary Monthly Basic Child Support Obligation (line 20 multiplied by line 21)</u>	=====	=====
23. <u>Child's Social Security Derivative Disability or Retirement Benefit. (if the benefits are paid to the obligee, enter the benefit amount on the line for the party whose retirement or disability created the child's benefit pursuant to Pa.R.C.P. No. 1910.16-2(b))</u>	=====	=====
24. <u>Adjusted Monthly Basic Child Support Obligation (line 22 minus line 23—if the result is less than zero, enter a zero on line 24)</u>	=====	=====

**PART D. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (See subdivision (c))**

<b>25.a.</b>	<b>Percentage of time obligor spends with children (divide number of overnights with the obligor by 365 and multiply by 100)</b>	_____ %
<b>b.</b>	<b>Subtract 30%</b>	( _____ 30%)
<b>c.</b>	<b>Difference (line 25a minus line 25b)</b>	_____ %
<b>d.</b>	<b>Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (line 21 minus line 25c)</b>	_____ %
<b>e.</b>	<b>Obligor's Preliminary Adjusted Basic Monthly Support Obligation (line 20 multiplied by line 25d)</b>	_____
<b>f.</b>	<b>Further adjustment, if necessary under subdivision (c)(2)</b>	_____
<b>g.</b>	<b>Obligor's Adjusted Basic Child Support Amount</b>	_____

**PART E. ADDITIONAL EXPENSES (See Pa.R.C.P. No. 1910.16-6)**

<b>26.a.</b>	<b>Obligor's Share of Child Care Expenses</b>	_____
<b>b.</b>	<b>Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)</b>	_____
<b>c.</b>	<b>Obligee's Share of the Health Insurance Premium (if the obligor is paying the premium)</b>	( _____ )
<b>d.</b>	<b>Obligor's Share of Unreimbursed Medical Expenses</b>	_____
<b>e.</b>	<b>Other Additional Expenses</b>	_____
<b>f.</b>	<b>Total Additional Expenses (add lines 26a, b, d, and e, then subtract line 26c)</b>	_____
<b>27.</b>	<b>Obligor's Total Monthly Support Obligation (line 24 or 25g plus line 26f, if applicable)</b>	_____

**(2) The formula in Parts I through IV is for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite*.**

**Official Note: See subdivision (1) for an order entered on or after January 1, 2019, or for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply to the modification.**

**PART I. BASIC CHILD SUPPORT**

	OBLIGOR	OBLIGEE
1. Total Gross Income Per Pay Period <b>(See Pa.R.C.P. No. 1910.16-2(a))</b>	_____	_____
2. [ Less ] Deductions <b>(See Pa.R.C.P. No. 1910.16-2(c))</b>	( _____ )	( _____ )
3. Net Income <b>(line 1 minus line 2)</b>	_____	_____
4. Conversion to Monthly Amount (if pay period is other than monthly) Include [ amount of ] <b>the</b> child's monthly Social Security derivative benefit <b>amount</b> , if any, in the [ income of the party receiving it ] <b>monthly net income of the party receiving the benefit</b> pursuant to [ Rule 1910.16-2(b)(2)(A) or (B) ] <b>Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii).</b>		
5. Combined Total Monthly Net Income <b>(obligor's line 4 plus obligee's line 4)</b>	_____	_____

	OBLIGOR	OBLIGEE
6. <b>[ BASIC CHILD SUPPORT OBLIGATION ] Basic Child Support Obligation</b> (determined from schedule at [ Rule ] Pa.R.C.P. No. 1910.16-3 based on number of children and line 5 [ combined monthly net income ])	_____	_____
7. Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	_____ %	_____ %
8. Each Party's Preliminary Monthly Share of the Basic Child Support Obligation (multiply line 6 and 7)	_____	_____
9. <b>[ Subtract ]</b> Child's Social Security Derivative Disability or Retirement Benefit [ from the Monthly Share of Basic Child Support of the Party whose Retirement or Disability Created the Child's Benefits if the Benefits are Paid to the Obligee ] (if the benefits are paid to the obligee, enter the benefit amount on the line for the party whose retirement or disability created the child's benefit)	_____	_____
10. Each Party's Adjusted Monthly Share of the Basic Child Support Obligation [ (Not less than 0) ] (line 8 minus line 9—if the result is less than zero, enter a zero on line 10)	_____	_____

*PART II. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE ([ See ] See subdivision (c) [ of this rule ])*

11. a. Percentage of Time Obligor Spends with Children (divide number of overnights with the obligor by 365 and multiply by 100)	_____ %
b. Subtract 30%	( _____ %)
c. Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract result of calculation in line 11b from line 7)	_____ %
d. Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 11c and line 6)	_____
e. Further adjustment, if necessary under subdivision (c)(2) [ of this rule ]	_____
f. Obligor's Adjusted Share of the Basic Child Support Amount (Total of line 11d and line 11e)	_____

*PART III. ADDITIONAL EXPENSES ([ see Rule ] See Pa.R.C.P. No. 1910.16-6)*

12. a. Obligor's Share of Child Care Expenses	_____
b. Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)	_____
c. [ Less ] Obligee's Share of the Health Insurance Premium (if the obligor is paying the premium)	( _____ )
d. Obligor's Share of Unreimbursed Medical Expenses	_____
e. Other Additional Expenses	_____
f. Total Additional Expenses (add lines 12a, b, d, and e, then subtract line 12c)	_____
13. Obligor's Total Monthly Support Obligation (add line 10 or 11f [ , if applicable, ] and line 12f, if applicable)	_____

*PART IV. SPOUSAL SUPPORT OR APL with dependent children*

14. Obligor's Monthly Net Income (line 4)	_____
15. [ Less ] Obligor's Support, Alimony [ Pendente Lite ] <b>Pendente Lite</b> or Alimony Obligations, [ if any, ] to Children or Former Spouses who are not part of this action, if any ([ see Rule ] See Pa.R.C.P. No. 1910.16-2(c)(2))	( _____ )
16. [ Less ] Obligee's Monthly Net Income (line 4)	( _____ )

- 17. Difference \_\_\_\_\_  
**(line 14 minus lines 15 and 16)**
- 18. [ **Less** ] Obligor’s Total Monthly Child Support Obligation \_\_\_\_\_ ( \_\_\_\_\_ )  
[ **Without** ] **without** Part II Substantial or Shared Custody  
Adjustment, if any  
(Obligor’s line 10 plus line 12f)
- 19. Difference \_\_\_\_\_  
**(line 17 minus line 18)**
- 20. Multiply by 30% × \_\_\_\_\_ [ **.** ]30%
- 21. [ **AMOUNT OF MONTHLY SPOUSAL SUPPORT or APL** ] \_\_\_\_\_  
**Monthly Spousal Support or APL Amount**  
**(line 19 multiplied by line 20)**

*Without Dependent Children*

- 22. Obligor’s Monthly Net Income (line 4) \_\_\_\_\_
- 23. [ **Less** ] Obligor’s Support, Alimony [ **Pendente Lite** ] ***Pendente***  
***Lite*** or Alimony Obligations [ , **if any,** ] to Children or Former  
Spouses who are not part of this action, **if any** ( [ **see Rule** ]  
**Pa.R.C.P. No.** 1910.16-2(c)(2)) \_\_\_\_\_ ( \_\_\_\_\_ )
- 24. [ **Less** ] Obligees’s Monthly Net Income (line 4) \_\_\_\_\_ ( \_\_\_\_\_ )
- 25. Difference \_\_\_\_\_  
**(line 22 minus lines 23 and 24)**
- 26. Multiply by 40% × \_\_\_\_\_ [ **.** ]40%
- 27. [ **PRELIMINARY AMOUNT OF MONTHLY SPOUSAL**  
**SUPPORT OR APL** ] \_\_\_\_\_  
**Preliminary Monthly Spousal Support or APL amount**  
**(line 25 multiplied by line 26)**
- 28. Adjustments for Other Expenses ( [ **see Rule** ] ***See Pa.R.C.P. No.***  
1910.16-6) \_\_\_\_\_ ( \_\_\_\_\_ )  
**(line 12f)**
- 29. [ **TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR**  
**APL** ] \_\_\_\_\_  
**Total Monthly Spousal Support or APL amount**  
**(line 27 plus or minus line 28, as appropriate)**

\* \* \* \* \*

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* [ **Where** ] **If** children are residing with the spouse (**custodial parent**) obligated to pay spousal support or alimony [ **pendente lite (custodial parent)** ] ***pendente lite*** and the other spouse (non-custodial parent) has a legal obligation to support the children, the guideline [ **amount of** ] spousal support or alimony [ **pendente lite shall be** ] ***pendente lite amount*** is determined by offsetting the non-custodial parent’s [ **obligation for support of the children** ] **child support amount** and the custodial parent’s [ **obligation of** ] spousal support or alimony [ **pendente lite** ] ***pendente lite amount***, and awarding the net difference either to the non-custodial parent as spousal support/alimony [ **pendente lite** ] ***pendente lite*** or to the custodial parent as child support as the circumstances warrant. **The calculation is a five-step process:**

[ **The calculation is a five-step process.** **First,** determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spou-

sal support without dependent children. **Second,** recalculate the net income of the parties assuming the payment of the spousal support. **Third,** determine the child support obligation of the non-custodial parent for the children who are the subjects of the support action. **Fourth,** determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent’s child support obligation from Step 3 from the original support obligation determined in Step 1. **Fifth,** because the first step creates additional tax liability for the recipient non-custodial parent and additional tax deductions for the payor custodial parent and the third step involves an offset of the child support owed by the non-custodial parent against the spousal support or alimony ***pendente lite*** owed by the custodial parent, only that reduced amount will be taxable. **Therefore,** upon application of either party, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation. ]

(1) Calculate the custodial parent’s spousal support or alimony ***pendente lite*** obligation to the non-custodial parent based on the parties’ monthly net incomes using the “without dependent chil-



dren” formula in either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV), as appropriate.

(2) Recalculate the parties’ monthly net incomes by adjusting for the spousal support or alimony *pendente lite* payment paid or received in (1).

(3) Using the recomputed monthly net incomes from (2), calculate the non-custodial parent’s child support obligation to the custodial parent.

(4) The final support amount is the difference calculated in (1) and (3).

(i) If the amount in (1) is greater than the amount in (3), the final amount is spousal support or alimony *pendente lite* payable to the non-custodial parent.

(ii) If the amount in (1) is less than the amount in (3), the final amount is child support payable to the custodial parent.

(5) If the proceeding is a modification of an order entered before January 1, 2019 that has federal tax consequences associated with spousal support or alimony *pendente lite* payments and the final order is spousal support or alimony *pendente lite* as in (4)(i), the offset spousal support or alimony *pendente lite* amount is federally taxable, and the trier-of-fact may deviate the final order due to the tax effect, as appropriate.

*Official Note:* See Pa.R.C.P. No. 1910.16-4.

[ (f) Allocation. Consequences.

(1) An order awarding child support and spousal support or child support and alimony *pendente lite* may be unallocated or may state the amount of support allocable to the spouse and the amount allocable to each child. The order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony *pendente lite* are delineated in the order. However, Part IV of the formula provided by these rules assumes that an order will be unallocated. Therefore, if the order is allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If the allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony *pendente lite* only.

*Official Note:* The 2005 amendment supersedes *Diament v. Diament*, 816 A.2d 256 (Pa. Super. 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor’s available net income for support purposes. Pa.R.C.P. No. 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.

(2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the method that results in the greatest benefit to the obligee.

If the obligee’s net income is equal to or greater than the obligor’s net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee’s net income is equal to or greater than the obligor’s net income, the guideline amount indicated shall be attributed to child support only.

(3) Unallocated charging orders for child support and spousal support or child support and alimony *pendente lite* shall terminate upon the death of the obligee.

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. §§ 7101 *et seq.* The court shall provide notice of allocation to the parties.

*Official Note:* This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order. ]

#### Explanatory Comment—2005

\* \* \* \* \*

Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Pa.R.C.P. No. 1910.16-3.

[ Subdivision (f) states that the guidelines continue to presume that the order will be unallocated for tax purposes. However, language has been added to subdivision (f)(1), and a new Note has been inserted, to clarify that an obligor’s tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor’s available net income for support purposes. Subdivision (3) is intended to ensure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Pa.R.C.P. No. 1910.19(d) provides that all spousal support and alimony *pendente lite* orders terminate upon the death of the obligee. Termination of a charging order does not affect arrears existing at that time. Subdivision (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in an-

other state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.]

\* \* \* \* \*

[ Explanatory Comment—2018

The allocation of a support order is of great significance to the parties. The issue of allocation may arise in a support action if child support and spousal support or child support and alimony *pendente lite* are sought. The decision to allocate a support order will determine the party that pays the federal income tax, which affects the actual money available to the beneficiary of the order.

Allocation of a support order may not be appropriate in all cases. Rather, the decision to allocate must be based upon the facts of the particular case. Subdivision (f) makes clear that the court has the authority to allocate the order and that the decision rests in the discretion of the court. The court or the parties may raise the question of allocation.]

Rule 1910.16-6. Support Guidelines. [ Adjustments to the ] Basic Support Obligation Adjustments. [ Allocation of ] Additional Expenses Allocation.

The [ trier of fact ] trier-of-fact may allocate between the parties the additional expenses [ identified ] in subdivisions (a)—(e). [ If under the facts of the case an order for basic support is not appropriate, the trier of fact ] If a basic support order is inappropriate under the facts of the case, the trier-of-fact may allocate between the parties the additional expenses.

Except for the subdivisions (b)(4) and (e) expenses, the trier-of-fact shall calculate the parties' proportionate share of the additional expenses after adjusting the parties' monthly net income by the monthly spousal support or alimony *pendente lite* amount received or paid, and then dividing each party's adjusted monthly net income by the parties' combined monthly net income. However, the trier-of-fact shall not adjust the parties' monthly net incomes when apportioning the expenses in child support only cases.

(a) *Child care expenses*. [ Reasonable ] The trier-of-fact shall allocate reasonable child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income], shall be allocated between the parties in proportion to their monthly net incomes]. The [ court ] trier-of-fact may order that the obligor's share is added to his or her basic support obligation, paid directly to the service provider, or paid directly to the obligee. When a party is receiving a child care subsidy through the Department of Human Services, the [ expenses to be ] expense allocated between the parties [ shall be ] is the amount actually paid by the party receiving the subsidy.

*Example.* Mother has primary custody of the parties' two children and Father has partial custody. Mother's monthly net income is \$2,000 and Father's is \$3,500. At their combined income level of \$5,500, the basic monthly child support from the schedule in Pa.R.C.P. No. 1910.16-3 is \$1,463 for two children. As Father's income is 64% of the parties' combined monthly net income, his share is \$936. Mother incurs child care expenses of \$400

per month and Father incurs \$100 of such expenses [ each ] per month. The total [ amount of ] child care expenses, \$500, will be apportioned between the parties, with Father paying 64%, or \$320. As [ he ] Father is already paying \$100 for child care while the children are in his partial custody, he would pay the remaining \$220 to Mother for a total child support obligation of \$1,156 (\$936 + \$220 = \$1,156).

\* \* \* \* \*

(b) *Health Insurance Premiums*.

[ (1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. If, prior to the entry of a divorce decree, a party's policy covers that party, a child, and a spouse and the spouse has separate additional coverage not needed to cover the child and/or the other party, the cost of the spouse's insurance premium shall not be allocated between the parties. If, prior to the entry of a divorce decree, a party provides coverage for that party and a child, but not the spouse, and the spouse has separate coverage, both parties' premiums shall be allocated between the parties in proportion to their respective incomes. If, prior to the entry of a divorce decree, each spouse has his or her own health insurance that does not cover the other party, and there are no children subject to the order, the cost of both parties' premiums shall be allocated between the parties in proportion to their respective incomes. If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of either party's household, the cost shall be allocated between the parties in proportion to their net incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed, even if that person is paying the premium as set forth in subdivision (1) above, or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event that evidence as to this portion is not submitted by either party, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

(2.1) The actual incremental amount of the premium which provides coverage for the subjects of the support order, if submitted by either party, shall be used in determining the amount of the premium to be allocated between the parties. If not submitted by either party, then the amount of the premium shall be divided by the number of persons covered to calculate the portion of the premium that provides coverage to each person. ]

(1) The trier-of-fact shall allocate the health insurance premiums paid by the parties, including the premium attributable to the party paying the premium, provided that a statutory duty of support is owed to the party or child covered by the health insurance.

(i) If the party paying the health insurance premium is the obligor, the obligee's share is deducted from the obligor's basic support amount.

(ii) If the obligee is paying the health insurance premium, the obligor's share is added to his or her basic support amount.

iii) An allocation of health insurance premiums between the parties shall also include health insurance that is provided and paid by a third-party resident of either party's household (e.g., step-parent) for a child who is the subject of the support order.

(2) The trier-of-fact shall not allocate employer-paid premiums or premiums paid for a party, person, or child to whom no statutory duty of support is owed.

(i) If the parties present evidence of the excluded premium's actual amount—the amount attributed to a party, person, or child not owed a statutory duty of support—the trier-of-fact shall deduct the actual amount excluded from the total premium before allocating the health insurance premium between the parties.

(ii) If the parties do not present evidence of the excluded premium's actual amount, the trier-of-fact shall calculate the excluded amount as follows:

(A) determine the premium's cost per person by dividing the total premium by the number of persons covered under the policy;

(B) multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of, the support action; and

(C) the resulting amount is excluded from allocation.

*Example 1.* If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had

been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

\* \* \* \* \*

(c) *Unreimbursed Medical Expenses.* **[ Unreimbursed ]** The trier-of-fact shall allocate the obligee's or children's unreimbursed medical expenses [ of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. Notwithstanding the prior sentence, there shall be no apportionment of ] **However, the trier-of-fact shall not allocate** unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The **[ court ] trier-of-fact** may **[ direct ]** order that the obligor's **expense** share **[ be ]** is added to his or her basic support obligation, **[ or paid directly to the obligee or ]** **paid directly** to the health care provider, **or paid directly to the obligee.**

\* \* \* \* \*

(4) If the trier of fact determines that out-of-network medical expenses were not obtained due to medical emergency or other compelling factors, the court may decline to assess any of such expenses against the other party.

**[ (5) In cases involving only spousal support or alimony pendente lite, the parties' respective net incomes for purposes of allocating unreimbursed medical expenses shall be calculated after the amount of spousal support or alimony pendente lite is deducted from the obligor's income and added to the obligee's income. ]**

*Official Note:* If the trier of fact determines that the obligee acted reasonably in obtaining services which were not specifically set forth in the order of support, payment for such services may be ordered retroactively.

(d) *Private School Tuition. Summer Camp. Other Needs.* Expenditures for needs outside the scope of typical child-rearing expenses, e.g., private school tuition, summer camps, have not been factored into the Basic Child Support Schedule.

(1) If a party incurs an expense for a need not factored into the Basic Child Support Schedule and the **[ court ] trier-of-fact** determines the need and expense are reasonable, the **[ court ] trier-of-fact** shall allocate the expense **[ between the parties in proportion to the parties' monthly net incomes ]**. The **[ court ] trier-of-fact** may order that the obligor's **expense** share is added to his or her basic support obligation, **paid** directly to the service provider, or **paid** directly to the obligee.

\* \* \* \* \*

(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the **[ court ] trier-of-fact** will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise.

**(1)** If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's **monthly** net income (including amounts of spousal support, alimony **[ pendente lite ] pendente lite**, and child support), the **[ court ] trier-of-fact** may direct the obli-

gor to assume up to 50% of the excess amount as part of the total support [ **award** ] **amount**.

(2) If the obligor is occupying the marital residence and the mortgage payment exceeds 25% of the obligor's monthly net income (less any amount of spousal support, alimony [ **pendente lite or** ] ***pendente lite***, and child support the obligor is paying), the [ **court** ] **trier-of-fact** may [ **make an appropriate downward adjustment in** ] **downwardly adjust** the obligor's support [ **obligation** ] **amount**.

(3) This rule shall not be applied after a final resolution of [ **all** ] **the** outstanding economic claims **in the parties' divorce action**.

(4) For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes, and homeowners' insurance and may include [ **any** ] subsequent mortgages, home equity loans, and [ **any** ] other **marital** obligations [ **incurred during the marriage which are** ] secured by the marital residence.

#### [ Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation.

#### Explanatory Comment—2005

Rule 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. § 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subsection (1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subsection (2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties

and children who are not the subjects of the support order. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

#### Explanatory Comment—2006

A new introductory sentence in Rule 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of the formula at Rule 1910.16-4 results in a basic support obligation of zero, the court may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment to subdivision (e) recognizes that the obligor may be occupying the marital residence

and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

#### Explanatory Comment—2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

#### Explanatory Comment—2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.]

#### Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By generally referencing the Tax Code, rather than incorporating current Code provisions in the rule, further amendments will be incorporated into the support calculation.

#### Explanatory Comment—2005

Pa.R.C.P. No. 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By referring to the Tax Code in general, rather than incorporating current Code provisions in the rule, any

further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subdivision (b)(1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subdivision (b)(2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subdivision (b)(2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier-of-fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in propor-

tion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier-of-fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the trier-of-fact's discretion based upon the circumstances of the case.

#### Explanatory Comment—2006

A new introductory sentence in Pa.R.C.P. No. 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of either formula Pa.R.C.P. No. 1910.16-4 results in a basic support obligation of zero, the trier-of-fact may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment of subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

#### Explanatory Comment—2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

#### Explanatory Comment—2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic

claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

#### Explanatory Comment—2018

The amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. Previously, the Rules of Civil Procedure apportioned the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)—(d), with the exception of subdivision (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment did not consider the amount of support paid by the obligor or received by the obligee.

The amended rule adjusts the parties' monthly net incomes, upward or downward, by the spousal support/APL amount paid or received by that party prior to apportioning the expenses. This methodology is not new to the Rules of Civil Procedure. In Pa.R.C.P. No. 1910.16-6(c)(5)(rescinded), the parties' monthly net incomes in spousal support/APL-only cases were similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the support obligation for purposes of determining a mortgage deviation. As the new procedure adopts the methodology in former subdivision (c)(5), that subdivision has been rescinded as delineating the spousal support only circumstance is unnecessary.

Lastly, the amendment consolidates Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1).

Rule 1910.18. Support Order. Subsequent Proceedings. **Modification of Spousal Support or Alimony Pendente Lite Orders Entered Before January 1, 2019.**

(a) Subsequent **support order modification or termination** proceedings [ **to modify or terminate a support order pursuant to Rule** ] pursuant to Pa.R.C.P. No. 1910.19 shall be brought in the court [ **which** ] **that** entered the order. If the action has been transferred pursuant to [ **Rule** ] Pa.R.C.P. No. 1910.2 following the entry of a support order, subsequent proceedings shall be brought in the court to which the action was transferred.

(b) Subsequent **support order enforcement** proceedings [ **to enforce an order pursuant to Rule** ] pursuant to Pa.R.C.P. No. 1910.20 may be brought in the court [ **which** ] **that** entered the support order or the court [ **of a county** ] to which the order has been transferred.

(c) Subdivision (a) shall not limit the **plaintiff's** right [ **of the plaintiff** ] to institute additional **support** proceedings [ **for support** ] in [ **any** ] a county of proper venue.

(d) Unless a modification provides that the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97), expressly applies, an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* is governed by the Pa.R.C.P. No. 1910.16-4(a)(2)(Part IV) formula.

**Official Note:** See Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV), as relevant.

**Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments.**

\* \* \* \* \*

(c) Pursuant to a petition for modification, the [ **trier of fact** ] **trier-of-fact** may modify or terminate the existing support order in any appropriate manner based [ **upon** ] **on** the evidence presented without regard to which party filed the petition for modification. If the [ **trier of fact** ] **trier-of-fact** finds that there has been a material and substantial change in circumstances, the order may be increased or decreased [ **depending upon** ] **based on** the **parties'** respective **monthly net incomes** [ **of the parties** ], consistent with the support guidelines [ **and** ], existing law, **and Pa.R.C.P. No. 1910.18(d)**, and [ **each** ] **the** party's custodial time with the child at the time the modification petition is heard.

\* \* \* \* \*

(g) *Overpayments.*

\* \* \* \* \*

(2) *Order Terminated.* If there is an overpayment in any amount and there is no charging order in effect, within one year of the termination of the charging order, the former obligor may file a petition with the domestic relations section seeking recovery of the overpayment. A copy shall be served upon the former obligee as original process. The domestic relations section shall schedule a conference on the petition, which shall be conducted consistent with the rules governing support actions. The domestic relations section shall have the authority to enter an order against the former obligee for the amount of the overpayment in a monthly amount to be determined by the trier of fact after consideration of the former obligee's ability to pay.

***(h) Modification of a Support Order with Child Support and Spousal Support or Child Support and Alimony Pendente Lite Entered Before January 1, 2019.***

**(1) In a subsequent modification proceeding of an order awarding child support and spousal support or child support and alimony pendente lite, as provided in Pa.R.C.P. No. 1910.18(d), the trier-of-fact may on its own motion or upon the motion of a party:**

**(i) make an unallocated award in favor of the spouse and one or more children; or**

**(ii) state the support amount allocable to the spouse and to each child.**

**(2) The trier-of-fact shall clearly state whether the order is allocated or unallocated even if the child support and spousal support or child support and alimony pendente lite amounts are delineated in the order.**

**(i) If the order is allocated, the Pa.R.C.P. No. 1910-16.4(a)(2)(Part IV) formula determines the spousal support amount.**

**(A) As the formula assumes an unallocated order, if the order's allocation utilizing the formula is inequitable, the trier-of-fact may adjust the order, as appropriate.**

**(B) In making an adjustment, the trier-of-fact shall consider the federal income tax consequences.**

**(C) If the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining a support amount.**

**(ii) If the order is unallocated or the order is for spousal support or alimony pendente lite only, the trier-of-fact shall not consider the federal income tax consequences.**

**Official Note:** See 23 Pa.C.S. § 4348(d) for additional matters that must be specified in a support order if arrearages exist when the order is entered.

**(3) A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier-of-fact should utilize the method that provides the greatest benefit to the obligee.**

**(4) If the obligee's monthly net income is equal to or greater than the obligor's monthly net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's monthly net income is equal to or greater than the obligor's monthly net income, the guideline amount indicated shall be attributed to child support only.**

**(5) Unallocated child support and spousal support or child support and alimony pendente lite orders shall terminate upon the obligee's death.**

**(6) In the event that the obligor defaults on an unallocated order, the trier-of-fact shall allocate the order for child support collection pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. §§ 7101—7903. The trier-of-fact shall provide the parties with notice of allocation.**

**Official Note:** This provision is necessary to comply with various state and federal laws relating to child support enforcement. It is not intended to affect an unallocated order's tax consequences.

**(7) An unallocated child support and spousal support or child support and alimony pendente lite order is a final order as to the claims covered in the order.**

**(8) Motions for post-trial relief cannot be filed to the final order.**

**Official Note:** The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.

**Subdivision (h) incorporates Pa.R.C.P. No. 1910.16 (rescinded) and Pa.R.C.P. No. 1910.16-4(f)(rescinded) for subsequent modification proceedings due to the enactment of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97).**

\* \* \* \* \*

[Pa.B. Doc. No. 19-39. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

**Order Adopting New Rule 490.1 and Revising the Comments of Rules 430, 455 and 456 of the Pennsylvania Rules of Criminal Procedure; No. 509 Criminal Procedural Rules Doc.**

### Order

*Per Curiam*

*And Now*, this 21st day of December, 2018, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 47 Pa.B. 1850 (April 1, 2017), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pennsylvania Rule of Criminal Procedure 490.1 is adopted, and the Comments to Pennsylvania Rules of Criminal Procedure 430, 455, and 456 are revised, in the following form.

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

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART D(1). Arrests With a Warrant

#### Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

- (1) the citation or summons is returned undelivered; or
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

#### (B) BENCH WARRANTS

- (1) A bench warrant shall be issued when:
  - (a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or
  - (b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

### Comment

Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule [ 400A ] **400** and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the defendant fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1). [ **See also the Public School Code of 1949, 24 P.S. § 13-1333(b)(2) that permits the issuing authority to allege the defendant dependent.** ]

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. *See* Rule 451.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (B)(1)(b), formerly paragraph (A)(1)(d), was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.



When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

Except in cases brought pursuant to the Public School Code of 1949, 24 P.S. § 1-102 *et seq.*, in which the defendant is at least [ 13 ] 15 years of age but not yet 17, if the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of [ 13 ] 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may [ **allege** ] **refer** the defendant [ **dependent** ] **for commencement of dependency proceedings** under 42 Pa.C.S. § 6303(a)(1). [ **Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.** ] See 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

**Official Note:** Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; Comment revised January 17, 2013, effective May 1, 2013; **Comment revised December 21, 2018, effective May 1, 2019.**

#### *Committee Explanatory Reports:*

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

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

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

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

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the change to the Rule 454 reference in paragraph (B)(1)(b) with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

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

**Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).**

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

##### **Rule 455. Trial in Defendant's Absence.**

(A) If the defendant fails to appear for trial in a summary case, the trial shall be conducted in the defendant's absence, unless the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the issuing authority may issue a warrant for the defendant's arrest.

(B) At trial, the issuing authority shall proceed to determine the facts and render a verdict.

(C) If the defendant is found not guilty, any collateral previously deposited shall be returned.

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial *de novo*. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine, costs, and restitution. When the amount of collateral deposited is more than the fine, costs, and restitution, the balance shall be returned to the defendant.

(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.

#### Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. *See* Rule 430(B). The trial would then be conducted with the defendant present as provided in these rules. *See* Rule 454.

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

Paragraph (D) provides notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. *See* Rules 408(B)(3), 413(B)(3), and 423(B)(3).

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

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least [ 13 ] 15 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of [ 13 ] 15 but is not yet 17; and has failed to pay

the fine, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may [ **allege** ] **refer** the defendant [ **dependent** ] **for commencement of dependency proceedings** under 42 Pa.C.S. § 6303(a)(1). [ **Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.** ] *See* 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a **local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.**

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

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

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

For arrest warrant procedures in summary cases, see Rules 430 and 431.

**Official Note:** Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; Comment revised January 17, 2013, effective May 1, 2013; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; amended June 10, 2016, effective August 1, 2016; **Comment revised December 21, 2018, effective May 1, 2019.**

#### *Committee Explanatory Reports:*

Final Report explaining the April 18, 1997 amendments mandating a summary trial in absentia with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5414 (October 1, 1997).

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

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

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

Final Report explaining the August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

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

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

Final Report explaining the March 9, 2016 Comment revision cross-referencing the sentencing provisions in Rule 454(F) published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

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

**Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).**

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

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

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

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

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

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

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

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

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

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

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

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

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

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

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

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

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

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

**Comment**

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

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

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

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

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least [ 13 ] 15 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School [ Act ] Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of [ 13 ] 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph [ (B) ] (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may [ allege ] refer the defendant [ dependent ] for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). [ Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court. ] See 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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

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

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

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not

afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rules 121 and 122 (dealing with appearance or waiver of counsel).

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

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

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

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; **Comment revised December 21, 2018, effective May 1, 2019.**

*Committee Explanatory Reports:*

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

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

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

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

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

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

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

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

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

**Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).**

**PART H. Summary Case Expungement Procedures**

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

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

**(A) PETITION FOR EXPUNGEMENT**

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

(2) The petition shall set forth:

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

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

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

(d) the magisterial district court number;

(e) the docket number;

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

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

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

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

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

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

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

(3) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another Department of Education-approved equivalent, or documen-

tation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

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

**(B) OBJECTIONS; HEARING**

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

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

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

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

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

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

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

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

**(C) ORDER**

(1) Every order for expungement shall include:

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

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

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

(d) the magisterial district court number;

(e) the docket number;

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

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

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

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

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

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

(l) a directive to the Department of Transportation to expunge all administrative records related to the truancy conviction.

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

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

### Comment

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

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

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

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

*See* Rule 490 for the procedures for expungement of summary cases other than truancy. *See also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

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

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

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

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

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

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

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

**Official Note:** Adopted December 21, 2018, effective May 1, 2019.

### Committee Explanatory Reports:

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

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

#### *New Rule 490.1 and Revision of the Comments to Pa.Rs.Crim.P. 430, 455, and 456*

#### Expungement of Summary Truancy Cases Notice of Impending Truancy Certification

On December 21, 2018, effective May 1, 2019, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 490.1 (Procedure for Obtaining Expungement of Truancy Cases; Expungement Order) to provide procedures for the expungement of summary truancy cases as provided for by Act 138 of 2016 and revised the Comments to Rules 430 (Issuance of Warrant), 455 (Trial in Defendant’s Absence), and 456 (Default Procedures: Restitution, Fines, and Costs) to correct statutory references contained in those Comments that have been affected by Act 138.

Act 138 of 2016 (hereafter “the Act”) amended truancy protocols in Pennsylvania. The Act, in 24 P.S. § 13-1333.3, provides that a child convicted of the summary offense of truancy may request a court to expunge his/her record if certain conditions are met. These conditions are that the child has earned a high school diploma, a Commonwealth secondary school diploma, or another Department of Education-approved equivalent, or is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 and has satisfied any sentence including payment of fines and costs. It should be noted that this expungement procedure applies only to a summary conviction of a truant child not a summary conviction of a parent or guardian.

The intent of the Act is to provide a relatively easy method of expungement of a summary truancy conviction when a defendant has accomplished the requirements of the Act, primarily completion of high school or the equivalent. Recognizing that these type of cases would be relatively few in number, the Committee nonetheless agreed that the Criminal Rules should be amended to incorporate the procedures that address this particular form of expungement. In addition, the Committee noted that some of the general summary expungement procedures in Rule 490 would be unnecessary for “streamlined” truancy expungement. The Committee concluded that, rather than incorporating the new procedures into the current rule, it would be clearer to place the procedures for truancy expungement in a separate rule, now Rule 490.1, immediately following the general summary expungement procedures in Rule 490. The organization of

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

new Rule 490.1 mirrors Rule 490. This includes provisions regarding the petition for expungement, provisions for review and objection by the Commonwealth, and provisions for the expungement order, if granted.

Under the general summary expungement procedures of Rule 490, when a defendant is eligible for expungement, he or she must file a petition with the clerk of courts and the determination on expungement is made by a common pleas judge. Under the Act, the expungement petition may be filed and adjudicated by a “court,” which is defined as “a magisterial district court, the Philadelphia Municipal Court or a Court of Common Pleas.” While allowing these proceedings in the magisterial district courts, which are not courts of record, is problematic, this provision of the Act constitutes a grant of jurisdiction to the minor courts in these cases. Recognition of this grant of jurisdiction is provided in paragraph (A)(1) of the new rule by stating that the petition may be filed with “the issuing authority by whom the charges were disposed.” Because the magisterial district courts are not of record, there was a concern regarding how some of the procedures of the new rule that are required to be “in open court on the record,” such as one of the service of the petition options under Rule 114 and entry of the order, would be accomplished. This concern is addressed by requiring every action taken by a magisterial district judge on the expungement petition in a court proceeding to be reduced to writing with copies provided to the defendant and affiant. This has been included in paragraph (B)(6) of new Rule 490.1 that requires the order to be in writing with a copy being made part of the case record. This concept is further elaborated in the Comment.

Paragraph (A)(2) provides the contents of the petition. The contents are taken from the requirements of Rule 490. Most of the information in the Rule 490 petition is required to ensure that the proper case is identified and disposed. The same concern is present in truancy cases and so the information required in the petition under Rule 490.1 is the same as in Rule 490. The one exception in contents is the requirement for a Pennsylvania State Police criminal history to be attached. Since the Act conditions expungement of truancy offenses only on completion of high school or equivalent and satisfaction of the conditions of the original case, criminal history did not appear to be as relevant here as in other summary cases. The Committee concluded that this requirement should not be carried over into Rule 490.1.

It should be noted that the term “motion” as defined by Rule 103 includes petitions. The Committee’s rationale for this definition was that all types of filing by the parties seeking relief should be treated uniformly with all of the standard procedures for motions applying. The term “petition” was used in the other expungement rules because it was the traditional terminology used in expungement and the Committee did not want to suggest that these were completely new procedures; for all intents and purposes, expungement petitions were motions. For the same reason, the term “petition” is used in Rule 490.1.

The new rule also provides for notice to the Commonwealth with the opportunity to respond. The Committee discussed, given the intended expedited nature of truancy expungement, whether this should be included at all. The Committee concluded that the truancy conviction remains a summary conviction and it would be inappropriate to deny the Commonwealth the opportunity to review and object prior to expungement of this criminal record.

Therefore, paragraph (B) provides notice and response procedures identical to those in Rule 490.

Paragraph (C) contains the provisions related to the order granting the expungement. The contents of the order also are identical to those of Rule 490 for other summary expungement orders. As with the contents of the petition, the same concept, *i.e.* correct identification of the case, are at work here.

The Committee also concluded that the Act did not intend that the adjudicating court have unlimited discretion in denying the petition. Rather, the Committee concluded that if the petitioner provides confirmation of having completed the educational and other requirements stated in the Act, the court must grant the petition. Therefore, the Comment states that, “If the judge finds the petitioner has satisfied the statutory conditions, the judge shall grant the petition.”

The Committee also examined the cross-references to the Public School Act of 1949 contained in the Comments to Rules 430, 455, and 456. Those Comments contain language regarding the procedures for dependency proceedings when a defendant under 17 has failed to pay the fine and costs in a summary case. The Comments refer to certain provisions in the Public School Act that have been changed by Act 138 of 2016. Specifically, the Comments refer to the old version of 24 P.S. § 13-1333(B)(2). Act 138 repealed that specific provision and the substance of it is now contained in 24 P.S. § 13-1333.3(f)(2). Additionally, the Comments describe the consequences of a failure to respond to the 10-day notice in these cases as permitting the issuing authority to “allege the defendant dependent.” The Act removed this provision and now states that in such an event, the defendant may be referred to a probation officer for possible commencement of dependency proceedings. Finally, the Comments refer to defendants being charged who have “attained the age of 13 but is not yet 17.” This has been changed by the Act as well and, as provided in 24 P.S. § 13-1333.1, a defendant may not be charged if under the age of 15. The language in these Comments therefore has been revised to reflect these changes as well as the provision in 24 P.S. § 13-133.3(f)(2) that provides for the adoption of a local policy for such referrals.

[Pa.B. Doc. No. 19-40. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 5 AND 10 ]

### Proposed Amendment of Pa.Rs.Crim.P. 542, 543 and 1003

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 542 (Preliminary Hearing; Continuances), 543 (Disposition of Case at Preliminary Hearing), and 1003 (Procedure in Non-Summary Municipal Court Cases) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of

those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

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

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

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

All communications in reference to the proposal should be received by no later than Wednesday, May 1, 2019. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural  
 Rules Committee*

BRIAN W. PERRY,  
*Chair*

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

#### PART D. Proceedings in Court Cases Before Issuing Authorities

##### Rule 542. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

- (1) assume charge of the prosecution; and
- (2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

- (1) be represented by counsel;
- (2) cross-examine witnesses and inspect physical evidence offered against the defendant;
- (3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;
- (4) offer evidence on the defendant's own behalf, and testify; and
- (5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) At the preliminary hearing, the issuing authority shall determine from the evidence presented whether there is [ **a prima facie case** ] **probable cause** that (1) an offense has been committed and (2) the defendant has committed it.

(E) [ **Hearsay as provided by law shall be considered by the issuing authority in determining**

**whether a prima facie case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property. ] **HEARSAY****

**(1) The forms of hearsay enumerated in this paragraph, that otherwise are inadmissible at trial, shall be admissible at a preliminary hearing and shall be considered by the issuing authority in determining whether the probable cause required by paragraph (D) has been established. These forms of hearsay shall include evidence relating to:**

**(a) ownership of, non-permitted use of, damage to, or value of property;**

**(b) authenticity of a written instrument;**

**(c) scientific/laboratory/forensic/expert reports; and**

**(d) chain of custody and foundational evidence relating to exhibits.**

**(2) Within the discretion of the issuing authority, the following forms of hearsay may be admissible at a preliminary hearing and considered by the issuing authority in determining whether the probable cause required by paragraph (D) has been established:**

**(a) the testimony of a victim or eyewitness where the Commonwealth has shown cause that requiring appearance at the preliminary hearing will cause an undue hardship upon the victim or eyewitness and is presented in the form of a writing signed and adopted by the declarant; or is a verbatim contemporaneous electronic recording of an oral statement; and**

**(b) evidence of a purely technical nature that is not included in paragraph (1).**

**(3) In no case shall all of the elements of the case be established by hearsay alone.**

**(4) Any hearsay evidence that is presented at the preliminary hearing pursuant to paragraphs (E)(1)(a) and (E)(2)(a) of this rule only shall be admitted at the preliminary hearing if the representative of the Commonwealth avers that a representative of the Commonwealth has communicated with the hearsay declarant, and determined that this declarant is available to testify at trial.**

**(5) If hearsay is offered at the preliminary hearing but the issuing authority refuses to admit it, the issuing authority may grant a continuance of the preliminary hearing.**

(F) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).

#### (G) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

- (a) the grounds for granting each continuance;
- (b) the identity of the party requesting such continuance; and
- (c) the new date, time, and place for the preliminary hearing, and the reasons that the particular date was chosen.



When the preliminary hearing is conducted in the court of common pleas, the judge shall record the party to which the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with Rule 600.

(2) The issuing authority shall give notice of the new date, time, and place for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by first class mail.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys' offices.

### Comment

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

This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from "prima facie" to "probable cause." The change was made because there is no material difference between the level of evidence that constitutes a prima facie case and that constitutes probable cause. Because the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of [ a prima facie case ] probable cause, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, [ 460 Pa. 336, ] 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

Paragraph (E) [ was amended in 2013 to reiterate ] reiterates that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish [ the elements of a prima facie case ] probable cause that an offense has been committed and the defendant has committed it. See the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, those forms of hearsay contained in paragraph (E)(1)(a)–(d), whether written or oral, [ may ] should be permitted to establish the elements of any offense. [ The presence

of witnesses to establish these elements is not required at the preliminary hearing. *But compare* ] See *Commonwealth ex rel. Buchanan v. Verbonitz*, [ 525 Pa. 413, ] 581 A.2d 172 (Pa. 1990) (plurality) [ (disapproving reliance on hearsay testimony as the sole basis for establishing a prima facie case) ] (in which five Justices held that "fundamental due process requires that no adjudication be based solely on hearsay evidence."). See also Rule 1003 concerning preliminary hearings in Philadelphia Municipal Court.

Paragraph (E)(2) provides that, within the discretion of the issuing authority, hearsay may be permitted to establish any element of the offense in two situations: (1) where the Commonwealth has shown that requiring the appearance of the witness, either victim or eyewitness, would cause an undue hardship on that witness; and (2) evidence of a purely technical nature that is not the testimony of an eyewitness or evidence describing the criminal behavior, or identifying the perpetrators of the crime and not included in paragraph (1). Probable cause cannot be established solely on the basis of hearsay evidence. Nothing in this rule is intended to preclude the use at the preliminary hearing of hearsay evidence that would be admissible at trial under other provisions of law. When providing the averment required under paragraph (E)(4) that a representative of the Commonwealth has confirmed the witness' availability for trial, that representative does not need to be the same individual representing the Commonwealth at the preliminary hearing.

Under the provisions of paragraph (E)(5), it is expected that when an issuing authority refuses to admit hearsay that is offered at the preliminary hearing pursuant to paragraph (E) of this rule, the issuing authority should grant a continuance if it is the first occasion when this hearsay has been offered at the preliminary hearing.

If the case is held for court, the normal rules of evidence will apply at trial.

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (F), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, or adjudicating or disposing of the summary offenses except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

See Chapter 5 Part E for the procedures governing indicting grand juries. Under these rules, a case may be presented to the grand jury instead of proceeding to a preliminary hearing. See Rule 556.2.

**Official Note:** Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted

June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and *Comment* revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days; amended October 1, 2012, effective July 1, 2013; amended April 25, 2013, effective June 1, 2013; **amended** , **2019**, **effective** , **2019**.

*Committee Explanatory Reports:*

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

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 1, 2007 amendments deleting the certified mail service requirement from paragraph (E)(2)(b) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Court's Order of January 27, 2011 adding new paragraphs (D) and (E) concerning hearsay at the preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 revision of the Comment concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the October 1, 2012 amendments to paragraph (G)(1) concerning computation of time and (G)(2) concerning notice of continuance published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay at preliminary hearings published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

**Report explaining the proposed amendments to paragraph (E) concerning hearsay at preliminary hearings published for comment at 49 Pa.B. 206 (January 12, 2019).**

**Rule 543. Disposition of Case at Preliminary Hearing.**

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) If the issuing authority finds that the Commonwealth has established [ **a prima facie case** ] **probable cause** that an offense has been committed and the defendant has committed it, the issuing authority shall hold the defendant for court on the offense(s) on which the Commonwealth established [ **a prima facie case** ] **probable cause**. If there is no offense for which [ **a prima facie case** ] **probable cause** has been established, the issuing authority shall discharge the defendant.

(C) When the defendant has appeared and has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529(A);

(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to Rule 510(C)(2), make compliance with these processing procedures a condition of bail; and

(4) advise the defendant that, if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice of the preliminary hearing by a summons served pursuant to Rule 511, a warrant of arrest shall be issued pursuant to Rule 509(2)(d).

(2) If the issuing authority finds that there was cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date, time, and place as provided in Rule 542(G)(2). The issuing authority shall not issue a bench warrant.

(3) If the issuing authority finds that the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority.

(a) In these cases, the issuing authority shall proceed with the case in the same manner as though the defendant were present.

(b) If the preliminary hearing is conducted and the case held for court, the issuing authority shall

(i) give the defendant notice by first class mail of the results of the preliminary hearing and that a bench warrant has been requested; and

(ii) pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), with a notice to the court of common pleas of the defendant's noncompliance.

(c) If the preliminary hearing is conducted and the case is dismissed, the issuing authority shall give the defendant notice by first class mail of the results of the preliminary hearing.

(d) If a continuance is granted, the issuing authority shall give the parties notice of the new date, time, and place as provided in Rule 542(G)(2), and may issue a bench warrant. If a bench warrant is issued and the warrant remains unserved for the continuation of the preliminary hearing, the issuing authority shall vacate the bench warrant. The case shall proceed as provided in paragraphs (D)(3)(b) or (c).

(E) If the Commonwealth does not establish [ **a prima facie case** ] **probable cause** of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes [ **a prima facie case** ] **probable cause** pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish [ **a prima facie case** ] **probable cause** pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(G) Except as provided in Rule 541(D), once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.

#### Comment

**This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from "prima facie" to "probable cause." The change was made because there is no material difference between the level of evidence that constitutes a prima facie case and that constitutes probable cause. Because the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.**

Paragraph (B) was amended in 2011 to clarify what is the current law in Pennsylvania that, based on the evidence presented by the Commonwealth at the preliminary hearing, the issuing authority may find that the Commonwealth has not made out [ **a prima facie case** ] **probable cause** as to the offense charged in the complaint but has made out [ **a prima facie case** ] **probable cause** as to a lesser offense of the offense charged. In this case, the issuing authority may hold the defendant for court on that lesser offense only. The issuing authority, however, may not *sua sponte* reduce the grading of any charge.

See Rule 1003 (Procedure In Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court, including reducing felony charges at the preliminary hearing in Philadelphia.

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) ("[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

If the administrative processing and identification procedures as authorized by law, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as a condition of bail. See Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. See Rule 547.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 571.

Paragraphs (D)(2) and (D)(3) were amended in 2013 changing the phrase "good cause" to "cause" in reference to whether the defendant's absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant's absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant's absence is judged for the trial to proceed in the defendant's absence. In both situations, the standard is the same.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(G)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice, the issuing authority must issue an arrest warrant as provided in Rule 509, and the case will proceed pursuant to Rules 516 or 517. See paragraph (D)(1).

If the issuing authority determines that there is cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(2). For the procedures when a preliminary hearing is continued, see Rule 542(G).

If the issuing authority determines that the defendant received service of the summons as defined in Rule 511

and has not provided cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(3)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), (C), and (D)(3)(b) or (c); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(G); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority may issue a bench warrant as provided in paragraph (D)(3)(d), and must send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(3)(b)(ii) requires the issuing authority to include with the Rule 547 transmittal a request that the court of common pleas issue a bench warrant if the case is held for court.

In addition to the paragraph (D)(3)(b) notice requirements, the notice may include the date of the arraignment in common pleas court.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

Rule 542(F) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) **[ a prima facie case ] probable cause** is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which **[ a prima facie case ] probable cause** is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the

defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Paragraph (G) emphasizes the general rule that once a case has been bound over to the court of common pleas, the case is not permitted to be remanded to the issuing authority. There is a limited exception to the general rule in the situation in which the right to a previously waived preliminary hearing is reinstated and the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority. See Rule 541(D).

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

**Official Note:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended February 12, 2010, effective April 1, 2010; amended January 27, 2011, effective in 30 days; *Comment* revised July 31, 2012, effective November 1, 2012; amended October 1, 2012, effective July 1, 2013; amended May 2, 2013, effective June 1, 2013; **amended** , 2019, effective 2019.

*Committee Explanatory Reports:*

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 18 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3971 (July 26, 2008).

Final Report explaining the February 12, 2010 amendments adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (B) concerning prima facie case published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(F)(2) to Rule 540(G)(2) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the October 1, 2012 amendments to paragraphs (D)(2) and (D)(3)(d) adding "place" to "date and time" for preliminary hearing notices published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

**Report explaining the proposed amendments change the terminology "prima facie" to "probable cause" published for comment at 49 Pa.B. 206 (January 12, 2019).**

## **CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA MUNICIPAL COURT TRAFFIC DIVISION**

### **PART A. Philadelphia Municipal Court Procedures**

#### **Rule 1003. Procedure in Non-Summary Municipal Court Cases.**

##### **(A) INITIATION OF CRIMINAL PROCEEDINGS**

(1) Criminal proceedings in court cases shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

##### **(2) Private Complaints**

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

(i.) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(ii.) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the President Judge of Municipal Court, or the President Judge's designee, for review of the decision. Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.

##### **(B) CERTIFICATION OF COMPLAINT**

Before an issuing authority may issue process or order further proceedings in a Municipal Court case, the issuing authority shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

(2) when prior submission to an attorney for the Commonwealth is required, an attorney has approved the complaint.

The issuing authority shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

##### **(C) SUMMONS AND ARREST WARRANT PROCEDURES**

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

(1) issue a summons and not a warrant of arrest when the offense charged is punishable by imprisonment for a term of not more than 1 year, except as set forth in paragraph (C)(2);

(2) issue a warrant of arrest when:

(a) the offense charged is punishable by imprisonment for a term of more than 5 years;

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons;

(c) the summons has been returned undelivered;

(d) a summons has been served and disobeyed by a defendant;

(e) the identity of the defendant is unknown;

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

(3) when the offense charged does not fall within the categories specified in paragraph (C)(1) or (2), the issuing authority may, in his or her discretion, issue a summons or a warrant of arrest.

##### **(D) PRELIMINARY ARRAIGNMENT**

(1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by an issuing authority without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the

defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

(3) At the preliminary arraignment, the issuing authority:

(a) shall not question the defendant about the offense(s) charged;

(b) shall give the defendant's attorney, or if unrepresented the defendant, a copy of the certified complaint;

(c) if the defendant was arrested with a warrant, the issuing authority shall provide the defendant's attorney, or if unrepresented the defendant, with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant's attorney, or if unrepresented the defendant, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) also shall inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment, unless the issuing authority fixes an earlier date for the trial upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth, and that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued;

(iii) in a case charging a felony, unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and that failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued;

(iv) if a case charging a felony is held for court at the time of the preliminary hearing, that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued; and

(v) of the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(4) After the preliminary arraignment, if the defendant is detained, he or she shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail, as provided by law.

#### (E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) Except as provided in [ paragraphs ] **paragraph** (E)(2) [ **and (E)(3)** ], in cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

**[ (2) At the preliminary hearing, the issuing authority shall determine whether there is a *prima facie* case that an offense has been committed and that the defendant has committed it.**

**(a) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established.**

**(b) Hearsay evidence shall be sufficient to establish any element of an offense including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.**

**(3) ] (2) If [ a *prima facie* case ] probable cause is not established on any felony charges, but is established on any misdemeanor or summary charges, the judge shall remand the case to Municipal Court for trial.**

#### (F) ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Courts shall accept bail at any time prior to the Municipal Court trial.

#### Comment

The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court with the statewide procedures for private complaints in Rule 506 (Approval of Private Complaints). In all cases in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

The procedure set forth in paragraph (C)(3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc.*

If the attorney for the Commonwealth exercises the options provided by Rule 202, Rule 507, or both, the attorney must file the certifications required by paragraphs (B) of Rules 202 and 507 with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

For the contents of the complaint, see Rule 504.

Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. *See Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Within the meaning of paragraph (D)(2), counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (D)(2), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (D)(2), two-way simultaneous audio-visual communication is a form of advanced communication technology.

*See* Rule 130 concerning *venue* when proceedings are conducted pursuant to this rule using advanced communication technology.

Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). *See also* Rules 208(A) and 513(A).

Paragraph (D)(3)(c) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. *See Commonwealth v. Fenstermaker*, [ 515 Pa. 501, ] 530 A.2d 414 (Pa. 1987).

The 2012 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. *See* Rule 556.2. *See also* Rule 556.11 for the procedures when a case will be presented to the indicting grand jury.

Paragraphs (D)(3)(d)(ii) and (D)(3)(d)(iv) require that, in all cases at the preliminary arraignment, the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial. *See also Commonwealth v. Bond*, 693 A.2d 220 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

Paragraphs (D)(3)(d)(iii) and (E) make it clear that, with some exceptions, the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts.

**This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from “prima facie” to “probable cause.” The change was made because there is no material difference between the level of evidence that constitutes a prima facie case and that constitutes probable cause. Since the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.**

**Paragraph (E) was amended in [ 2013 to reiterate that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish the elements of a prima facie case. See the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, hearsay, whether written or oral, may establish the elements of any offense. The presence of witnesses to establish these elements is not required at the preliminary hearing. But compare Commonwealth ex rel. Buchanan v. Verbonitz, 525 Pa. 413, 581 A.2d 172 (1990) (plurality) (disapproving reliance on hearsay testimony as the sole basis for establishing a prima facie case). See also Rule 542. ] 2019 to clarify that the use of hearsay at preliminary hearings must be in accordance with Rule 542(E).**

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

***Official Note:*** Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; *Comment* revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective

January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days, *Comment* revised July 31, 2012, effective November 1, 2012; amended April 25, 2013, effective June 1, 2013; amended May 2, 2013, effective June 1, 2013; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

Report explaining the provisions of the new rule published at 22 Pa.B. 18 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

Final Report explaining the August 28, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).

Court's Order of January 27, 2011, amending paragraph (E) concerning hearsay and reducing felony charges at preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(B) to Rule 540(C) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

Final Report explaining the May 2, 2013 amendments concerning proceedings conducted in the defendant's absence published with the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

**Report explaining the proposed amendments to paragraph (E) concerning hearsay at preliminary hearings published for comment at 49 Pa.B. 206 (January 12, 2019).**

**REPORT**

***Proposed Amendment of Pa.Rs.Crim.P. 542, 543, and 1003***

**USE OF HEARSAY AT PRELIMINARY HEARINGS**

The Committee, at the Court's direction, undertook an examination of the nature of the Commonwealth's burden at preliminary hearings and the extent to which hearsay evidence may be used in satisfying that burden in light of the Court's dismissal of the appeal in *Commonwealth v. Ricker*, 170 A.3d 494 (Pa. 2017). The relevant provisions regarding the admissibility of hearsay at the preliminary hearing are contained in Rule 542 (Preliminary Hearing; Continuances) with similar provisions for preliminary hearings in the Philadelphia Municipal Court contained in Rule 1003 (Procedure in Non-Summary Municipal Court Cases).

As a starting point, the Committee examined the history of the provision contained in Paragraph (E) of Rule 542. The current rule provisions regarding hearsay at preliminary hearings were developed in several stages. In 2011, the Court amended Rules 542 and 1003 to provide that "Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property." The Comments to both rules explain that the use of hearsay is not limited to these elements and offenses.

Following these amendments, there were reports of some issuing authorities interpreting this language as limiting the use of hearsay in preliminary hearings to property offenses, despite the language in the Comment indicating that the rule was not intended to be thus limited. In 2013, on the Committee's recommendation, the Court adopted changes to clarify this misconception, adding the phrase "including, but not limited to" to the statement in Rule 542(E) that provides that hearsay evidence may be used to "establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property."<sup>1</sup> Additionally, a cross-reference to *Commonwealth ex rel. Buchanan v. Verbonitz*, 581 A.2d 172 (Pa. 1990), was added to the Comment. *Verbonitz* stands for the proposition that, while the Commonwealth is permitted to use hearsay to establish the elements of the offense for purposes of the preliminary hearing, the Commonwealth may not establish its case exclusively by hearsay. However, in 2015, in *Commonwealth v. Ricker*, 120 A.3d 349 (Pa. Super. 2015), the Superior Court held that hearsay evidence alone may be used to establish the Commonwealth's case at the preliminary hearing. As noted above, the Supreme Court of Pennsylvania subsequently dismissed the grant of appeal as improvidently granted. *Commonwealth v. Ricker*, 170 A.3d 494 (Pa. 2017).

<sup>1</sup> A similar amendment was made to Rule 1003 describing the use of hearsay evidence in felony preliminary hearings in the Philadelphia Municipal Court.



The Committee also looked at practice in other states. It was clear that there is a wide diversity in the manner in which hearsay evidence is permitted in preliminary examinations. Some states, such as Tennessee where the rules of evidence are strictly applied, are very restrictive in the use of hearsay. Other states, such as Alabama and California, permit very wide latitude in using hearsay evidence to establish probable cause at the preliminary examinations. Given this wide variety of practices and the procedural differences that many of these states have with Pennsylvania, the Committee concluded that, while some of these practices were illuminating, no single state's procedures were an adequate model. The Committee therefore concentrated efforts on finding the procedures that would be best suited for Pennsylvania.

As an initial point, the Committee examined the question of the Commonwealth's *prima facie* burden at the preliminary hearing and whether it implicated constitutional confrontation rights. The Committee concluded that there was no material difference between the *prima facie* standard and probable cause, particularly because the question of witness credibility is not at issue at the preliminary hearing. Therefore, the term "*prima facie*" has been replaced with the term "probable cause" in Rules 542 and 1003 to clarify any confusion. The Comments of both rules would be revised to provide further explanation with the added provision that the change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing. Similar changes also would be made to Rule 543 (Disposition of Case at Preliminary Hearing).

The Committee believes that any confrontation right at the preliminary hearing is based in the rule and the definition of that right is a matter of policy. The Committee concluded that the current language of Rule 542(E) is inadequate. The consensus of the Committee was that establishment of a *prima facie* case by hearsay alone, as held by the Superior Court in *Ricker*, was not appropriate. The Committee believes that *Verbonitz*, despite being ostensibly a plurality decision, is still good law and stands for the proposition that a *prima facie* case may not be found exclusively on hearsay evidence.

Current paragraph (E) of Rule 542 would be removed under the proposal. It would be replaced by a more detailed description of how hearsay would be permitted to be used. First, the rule would specify certain categories of evidence that always could be presented by hearsay at the preliminary hearing. This would be evidence of a technical or administrative nature, such as laboratory reports or evidence of the ownership and non-permitted use of property. New paragraph (E)(1) of Rule 542 would contain the list of these forms of hearsay that would always be admissible at the preliminary hearing.

The Committee agreed that there should also be certain forms of hearsay evidence that could be admissible at the discretion of the issuing authority. Ultimately, the Committee agreed that there should be two categories of discretionary hearsay. These would be contained in a new paragraph (E)(2) added to Rule 542.

Paragraph (E)(2)(a) would permit the admission of victim and eyewitness testimony by hearsay when appearance at the preliminary hearing would cause an undue hardship for the witness. The rule would require the Commonwealth to make a showing as to this hard-

ship and the hearsay would be required to be in the form of either a writing signed and adopted by the witness or a verbatim contemporaneous electronic recording of the oral statement of the witness. The latter requirement is adapted from the language of Rule of Evidence 803.1(B) and (C). The Committee debated whether to include a definition of "undue hardship" but ultimately decided that this was a fact-specific concept and best left to be determined in a case-by-case manner.

The other category of discretionary hearsay, contained in paragraph (E)(2)(b), would be other hearsay of a "purely technical" nature, if not contained in the allowances already listed in paragraph (E)(1). This was intended as a catch-all for other forms of technical evidence that were not considered when the list in paragraph (E)(1) was developed. The term "purely technical" would be further defined in the Comment as that which "is not the testimony of an eye witness or evidence describing the criminal behavior, or identifying the perpetrators of the crime" and not included in paragraph (E)(1).

The rule would also require that, in the case of victim or eyewitness testimony or of witness testimony of ownership of, non-permitted use of, damage to, or value of property, the representative of the Commonwealth at the preliminary hearing must certify that a representative of the Commonwealth has communicated with the hearsay declarant and that the declarant is available to testify at trial. A statement in the Comment would clarify that the communication to verify the witness' availability may be by any representative of the Commonwealth, not just the representative at the preliminary hearing.

With regard to the denial of discretionary hearsay, paragraph (E)(5) would state that the issuing authority may grant a continuance when proffered hearsay is refused. Comment language would be added to indicate that it is expected that the continuance should be granted if this is the first time that the hearsay had been offered.

The rule also would contain an admonition that not all of the elements of an offense can be established exclusively by hearsay alone. The cross-reference to *Verbonitz* in the Comment would be retained but a new parenthetical added that more clearly reflects the holding in the case.

The Committee also considered the applicability of these changes to felony preliminary hearings in the Philadelphia Municipal Court. As mentioned above, Rule 1003(E) provides the authority for the use of hearsay at preliminary hearings held in the Philadelphia Municipal Court. The current language in the rule itself is somewhat different than that contained in current Rule 542(E), reflecting the specific problem that the 2013 amendments were meant to address, *i.e.*, the refusal of some Municipal Court judges to admit hearsay evidence regarding ownership or permissive use. The language in the Comment is virtually identical to that contained in the current Rule 542 Comment. The Committee concluded that there was no reason why the use of hearsay should be different in Municipal Court preliminary hearings. Therefore, the proposal would remove the current specific hearsay provisions from Rule 1003(E) and would refer to Rule 542. The Comment to Rule 1003 would be modified to state that the use of hearsay would be governed by Rule 542.

[Pa.B. Doc. No. 19-41. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

[ 237 PA. CODE CHS. 1, 5 AND 11 ]

#### Order Amending Rules 163, 195, 512 and 1147 and Adopting Rules 148, 1146 and 1148 of the Pennsylvania Rules of Juvenile Court Procedure; No. 784 Supreme Court Rules Doc.

#### Order

*Per Curiam*

And Now, this 21st day of December, 2018, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 47 Pa.B. 3336 (June 17, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1) Pennsylvania Rules of Juvenile Court Procedure 163, 195, 512, and 1147 are amended; and

2) Pennsylvania Rules of Juvenile Court Procedure Rules 148, 1146, and 1148 are adopted in the following form.

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

#### Annex A

### TITLE 237. JUVENILE RULES

#### PART I. RULES

##### Subpart A. DELINQUENCY MATTERS

##### CHAPTER 1. GENERAL PROVISIONS

##### PART B(1). EDUCATION AND HEALTH OF JUVENILE

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

#### Rule 148. Educational Stability & Removal from Home.

A. *General Rule.* Any order resulting in the removal of the juvenile from home or a change in placement shall address the educational stability of the juvenile.

B. *School of Origin.* A juvenile removed from home shall remain in their school of origin unless the court finds remaining in the school of origin is not in the juvenile's best interest or protective of the community. If the court finds that it is not in the best interest for the juvenile or protective of the community to remain in the school of origin, then the court may order the juvenile to be enrolled in another school that best meets the juvenile's needs.

C. *Another School.* If a court orders the juvenile to be enrolled in another school pursuant to paragraph (B), then the juvenile shall attend a public school unless the court finds that a public school is not in the best interest of the juvenile or protective of the community.

#### Comment

This rule is intended to apply at any point in a delinquency proceeding when the juvenile is removed from home, including pre-dispositional detention placement and post-dispositional modification resulting in the juvenile's out of home placement or a change to that

placement. This rule is intended to complement rather than supersede the requirements of Rule 512(D)(6).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the juvenile's needs, the proximity of the school of origin relative to the placement location, and the protection of the community. This paragraph is intended to facilitate educational stability while the juvenile remains under the jurisdiction of the Juvenile Court and to codify the presumption that a juvenile is to remain in their school of origin absent evidence that it is not in the best interest of the juvenile or protective of the community to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the juvenile to attend a public school includes the security and safety of the juvenile and treatment needs. Paragraph (C) is intended to codify the presumption that a juvenile is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the juvenile or protective of the community to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

For release of information to school, see Rule 163.

**Official Note:** Rule 148 adopted December 21, 2018, effective May 1, 2019.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

### PART C. RECORDS

#### PART C(1). ACCESS TO JUVENILE RECORDS

#### Rule 163. Release of Information to School.

\* \* \* \* \*

#### Comment

#### For educational stability of juvenile when removed from home, see Rule 148.

Pursuant to paragraph (B), the juvenile probation office is required to provide notice to the building principal or his or her designee for maintaining court records separately from official school records. Some school districts have established local policies relating to the receipt of this information that requires the information to be provided to a school district official other than a building principal. That individual should be regarded as the building principal's designee with respect to the provisions of this rule.

\* \* \* \* \*

**Official Note:** Rule 163 adopted April 1, 2005, effective October 1, 2005. Amended May 21, 2012, effective August 1, 2012. Amended July 28, 2014, effective September 29, 2014. **Rule 163 amended December 21, 2018, effective May 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 163 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Final Report explaining the amendments to Rule 163 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 163 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).**

#### PART D(2). JUVENILE PROBATION OFFICERS

##### Rule 195. Powers, Duties, and Training of a Juvenile Probation Officer.

A. *Powers and Duties of a Juvenile Probation Officer.* Subject to any limitation imposed by the court, a juvenile probation officer shall:

1) take children, juveniles, and minors into custody pursuant to:

- a) the Juvenile Act, 42 Pa.C.S. §§ 6304 and 6324;
- b) the Child Protective Services Law (CPSL), 23 Pa.C.S. [ § ] §§ 6301 *et seq.*;
- c) a bench warrant as set forth in Rules 140, 141, and 1140; or
- d) Rule 1202;

2) authorize detention or shelter care for a juvenile, and the shelter care of a child, pursuant to 42 Pa.C.S. §§ 6304, 6325, or 6331;

3) receive and examine written allegations unless the District Attorney has elected to receive and approve all written allegations pursuant to Rule 231(B);

4) make appropriate referrals for informal adjustment, consent decree, or other diversionary programs;

5) file petitions if diversionary programs are not appropriate unless the District Attorney has elected to file all petitions pursuant to Rule 330(A);

6) make investigations, reports, including social studies pursuant to Rule 513, and recommendations to the court;

7) make appropriate referrals to private and public agencies, psychological or psychiatric providers, drug and alcohol facilities or programs, or any other necessary treatments or programs;

8) communicate to the court and parties, and facilitate any special needs, including health and education, of the juvenile;

9) supervise and assist a juvenile placed on probation or a child under the court's protective supervision or care;

10) search the person and property of juveniles pursuant to 42 Pa.C.S. § 6304(a.1);

11) regularly oversee and visit juveniles in placement facilities;

12) report suspected child abuse pursuant to 23 Pa.C.S. § 6311; [ and ]

**13) receive allegations that a child has failed to satisfy penalties for violating compulsory school attendance, as permitted by local rule; and**

[ 13 ] 14) perform any other functions as designated by the court.

B. *Limitations on [ powers and duties ] Powers and Duties.* The President Judge of each judicial district may limit the power and duties of its juvenile probation officers by local rule.

C. *Training.* [ No later than January 1, 2012 or within ] Within 180 days after being appointed or employed, a juvenile probation officer shall be trained on:

- 1) the Juvenile Act;
- 2) the Pennsylvania Rules of Juvenile Court Procedure;
- 3) the Child Protective Services Law (CPSL); and
- 4) any local procedures.

#### Comment

Pursuant to paragraph (A)(1), a juvenile probation officer has the authority to take children, juveniles, and minors into custody pursuant to the Juvenile Act, the CPSL, a bench warrant, or Rule 1202. 23 Pa.C.S. [ § ] §§ 6301 *et seq.* and 42 Pa.C.S. [ § ] §§ 6301 *et seq.*

When a juvenile is under the court's supervision, the juvenile probation officer may take a juvenile into custody pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1) through (5), and bench warrants as set forth in Rules 140, 141, and 1140.

When a child, juvenile, or minor is not under the court's supervision, the juvenile probation officer, as a duly authorized officer, may take a child, juvenile, or minor into custody pursuant to the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6315 and the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1), (3), and (4).

A properly commissioned juvenile probation officer is vested with all the powers and duties as set forth in 42 Pa.C.S. § 6304 and the power to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to paragraph (B).

The President Judge may adopt a local rule, pursuant to the procedures of Rule 121 and Pa.R.J.A. No. 103(d), limiting the authority granted by the commission to juvenile probation officers. In determining whether to limit the authority of juvenile probation officers, the President Judge should consider the training and experience necessary to perform the various duties as provided in this rule. For example, the President Judge may choose to prohibit juvenile probation officers from taking a child into protective custody who is believed to be in imminent danger from his or her surroundings, but who is not under the court's supervision as a delinquent or dependent child. *See* 42 Pa.C.S. § 6324.

In situations when a juvenile probation officer takes a child into protective custody who is in imminent danger from his or her surroundings pursuant to 42 Pa.C.S. § 6325, 23 Pa.C.S. § 6315, and Rule 1202, the juvenile probation officer should take the appropriate steps to ensure the child's safety, immediately contact the county agency, and document for the county agency the circumstances which necessitated protective custody. *See* Rule 1202 and its Comment.

The juvenile probation officer may also supervise or assist a child placed in his or her protective supervision or care by the court. *See* 42 Pa.C.S. § 6304.

Pursuant to paragraph (A)(3), the juvenile probation officer is to receive written allegations from local law enforcement agencies to determine if a case may proceed to juvenile court. However, pursuant to Rule 231(B), the District Attorney of any county may require initial receipt and approval of written allegations before a delinquency proceeding may be commenced. *See* Rule 231(B).

Pursuant to paragraph (A)(6) and (7), the juvenile probation officer is to prepare reports compiling the juvenile's information for the court and make the necessary referrals to programs supported by a need revealed during the investigation.

Pursuant to paragraph (A)(8), the juvenile probation officer is to communicate the information to all parties before approaching the court. See Rule 136 for *ex parte* communication.

Pursuant to paragraph (A)(11), the juvenile probation officer is to oversee all juveniles ordered to placement facilities. Juvenile probation officers should visit all juveniles in placement facilities on a regular basis to determine if: 1) the juvenile is receiving the appropriate treatment; and 2) the facility is meeting the needs of the child. The Juvenile Court Judges' Commission Standards Governing Aftercare Services recommend that all juveniles be visited on a monthly basis. The juvenile probation officer is to report any irregularities or controversies to the court and all parties as soon as they are made known to the juvenile probation officer.

**Pursuant to paragraph (A)(13), the President Judge may adopt a local rule to permit the juvenile probation office to receive allegations that a child has failed to pay fines or costs related to a truancy conviction. See 24 P.S. § 13-1333.3(f)(2). Nothing in this paragraph is intended to preclude the use of diversionary programs to address the nonpayment of fines or costs.**

Pursuant to paragraph [ (A)(13) ] (A)(14), a juvenile probation officer may perform any other function designated by the court to carry out the purposes of the Juvenile Act.

Pursuant to paragraph (C), the juvenile probation officer is to be trained in the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the CPSL, and any local procedures. The training is to occur within 180 days of the juvenile probation officer's appointment or employment. It is best practice for juvenile probation officers to receive training within the first ninety days of employment. It is also best practice that juvenile probation officers receive specialized training and educational updates on a continuing basis.

Specialized training for juvenile probation officers should include delinquency and dependency procedures and areas that address their duties as officers of the court.

**Official Note:** Rule 195 adopted May 20, 2011, effective July 1, 2011. **Amended December 21, 2018, effective May 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 195 published with the Court's Order at 41 Pa.B. 2839 (June 4, 2011).

**Final Report explaining the amendments to Rule 195 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).**

**CHAPTER 5. DISPOSITIONAL HEARING**

**PART B. DISPOSITIONAL HEARING AND AIDS**

**Rule 512. Dispositional Hearing.**

\* \* \* \* \*

D. *Court's Findings.* The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

- 1) its disposition;
- 2) the reasons for its disposition;
- 3) the terms, conditions, and limitations of the disposition; and
- 4) if the juvenile is removed from the home:

a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile[ , and ];

b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare; **and**

**c) the provision of educational services for the juvenile pursuant to Rule 148;**

5) whether any evaluations, tests, counseling, or treatments are necessary;

6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and

7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

**Comment**

\* \* \* \* \*

**Official Note:** Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 16, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. Amended April 6, 2017, effective September 1, 2017. Amended May 11, 2017, effective October 1, 2017. **Amended December 21, 2018, effective May 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2969 (May 27, 2017).

**Final Report explaining the amendments to Rule 512 published with the Court's Order at 49 Pa.B. 213 (January 12, 2019).**

**Subpart B. DEPENDENCY MATTERS**

**CHAPTER 11. GENERAL PROVISIONS**

**PART B(1). EDUCATION AND HEALTH OF CHILD**

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

**Rule 1146. Notice of Truancy Hearing.**

Upon receiving written notice of a hearing regarding a citation or complaint for truancy against a child or a person in parental relation pursuant to 24 P.S. § 13-1333.1 when the child is the subject of a dependency proceeding, the county agency shall serve a copy of the notice upon the dependency court and parties.

**Comment**

Pursuant to 24 P.S. § 13-1333.2(b)(1), the court in which a truancy citation or complaint is filed shall provide the county agency with written notice of the hearing. For definition of "person in parental relation," see 24 P.S. § 13-1326.

The President Judge may adopt local rules coordinating jurisdiction and proceedings between the judge of the court where the citation or complaint was filed and the dependency court judge. Coordination may include, but is not limited to, the entry of an order staying the truancy proceeding for further consideration by the dependency court.

**Official Note:** Rule 1146 adopted December 21, 2018, effective May 1, 2019.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1146 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

**Rule 1147. Educational Decision Maker.**

A. *Generally.* At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that:

- 1) the child has no guardian; or
- 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

B. *Notice of hearings.* The educational decision maker shall receive notice of all proceedings.

C. *Duties and responsibilities.* The educational decision maker shall:

1) make appropriate inquiries and take appropriate actions to ensure that:

a) issues concerning the child's educational stability are addressed;

b) school discipline matters are addressed;

c) the child is receiving appropriate education that will allow the child to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;

d) the child, who is [ ~~sixteen~~ ] ~~fourteen~~ years of age or older, is receiving the necessary educational services to transition to [ ~~independent living~~ ] successful adulthood;

e) the child, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the child turns fourteen; and

f) the child, who is aging out of care within ninety days, has a transition plan that addresses the child's educational needs, and if applicable, the plan is coordinated with the child's transition planning concerning special education under the Individuals with Disabilities Education Act.

2) address the child's educational needs by:

a) meeting with the child at least once and as often as necessary to make decisions regarding education that are in the child's best interests [ ~~of the child~~ ];

b) participating in special education and other meetings, and making decisions regarding all matters affecting the child's educational needs in a manner consistent with the child's best interests;

c) making any specific recommendations to the court relating to:

i) the timeliness and appropriateness of the child's educational placement;

ii) the timeliness and appropriateness of the child's transitional planning; and

iii) services necessary to address the child's educational needs;

d) appearing and testifying at court hearings when necessary; and

e) having knowledge and skills that ensure adequate representation of the child.

**Comment**

A child in dependent care is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for highly mobile children whose caregivers may change and whose guardian may be unavailable. An educational decision maker's responsibilities may include, but are not limited to: ensuring educational stability as mandated by 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; ensuring prompt enrollment in a new school as required pursuant to 22 Pa. Code § 11.11(b); facilitating access to a full range of school programs; advocating

for the child in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a child eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. See 24 P.S. §§ 13-1371, 13-1372, 20 U.S.C. [ § ] §§ 1400 *et seq.* See paragraph (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a child who is also adjudicated delinquent is to review Rule 147.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (*e.g.*, foster parent, relative with whom the child lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the child's education and who is acting in the child's best interest regarding all educational matters. See Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. [ § ] §§ 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding education only to the extent necessary to protect the child's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the child; and 2) can consent to or prohibit the release of information from the child's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educational decision maker appointed by the court should be familiar with a child's educational rights or is to agree to be trained regarding these issues.

If the child is or may be eligible for special education, an educational decision maker is to be appointed in accordance with the standards and procedures set forth in federal and state laws concerning special education. See IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a child. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the child. 34 C.F.R. § 300.519(c), (d)(2)(i).

The educational decision maker should refer to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. [ § ] §§ 11431 *et seq.* (1989) for guidance in educational stability. Specifically, the educational decision maker is to: a) ensure the right to remain in the same school regardless of a change in placement when it is in the child's best interest; b) facilitate immediate enrollment in a new school when a school change is in the child's best interest; and c) ensure that school proximity is considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*

The educational decision maker is to also ensure: a) that the child receives an appropriate education, including, as applicable, any necessary special education, early intervention, or remedial services; see 24 P.S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, 20 U.S.C. [ § ] §§ 1400 *et seq.*; b) that the child receives educational services necessary to support the child's transition to [ **independent living pursuant to 42 Pa.C.S. § 6351** ] **successful adulthood** if the child is [ **sixteen** ] **fourteen** or older pursuant to 42 Pa.C.S. § 6351(F)(8); and c) that the educational decision maker participates in the development of a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that "provide for the care, protection, safety, and wholesome mental and physical development of children." 42 Pa.C.S. § 6301(b)(1.1). The IDEA also requires that each child who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. See IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

**Official Note:** Rule 1147 adopted April 29, 2011, effective July 1, 2011. **Amended December 21, 2018, effective May 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1147 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

**Final Report explaining the amendments to Rule 1147 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).**

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

#### **Rule 1148. Educational Stability & Placement.**

**A. General Rule.** Any order resulting in the placement of a child or a change in placement shall address the educational stability of the child.

**B. School of Origin.** A child in placement shall remain in their school of origin unless the court finds remaining in the school of origin is not in the child's best interest. If the court finds that it is not in the best interest of the child to remain in the school of origin, then the court may order the child to be enrolled in another school that best meets the child's needs.

**C. Another School.** If a court orders the child to be enrolled in another school pursuant to paragraph (B), then the child shall attend a public school unless the court finds that a public school is not in the best interest of the child.

#### **Comment**

This rule is intended to apply at any point in a dependency proceeding when the child is in placement, including pre-dispositional placement and post-dispositional modification of a dependent child's placement. This rule is intended to complement rather than supersede the requirements of Rule 1512(D)(1)(i).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the child's needs and the proximity of the school of origin relative to the placement location. This paragraph is not intended to

usurp the administrative process contemplated by the Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 6311(g)(1)(E). This paragraph is intended to facilitate educational stability while the child remains under the jurisdiction of the Juvenile Court and to codify the presumption that a child is to remain in their school of origin absent evidence that it is not in the child's best interest to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the child to attend a public school include the security and safety of the child and treatment needs. Paragraph (C) is intended to codify the presumption that a child is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the child to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

A court may consider an Individualized Education Program, Service Agreement, or administrative determination in making findings pursuant to this Rule.

**Official Note:** Rule 1148 adopted December 21, 2018, effective May 1, 2019.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

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

**Amendment of Pa.R.J.C.P. 163, 195, 512, and 1147  
New Pa.R.J.C.P. 148, 1146, and 1148**

On December 21, 2018, the Supreme Court amended Rules of Juvenile Court Procedure 163, 195, 512, and 1147, and adopted new Rules 148, 1146, and 1148 to improve the educational stability of juveniles and children, effective May 1, 2019. The changes consist of three components: 1) changes to implement the Act of November 3, 2016, P.L. 1061, concerning truancy matters; 2) changes to update Rule 1147 in light of Act 94 of 2015, P.L. 559, which amended 42 Pa.C.S. § 6351(F)(8); and 3) the creation of procedures for the judicial determination of the delivery of educational services for dependent/delinquent youth in placement.

This proposal was previously published for comment at 47 Pa.B. 3336 (June 7, 2017). Following the review and deliberation on all the comments received, the Committee revised the proposal in several aspects.

*Truancy*

In 2016, Pennsylvania substantially revised its truancy laws. Section 5 of the Act of November 3, 2016, P.L. 1061, amended Section 1333.3(F)(2) of the Public School Code, 24 P.S. § 13-1333.3(f)(2). In response, the Committee proposed amending Rule 195 to add paragraph (A)(13) to recognize that a juvenile probation officer (JPO) may receive allegations that a child has also failed to satisfy penalties arising from a truancy citation. Consistent with

the statute, the Rule first required a local rule permitting the receipt of these allegations. It is contemplated that the local rule would provide guidance as to further actions of the juvenile probation officer with regard to those allegations.

A commenter suggested that Rule 195 should discuss the purpose for which the JPO may receive allegations. The Committee concluded that the statute, 24 P.S. § 13-1333.3(f)(2), speaks for itself. While the statute does not explicitly provide for diversionary programs, the Committee saw merit in the continued use of diversionary programs when the President Judge via local rule approved such a program. Accordingly, the Committee revised the Comment to Rule 195 to specifically reference the availability of diversionary programs.

The Committee believed the truancy legislation also provided an opportunity to coordinate actions between the dependency court and the court where a truancy citation is filed when a dependent child or a "person in parental relation" to the child is charged with truancy. As amended, 24 P.S. § 13-1333.2(b)(1) requires the court to send a hearing notice to the county agency when a truancy citation is filed. Utilizing this notice mechanism, Rule 1146 would require the county agency to then provide notice of the hearing to the dependency court and the parties. Thereafter, the dependency court judge and the truancy court judge could coordinate proceedings.

Based upon the comments, the Committee realized that the proposed language may be interpreted to require notice be given to the dependency court in truancy matter. That was not the intention. Post-publication, Rule 1146 was revised to clarify that the county agency need only serve a copy of the truancy notice on the court and parties if there was an open dependency matter.

*Education Decision Makers (Rule 1147)*

Act 94 of 2015 amended 42 Pa.C.S. § 6351(F)(8) to require at each permanency hearing a judicial determination of the services needed to assist a child who was 14 years of age or older to successfully transition to adulthood. The amendment lowered the age of applicability from 16 years of age to 14. This amendment was incorporated into Rule 1608(D)(1)(k) on December 9, 2015.

Rule 1147(C)(1)(d), regarding the duties of educational decision makers ("EDMs"), requires EDMs to inquire and act to ensure that a child 16 years of age or older is receiving the necessary educational services to transition to independent living. Upon review of the legislation, the Committee believed that "services" in Section 6351(F)(8) of the Juvenile Act included "educational services" as used in Rule 1147. Accordingly, the Committee proposed to amend Rule 1147 and the Comment to reflect that interpretation, including the lower age.

*Educational Stability (Rule 148 and 1148)*

The Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6311(g)(1)(E), requires that a child in placement remain in their school of origin unless it is not in the child's best interest. In response, the Committee proposed new Rule 1148 to establish a procedural requirement for the court to conduct a best interest analysis if a child in placement was not to remain in their school of origin. The Rule's purpose was to maintain the child's educational stability. Further, this requirement

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

would extend beyond dependency proceedings to include the removal of a juvenile from home in delinquency proceedings via new Rule 148. Both Rule 148 and Rule 1148 would be applicable to any order resulting in the placement of a child or the removal of a juvenile from home.

Several commenters suggested “or a change in placement” be added to paragraph (A) of Rules 148 and 1148 so that educational needs were addressed not just upon removal, but also when there was a change in placement. The Committee agreed and revised the text to add this suggestion.

There was a suggestion to strike “community’s best interest” in paragraph (B) of Rule 148. The Committee believed that the court was required to consider the protection of the community in delinquency matters and it was a sufficiently important factor when considering educational needs that it should be specifically included in the rule text. The language was revised from “community’s best interest” to “protective of the community” to more closely reflect the language of the Juvenile Act. This revision was made to paragraph (B) and (C).

A commenter recommended adding a new paragraph (E) that would require the court’s decision regarding the juvenile’s schooling to be in a separate order and served on the school responsible for educating the juvenile. The Committee did not favor requiring a separate order—a separate order was not needed in every case so it did not seem efficient to require a separate order in every case. There may be times when a separate order is necessary to avoid disclosing unnecessary details to the school, but the courts have the discretion to enter such orders. Notwithstanding, the Committee favored including a citation to Rule 148 in the Comment to Rule 163 (Release of Information to School) to indicate that sharing educational stability information was permitted.

Rule 1148 is the dependency analog to Rule 148. While the procedures set forth in both rules are very similar, the stakeholders in delinquency and dependency proceedings differ, which is reflected in the comments to Rule 1148. It is beyond countenance that the court is obligated to ensure the stability and appropriateness of a child’s education. *See, e.g.*, Pa.R.J.C.P. 1512(D)(1)(i); Pa.R.J.C.P. 1609(E)(1)-(2). The commentary accompanying the Rules requires the court to address the child’s educational stability, including 1) the child’s right to remain in the same school regardless of a change in placement when it is in the child’s best interest; 2) the immediate enrollment when a school change is in the child’s best interest; and 3) consideration of the school’s proximity in all placement changes. The changes brought by the Every Student Succeeds Act, Pub.L. 114-95, amending 20 U.S.C. § 6311, only serve to reinforce what is already required by the Rules—once the child is subject to juvenile court jurisdiction, the court is required to make educational decisions in the child’s best interest.

[Pa.B. Doc. No. 19-42. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BEDFORD COUNTY

#### Local Rules Relating to Compulsory Arbitration; Misc. Doc. No. 60305 for 2018

##### Order of Court

And now, December 20, 2018, Bedford County Local Rule of Civil Procedure 1302 is amended as follows:

##### Rule 1302. List of Arbitrators; Appointment of Board; Compensation.

1. The Prothonotary of Bedford County shall maintain a list of available arbitrators in accordance with the applicable provisions of the Rules of Civil Procedure.

2. The Prothonotary of Bedford County shall make all appointments of arbitrators in cases being submitted to compulsory arbitration, subject to the applicable provisions of the Rules of Civil Procedure.

3. The chairman of the board of arbitration shall be paid the sum of **\$275.00** for a hearing lasting one-half (1/2) day. Each other member shall be paid the sum of **\$200.00** for a hearing lasting one-half (1/2) day. In the event a hearing lasts a full day, the chairman shall be paid **\$375.00** and each member shall be paid the sum of **\$300.00**. In the event the matter is settled and no hearing is held, the chairman only shall be paid the sum of **\$125.00** for work performed in preparation for the hearing. Payment shall be made by the County of Bedford.

This amendment shall become effective thirty (30) days from date of publication in the *Pennsylvania Bulletin*.

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

1. Forward one (1) copy of this Order to the Administrative Office of Pennsylvania Courts via e-mail to [adminrules@pacourts.us](mailto:adminrules@pacourts.us).

2. Upon written notification from the Civil Rules Committee that the amended Local Rule is not inconsistent with the statewide rule, send two (2) paper copies of this Order together with one (1) electronic copy in a Microsoft Word format only to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this amended Local Rule on the Bedford County Court website at [www.bedfordcountypa.org](http://www.bedfordcountypa.org) and thereafter compile the amended Local Rule within the complete set of Local Rules no later than thirty (30) days after the amended Local Rule becomes effective.

4. File one (1) copy of the Local Rule in the Office of the Prothonotary of Bedford County and in the Bedford County Law Library for public inspection and copying.

*By the Court*

THOMAS S. LING,  
*President Judge*

[Pa.B. Doc. No. 19-43. Filed for public inspection January 11, 2019, 9:00 a.m.]



Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 21st day of December, 2018, Dauphin County Local Rule of Civil Procedure 1910.11 is amended as follows:

Rule 1910.11. Domestic Relations Cases—Demand for Hearing De Novo Before the Court.

- 1. A Demand for Hearing De Novo before the Court, in accordance with Pa.R.C.P. 1910.11, shall be filed in the Domestic Relations Office [ accompanied by a filing fee of \$15.00 ].
2. A Demand for Hearing shall be substantially in the form set forth below and shall be accompanied by the following:
a. Prior Court Involvement Statement in accordance with Local Rule 1931. This form is available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php.
b. Seminar Attendance Order, in the form set forth below in accordance with Local Rule 1930. This form is available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php.
c. Self-Represented Party Entry of Appearance in accordance with Local Rule 1930.8 if the party filing the Demand for Hearing De Novo is not represented by counsel. This form is available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php.
3. The Domestic Relations Office shall obtain from the Court Administrator’s Office the dates to insert in the Seminar Attendance Order and prepare an Order for Court Hearing.
4. The Domestic Relations Office will mail the Seminar Attendance and Hearing Orders to all parties.
5. All Demands for Hearing De Novo shall be substantially in the following form. This form is available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php.

Plaintiff : IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA
:
Defendant : PACSES CASE NUMBER
:
: DOCKET NO.

DEMAND FOR HEARING DE NOVO BEFORE THE COURT

1. I \_\_\_\_\_ am appealing the Order issued following my Domestic Relations Conference in the
Print Name
above-captioned case and demand a Hearing De Novo before the Court regarding the following:

Date of order: \_\_\_\_\_ Monthly Amount of Support Order \$ \_\_\_\_\_

2. The reason(s) for my Demand for Hearing De Novo is/are as follows:
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

3. I have attached:

[ (a) Filing Fee of \$15.00.

(b) [(a) Prior Court Involvement Statement (form available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php).

[(c) [(b) Seminar Attendance Order (form available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php).

[(d) [(c) Self-Represented Party Entry of Appearance (form available at http://www.dauphincounty.org/government/courts/self\_help\_center/index.php).

4. I have provided a copy of this form to all other attorneys or other self-represented parties at the following addresses as listed below: (Use reverse side if you need more space)

Name \_\_\_\_\_ Address \_\_\_\_\_
Name \_\_\_\_\_ Address \_\_\_\_\_

Signature of person requesting the Hearing or their attorney:

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

These amendments shall be effective thirty (30) days from date of publication.

*By the Court*

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 19-44. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### LEHIGH COUNTY

#### Establishing Uniform Costs for the Retail Theft Class Administered by the Adult Probation/Parole Office; No. AD-10-2018

##### Order

*And Now*, this 20th day of December, 2018, the following Administrative Order establishing uniform costs in criminal cases for certain services rendered by the Adult Probation/Parole Office of Lehigh County is promulgated and is effective for all such services rendered in any criminal case thirty (30) days after publication in the *Pennsylvania Bulletin*.

*It Is Further Ordered* that the District Court Administrator for the 31st Judicial District is directed to:

1. File the original with the Clerk of Judicial Records.
2. File one (1) certified copy of this order with the Administrative Office of Pennsylvania Courts.
3. File two (2) certified copies and one electronic version with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
4. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

##### RETAIL THEFT CLASS

Every person who attends the Retail Theft class administered by the Lehigh County Adult Probation and Parole Department shall pay a fee of \$25.00 for such program in addition to any other applicable costs of prosecution, fines, restitution and other costs.

*By the Court*

EDWARD D. REIBMAN,  
*President Judge*

[Pa.B. Doc. No. 19-45. Filed for public inspection January 11, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### WAYNE COUNTY

#### Representation of Indigent Parties by Pro Bono Legal Counsel; No. 61-CIVIL-2017

##### Order

*And Now*, this 21 day of December, 2018, upon consideration of the Wayne County Bar Association Pro Bono Plan "Access to Justice" that was adopted unanimously by the Wayne County Bar Association on November 22, 2017,

and it being the express intention of this Court to support the pro bono work of the members of the bar, *It Is Hereby Ordered* that the following Local Rule of Civil Procedure is *Adopted* by this Court:

#### Local Rule 1012. Entry of Appearance. Withdrawal of Appearance. Notice.

1. Every attorney who has agreed to represent an individual pro bono in a matter pending before this Court shall be permitted to withdraw his/her appearance in such matter before its conclusion upon certification that s/he has completed all duties and responsibilities incident to her/his representation and fully complied with the terms of this Local Rule.

2. To make a limited appearance pursuant to this Local Rule, counsel must enter her/his appearance on an approved Praecipe for Entry of Limited Appearance form, attached Exhibit A, which confirms that the attorney is providing free legal service to the party, sets forth with particularity those duties to be rendered for the party, and confirms counsel's belief that the party is unable to pay the costs of a lawyer, as provided by Pa.R.C.P. 240(d)(1).

3. If an attorney has agreed to represent an indigent client pro bono in a matter that has been previously scheduled for a hearing or other court appearance at a time in conflict with the pro bono attorney's pre-existing obligations, the attorney may request a reasonable continuance to allow said attorney to prepare for and participate in the hearing. Before making such request, the pro bono attorney shall contact all parties and obtain from them their consent (or objection) and a date or dates to which the matter may be rescheduled. In the absence of objection, the request for continuance shall be granted without hearing or further Order of this Court; if there is objection, counsel shall present a Motion to Continue in Motions Court.

4. In matters where the client will represent her/himself following pro bono counsel's withdrawal, counsel must use an approved Substitution of Appearance form, attached Exhibit B, to withdraw her/his appearance, which shall include the certifications required by paragraph 1 of this Order and a certificate of service that Notice of Withdrawal of Appearance has been delivered to the client. In instances where pro bono counsel is being replaced by private counsel (pro bono or otherwise), counsel should use standard entry and withdrawal forms.

5. In matters where the Rules of Civil Procedure require leave of Court to be obtained before withdrawal may occur, counsel shall provide a Motion to Withdraw along with a proposed Rule upon all parties to show cause why said withdrawal should not be permitted. The Rule shall be returnable with any answer in opposition to be filed within twenty (20) days. In the absence of any

timely-filed answer in opposition, counsel shall present a Rule Absolute granting the petition as being uncontested and entering the withdrawal. In matters in which leave of Court is not required by the Rules of Civil Procedure, withdrawal shall be effective upon the filing of the Praecipe.

6. Except in such cases where said information has been deemed confidential, any entry of appearance by a self-represented party shall set forth the current address and telephone number of the formerly represented client.

7. This Order shall constitute leave of Court for the Prothonotary to enter the withdrawal of pro bono counsel upon satisfaction of the above requirements.

The Effective Date of this Local Rule is 30 days after the date of publication in the *Pennsylvania Bulletin*.

The District Court Administrator is directed to:

1. File one (1) certified copy of this Order with the Administrative Office of Pennsylvania Courts;
2. Submit two (2) certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* along with a copy of this Order on a CD-ROM or other agreed upon alternate format;
3. Publish a copy of this Order on the Wayne County Court of Common Pleas website;
4. Compile the local rule within the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*.

By the Court

JANINE EDWARDS,  
*President Judge*

Exhibit A

**IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY  
COMMONWEALTH OF PENNSYLVANIA  
22nd JUDICIAL DISTRICT**

_____	:	
PLAINTIFF NAME	:	
Plaintiff	:	
v.	:	No. _____
DEFENDANT NAME	:	
Defendant	:	
_____	:	

PRAECIPE FOR ENTRY OF LIMITED APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my limited appearance on behalf of \_\_\_\_\_, Plaintiff/Defendant in the above matter. I hereby certify that I have accepted this representation as a pro bono volunteer attorney through the Wayne County Bar Association Pro Bono Program. Pursuant to Pa.R.Civ.P. 240(d)(1), I further certify that I believe the party is unable to pay the costs of this proceeding, including my fees. My representation will end, by agreement with my client, upon \_\_\_\_\_ [specify terms].

Upon completion of the above duties and consistent with the agreement, I may withdraw my appearance by filing the Entry of Appearance of Withdrawal of Appearance form with the Prothonotary or, if Court approval is required, by filing a Motion to Withdraw stating the reasons for withdrawal and attaching a proposed Order. Upon filing my withdrawal or motion to withdraw as counsel, I shall provide a copy of the same to my client and shall certify the address at which my client may receive additional notices after my withdrawal.

Respectfully submitted,

Date: \_\_\_\_\_

\_\_\_\_\_  
Name  
Attorney ID. No. \_\_\_\_  
Address  
Telephone Number.

Exhibit B

**IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY  
COMMONWEALTH OF PENNSYLVANIA  
22nd JUDICIAL DISTRICT**

_____	:	
PLAINTIFF NAME	:	
Plaintiff	:	
v.	:	No. _____
DEFENDANT NAME	:	
Defendant	:	
_____	:	

ENTRY OF APPEARANCE OF SELF-REPRESENTED PARTY

I, \_\_\_\_\_, [ ] Plaintiff [ ] Defendant, will be representing myself in this lawsuit from now on. Please WITHDRAW the appearance of my attorney, named below, as my attorney of record.

I understand that I am under a continuing obligation to provide current contact information to the court, to other self-represented parties, and to attorneys of record. All pleadings and legal papers can be served on me at the address listed below, which may or may not be my home address as allowed by court rule:

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

WITHDRAWAL OF COUNSEL OF RECORD

Kindly WITHDRAW my appearance for the filing party. I hereby certify that I have completed all duties I agreed to perform in my Pro Bono engagement for this client, and in the Limited Entry of Appearance I filed in this case. I also certify that on behalf of the filing party, I am this day serving a true and correct copy of this document on all parties (including the party named above) and/or their counsel of record, by first class mail, postage prepaid.

Date:

\_\_\_\_\_  
Counsel for the above filing party  
Attorney ID No.  
Address

[Pa.B. Doc. No. 19-46. Filed for public inspection January 11, 2019, 9:00 a.m.]

\_\_\_\_\_

# NOTICES

## DEPARTMENT OF AGING

### Pennsylvania Long-Term Care Council Meetings

The Pennsylvania Long-Term Care Council (Council) will hold meetings at 10 a.m. on February 13, 2019, April 18, 2019, June 12, 2019, August 29, 2019, October 24, 2019, and December 12, 2019.

Meetings of the Council will be held at the Pennsylvania Farm Show Complex and Expo Center, Keystone Conference Center, 2300 North Cameron Street, Harris-

burg, PA. The Keystone Conference Center is located on the second floor of the Maclay Street side of the Complex.

Any questions or concerns regarding these meetings should be directed to Charles Quinnan, Council Executive Director, (717) 705-7296, [cquinnan@pa.gov](mailto:cquinnan@pa.gov).

TERESA OSBORNE,  
*Secretary*

[Pa.B. Doc. No. 19-47. Filed for public inspection January 11, 2019, 9:00 a.m.]

## DEPARTMENT OF BANKING AND SECURITIES

### Actions on Applications

The Department of Banking and Securities (Department), under the authority in the Banking Code of 1965 (7 P.S. §§ 101—2204), the Department of Banking and Securities Code (71 P.S. §§ 733-1—733-1203) and 17 Pa.C.S. (relating to Credit Union Code), has taken the following actions on applications received for the week ending January 1, 2019.

Under section 503.E of the Department of Banking and Securities Code (71 P.S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file comments in writing with the Department of Banking and Securities, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

### BANKING INSTITUTIONS

#### Branch Applications

##### De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-10-2018	Ameriserv Financial Bank Johnstown Cambria County	12806 Shank Farm Way Hagerstown Washington County, MD	Opened
12-15-2018	Republic First Bank Philadelphia Philadelphia County	178 East Greentree Road Marlton Burlington County, NJ	Opened
12-24-2018	Wayne Bank Honesdale Wayne County	734 Sans Souci Parkway Hanover Township Luzerne County	Filed
12-28-2018	CNB Bank Clearfield Clearfield County	1668 West Fifth Avenue Columbus Franklin County, OH	Filed

#### Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-13-2018	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 1700 Walnut Street Philadelphia Philadelphia County  <i>From:</i> 214 South 20th Street Philadelphia Philadelphia County	Effective

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-17-2018	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 2753 West Main Street Norristown Montgomery County  <i>From:</i> 2701 Ridge Pike Trooper Montgomery County	Effective
12-17-2018	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 106 Isabella Street Pittsburgh Allegheny County  <i>From:</i> 540 East Ohio Street Pittsburgh Allegheny County	Effective
12-18-2018	FNCB Bank Dunmore Lackawanna County	<i>To:</i> 196 North Main Street Shavertown Luzerne County  <i>From:</i> 1919 Memorial Highway Shavertown Luzerne County	Effective

**Branch Discontinuances**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
12-07-2018	Union Community Bank Mount Joy Lancaster County	600 Richmond Drive Lancaster Lancaster County	Closed
12-14-2018	Union Community Bank Mount Joy Lancaster County	921 Lancaster Avenue Columbia Lancaster County	Closed

**CREDIT UNIONS**

No activity.

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

ROBIN L. WIESSMANN,  
*Secretary*

[Pa.B. Doc. No. 19-48. Filed for public inspection January 11, 2019, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednesday, January 23, 2019, at 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items can be directed to Gretchen Leslie at (717) 772-9084. Persons who wish to participate during the public comment section are encouraged to submit their comments in writing to Gretchen Leslie, Advisor, Conservation and Natural Resources Advisory Council, 400 Market Street, Harrisburg, PA 17101.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Katie Woodbury directly at (717) 783-5878 or through the Pennsylvania AT&T Relay Service at (800) 654-5984

(TDD) to discuss how the Department may accommodate their needs.

CINDY ADAMS DUNN,  
*Secretary*

[Pa.B. Doc. No. 19-49. Filed for public inspection January 11, 2019, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Execution of Oil and Gas Lease for Publicly- Owned Streambeds

Effective July 31, 2018, an Oil and Gas Lease for Publicly-Owned Streambeds, Contract No. M-2102008-04, was executed by and between the Commonwealth, acting through the Department of Conservation and Natural Resources (Department) (lessor), and Chevron Appalachia, LLC (lessee), with its principal place of business located at 700 Cherrington Parkway, Coraopolis, PA 15108.

The lease is for Streambed Tract 2008 on the Youghiogheny River encompassing a total of 239.4 acres

of submerged lands located in South Versailles, Elizabeth and Sewickley Townships, Allegheny and Westmoreland Counties. The lease was recorded at the Westmoreland County Courthouse on August 21, 2018, instrument No. 201808210026552; and Allegheny County Courthouse on September 4, 2018, instrument No. 2018-27410. The lease allows for the development of oil and natural gas below and between the ordinary low water marks of the Youghiogheny River solely by means of directional, including horizontal, drilling on a nondevelopment basis that will not disturb the river or its bed. Contract No. M-2102008-04 may be viewed online at [http://contracts.patreasury.gov/Admin/Upload/454358\\_M-2102008-04%20Streambed%20Lease%20Youghiogheny%20Lease%20Tract%202008%20Chevron%20Appalachia.pdf](http://contracts.patreasury.gov/Admin/Upload/454358_M-2102008-04%20Streambed%20Lease%20Youghiogheny%20Lease%20Tract%202008%20Chevron%20Appalachia.pdf).

patreasury.gov/Admin/Upload/454358\_M-2102008-04%20Streambed%20Lease%20Youghiogheny%20Lease%20Tract%202008%20Chevron%20Appalachia.pdf.

Questions regarding this lease should be directed to the Department's Bureau of Forestry, Minerals Division, (717) 787-2703.

CINDY ADAMS DUNN,  
Secretary

[Pa.B. Doc. No. 19-50. Filed for public inspection January 11, 2019, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

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#### APPLICATIONS

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

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Waste; Discharge into Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 Individual Permits and Individual Stormwater Construction Permits in Sections IV and VI, the Department, based upon preliminary reviews, has made tentative determinations of proposed effluent limitations and other terms and conditions for the permit applications. In accordance with 25 Pa. Code § 92a.32(d), the proposed discharge of stormwater associated with construction activities will be managed in accordance with the requirements of 25 Pa. Code Chapter 102. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the United States Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**I. NPDES Renewal Applications.**

*Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0060917 (Sewage)	Country Crest MHP WWTP State Route 29 Hunlock Creek, PA 18621	Luzerne County Lehman Township	Tributary 28314 to Hunlock Creek (5-B)	Yes
PA0063860 (Industrial)	Lehighon Water Authority Box 29 Municipal Building Lehighon, PA 18235	Carbon County Franklin Township	Long Run (2-B)	Yes
PA0035611 (Sewage)	Safety Rest Area No. 56 Interstate 81 Southbound Lenox Township, PA 18446	Susquehanna County Lenox Township	Unnamed Tributary to East Branch Tunkhannock Creek (4-F)	Yes
PA0061441 (Sewage)	Freeman's Mobile Home Park Monroe Township, PA 18612-8026	Wyoming County Monroe Township	Unnamed Tributary to Leonard Creek (4-G)	Yes

*Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0255513 (Sewage)	Cromie Properties Glorious Mart 437 Bear Creek Road Sarver, PA 16055	Somerset County Stonycreek Township	Unnamed Tributary to Calendars Run (18-E)	Yes
PA0205753 (Sewage)	East Bethlehem Township Municipal Authority WWTP P.O. Box 136 Fredericktown, PA 15333-0136	Washington County East Bethlehem Township	Monongahela River (19-C)	Yes

*Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0240044 (Sewage)	Meadville KOA Campground 25164 State Highway 27 Meadville, PA 16335-5914	Crawford County East Mead Township	Unnamed Tributary to Little Sugar Creek (16-D)	Yes
PA0240010 (Sewage)	Paul L Labrie SFTF 112 Wetmore Trail Kane, PA 16735-2218	McKean County Hamilton Township	Twomile Run (16-F)	Yes
PA0239224 (Sewage)	Keystone Charter School 425 South Good Hope Road Greenville, PA 16125	Mercer County West Salem Township	Big Run (20-A)	Yes
PA0264008 (Sewage)	Stateline Bar & Grill 1185 Vernon Road Greenville, PA 16125	Mercer County West Salem Township	Unnamed Tributary to Booth Run (20-A)	Yes

**II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Non-Waived Permit Applications.**

*Northeast Regional Office: Regional Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone: 570.826.2511.*

**PA0276162**, Storm Water, SIC Code 4222, 4225, **C&S Wholesale Grocers, Inc.**, 208 Bilo Boulevard, Greenville, SC 29607. Facility Name: Bethlehem 4. This proposed facility is located in Bethlehem Township, **Northampton County**.

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

The receiving stream(s), Monocacy Creek, is located in State Water Plan watershed 2-C and is classified for High Quality—Cold Water and Migratory Fish, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.



The proposed effluent limits for Outfall 001 are based on a design flow of 0 MGD (stormwater).

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	100.0
Oil and Grease	XXX	XXX	XXX	XXX	XXX	30.0

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

- Stormwater Outfalls and Authorized Non-Stormwater Discharges
- Best Management Practices (BMPs)
- Routine Inspections
- Preparedness, Prevention and Contingency (PPC) Plan
- Stormwater Monitoring Requirements

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

The EPA Waiver is in effect.

**PA0276031**, Storm Water, SIC Code 4581, **Pocono Mountain Municipal Airport Authority**, 188 Airport Drive, Tobyhanna, PA 18466. Facility Name: Pocono Mountain Municipal Airport. This proposed facility is located in Coolbaugh Township, **Monroe County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Industrial Stormwater from an existing facility (including new stormwater outfall). This permit is replacing previous NPDES Permit No. PAS802210 and No Exposure Certification No. NNOEX050202.

The receiving stream(s), Red Run, is located in State Water Plan watershed 2-A and is classified for High Quality—Cold Water and Migratory Fish, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for stormwater-only Outfall Nos. 001—007 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD <sub>5</sub> )	XXX	XXX	XXX	XXX	XXX	30.0
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	XXX	120.0
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	100.0
Total Dissolved Solids	XXX	XXX	XXX	XXX	XXX	Report
Oil and Grease	XXX	XXX	XXX	XXX	XXX	30.0
Ammonia-Nitrogen	XXX	XXX	XXX	XXX	XXX	Report

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

- Standard stormwater permit conditions; Necessary property rights; Residuals management

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

The EPA Waiver is in effect.

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*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone: 412.442.4000.*

**PA0255491**, Sewage, **Ms. Stacey Barnhart**, 2398 State Route 982, Mount Pleasant, PA 15666-2520. Facility Name: Barnhart SRSTP. This proposed facility is located in Mount Pleasant Township, **Westmoreland County**.

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

The receiving stream(s), Unnamed Tributary to Brush Run, is located in State Water Plan watershed 19-D and is classified for Cold Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD <sub>5</sub> )	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200.0	XXX	1,000.0

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 412-442-4000.

The EPA Waiver is in effect.

*Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**PA0271918**, Sewage, SIC Code 8800, **Joseph Balter**, 845 Samick Drive, Erie, PA 16509. Facility Name: Joseph Balter SRSTP. This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated sewage from a single-family residence.

The receiving stream, an Unnamed Tributary to Walnut Creek, is located in State Water Plan watershed 15 and is classified for cold water fishes and migratory fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Annual Average	Maximum	
Flow (GPD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD <sub>5</sub> )	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX

Sludge use and disposal description and location: Septage must be pumped and hauled off-site by a septage hauler for land application under a general permit authorized by DEP or disposal at an STP.

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

- Prohibition of Stormwater Discharges
- Right of Way
- Requirement to submit an Annual Maintenance Report
- Solids Handling
- Treatment tank pumping requirement
- Abandonment of the treatment facility for public sewers

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is in effect.

### III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law.

*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

**WQM Permit No. 5618401**, Sewage, **Dell Cromie**, 437 Bear Creek Road, Sarver, PA 16055.

This proposed facility is located in Stonycreek Township, **Somerset County**.

Description of Proposed Action/Activity: Installation of a SFTF to replace a malfunctioning on-lot system.

**WQM Permit No. 0218409**, Sewage, **Breakneck Creek Region Authority**, 1166 Mars Evans City Road, Mars, PA 16046-2216.

This proposed facility is located in Adams Township, **Butler County**.

Description of Proposed Action/Activity: Construction of a new sanitary gravity sewer collection system to serve new residential and commercial development known as The Pittsburgh Cut Flowers Subdivision in Richland township along Bakerstown Road.

*Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 1018410**, Sewage, **Stephen Eger**, 425 Arbor Drive, Mars, PA 16046.

This proposed facility is located in Jackson Township, **Butler County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

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#### **IV. NPDES Individual Permit Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s).**

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*Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.*

**PAI133519**, MS4, **East Earl Township Lancaster County**, 4610 Division Highway, East Earl, PA 17519. The application is for a renewal of an individual NPDES permit for the discharge of stormwater from a regulated municipal separate storm sewer system (MS4) to waters of the Commonwealth in East Earl Township, **Lancaster County**. The receiving stream(s), Shirks Run, Muddy Creek, Black Creek, Cedar Creek, and Mill Creek, are located in State Water Plan watershed 7-J and are classified for Migratory Fishes, Cold Water Fishes, Warm Water Fishes, and Trout Stocking, aquatic life, water supply and recreation. The applicant is classified as a small MS4.

The applicant has submitted the following plan(s) with the application to reduce pollutant loads to impaired waters:

- A Pollutant Reduction Plan (PRP)

The Department has made a tentative determination to issue the NPDES permit. Written comments on the application and draft permit will be accepted for 30 days following publication of this notice. The period for comment may be extended at the discretion of DEP for one additional 15-day period. You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is in effect for small MS4s, and is not in effect for large MS4s.

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#### **VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities.**

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*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

*Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD390087	Jenstar Properties Inc P.O. Box 1400 Voorhees, NJ 08043-7400	Lehigh	Upper Macungie Twp	UNT to Cedar Creek (HQ-CWF, MF)

*Monroe County Conservation District, 8050 Running Valley Road, Stroudsburg, PA 18347.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD450075	Nyles & Kitty Possinger 291 NE Belmont Pike Stroudsburg, PA 18360	Monroe	Hamilton Twp	Appenzell Creek (HQ-CWF, MF)

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.*

<i>Permit #</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD210028	US Army Carlisle Barracks Garrison 330 Engineer Avenue Carlisle, PA 17013	Cumberland	North Middletown & Middlesex Townships Carlisle Borough	LeTort Spring Run (HQ-CWF)
PAD060024	JLM Real Estate, LLC 950 East Main Street P.O. Box 472 Schuylkill Haven, PA 17972	Berks	Richmond Township	Moselem Creek (HQ-CW, MF)

Northwest Region: Waterways and Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.  
 Erie County Conservation District, 1927 Wager Road, Erie, PA 16509. 814-825-6403.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAD250005	Eastman Development LLC Mr. Mike Redlawsk 2601 West 26th Street Erie, PA 16506	Erie	Fairview Township	Trout Run CWF; MF

**STATE CONSERVATION COMMISSION  
 PROPOSED NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS  
 FOR NPDES PERMITS FOR CAFOs**

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under 3 Pa.C.S. Chapter 5 and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC) or County Conservation Districts (CCD) working under a delegation agreement with the SCC have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at <http://www.nacdnet.org/about/districts/directory/pa.phtml> or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based. Comments should be sent to the SCC, Agriculture Building, Room 310, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**ACT 38  
 NUTRIENT MANAGEMENT PLANS  
 CAFO PUBLIC NOTICE SPREADSHEET—APPLICATIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>AEU's</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>New or Renewal</i>
Bellaire Farms, LLC William Hynes & Eric Miller 225 Oberholtzer Road Elizabethtown, PA 17022	Lancaster	2.1	232.39	Broilers	NA	R
Clark Crest Dairy Farm Ron Clark 754 Solanco Road Quarryville, PA 17566	Lancaster	195.9	1,050.75	Dairy	HQ	R

**PUBLIC WATER SUPPLY (PWS)  
 PERMITS**

Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact

basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### SAFE DRINKING WATER

#### Applications taken under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

*Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

##### Permit No. 3060026, Public Water Supply.

Applicant	<b>Park Road Estates, LLC</b>
Municipality	Richmond Township
County	<b>Berks</b>
Responsible Official	Tyler Eberly, Owner 2403 Main Street Narvon, PA 17555
Type of Facility	Public Water Supply
Consulting Engineer	Not Listed
Application Received:	12/4/2018
Description of Action	Transfer of ownership of the Park Place Court from Charles Hicks to Tyler Eberly. The entity name will be changed to Park Road Estates, LLC.

##### Permit No. 3618525, Public Water Supply.

Applicant	<b>Rino's Pizza</b>
Municipality	Penn Township
County	<b>Lancaster</b>
Responsible Official	Javier Anota Xolio, Owner 1711 Lebanon Road Manheim, PA 17545
Type of Facility	Public Water Supply
Consulting Engineer	Charles A. Kehew II, P.E. James R. Holley & Associates, Inc. 18 South George Street York, PA 17401
Application Received:	12/4/2018
Description of Action	Installation of facilities to provide 4-log treatment of viruses.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995 PREAMBLE 1

#### Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P.S. §§ 6026.302—6026.305) require the Department to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to

Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. A person intending to use the background standard, Statewide health standard, the site-specific standard or intend to remediate a site as a special industrial area shall file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of cleanup standards or receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the following site, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified as follows. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**McDonald's Restaurant**, 4240-52 Market Street, City of Philadelphia, **Philadelphia County**. Jeffrey T. Bauer, Whitestone Associates, Inc., 1600 Manor Drive, Suite 220, Chalfont, PA 18914 on behalf of James F. Russ, Jr., McDonald's USA, LLC, 4138 Market Street, Philadelphia, PA 19104 submitted a Notice of Intent to Remediate. The site groundwater has been found to be contaminated with chlorinated VOCs. The proposed future use of the property will be non-residential for use as commercial office building. The Notice of Intent to Remediate was published in *The Philadelphia Daily News* on November 2, 2018.

**SPC Corporation Facility**, 2600 Penrose Avenue, City of Philadelphia, **Philadelphia County**. William F. Schmidt, PE, The Vertex Companies, Inc., 700 Turner

Way, Suite 105, Aston, PA 19014 submitted a Notice of Intent to Remediate. Groundwater has been found to be contaminated with volatile organic compounds, semi-volatile organics compounds and priority pollutant metals. The proposed future use of the property will be non-residential. The Notice of Intent to Remediate was published in the *Philadelphia Metro* on October 25, 2018.

**Tioga Pipe Supply Company, Inc.**, 3321-3329, 3331-3333 and 3335 Richmond Street, 2815 and 2825 E. Westmoreland Street, 3320-3322 and 3331 Melvale Street, City of Philadelphia, **Philadelphia County**. Jeffrey K. Walsh, PG, Penn E&R, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of David Keiser, Tioga Pipe Supply Company, Inc., 2450 Wheatsheaf Lane, Philadelphia, PA 19137 submitted a Notice of Intent to Remediate. Site soil and groundwater have been impacted with VOCs, SVOCs, and metals. The proposed future use of the property will be non-residential for unknown purpose. The Notice of Intent to Remediate was published in the *Philadelphia Daily News* on November 15, 2018.

#### **OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Application received, under the Solid Waste Management Act of July 7, 1980, P.L. (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and regulations to operate a Solid Waste Processing or Disposal Area or Site.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Telephone 412-442-4000.*

**Permit Application ID No. 101717. Boyd Roll-Off Services, Inc.**, 1107 Thompson Avenue, McKees Rocks, PA 15136. An application for expansion and modifications of the Boyd Transfer & Recycling Waste Transfer Facility, located in McKees Rocks Borough, **Allegheny County**, was received in the Regional Office on May 15, 2017.

### **AIR QUALITY**

#### **PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS**

The Department has developed an “integrated” plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the general public. This approach allows the owner or operator of a facility to submit permitting documents relevant to its application for all sources related to a facility or a proposed project, affords an opportunity for public input, and provides for a decision on the issuance of the necessary permits.

The Department received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of the application, the Department’s analysis, all pertinent documents used in the evaluation of the application and subsequently prepared proposed plan approvals/operating permits are available for public review during normal business hours at the appropriate Department Regional Office. Appointments for scheduling a review must be made by calling the appropriate Department Regional Office. The address and phone number of the Regional Office is listed before the application notices.

Persons wishing to file a written protest or provide comments or additional information, which they believe should be considered prior to the issuance of a permit, may submit the information to the Department’s Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments, protests and information. Each submission must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval/Operating Permit including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the permit.

A person wishing to request a hearing may do so during the 30-day comment period. A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper, the *Pennsylvania Bulletin* or by telephone, when the Department determines this type of notification is sufficient. Requests for a public hearing and any relevant information should be directed to the appropriate Department Regional Office.

Permits issued to the owners or operators of sources subject to 25 Pa. Code Chapter 127, Subchapter D or E, or located within a Title V facility or subject to 25 Pa. Code § 129.51(a) or permits issued for sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may be submitted to the United States Environmental Protection Agency for review and approval as a revision to the State Implementation Plan. Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the sources are constructed and operating in compliance with applicable requirements in the Air Pollution Control Act (35 P.S. §§ 4001—4015), 25 Pa. Code Chapters 121—145, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### **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.**

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**08-00058A: Bradford County Real Estate Partners LLC** (c/o New Fortress Energy, 111 W 19th St., 8th Floor, New York, NY 10011). The Department has received a Plan Approval application for the construction and operation of several sources at the proposed Bradford County Real Estate Partners—natural gas processing plant facility capable of generating approximately 4 million gallons of liquified natural gas for delivery to commercial markets to be located in Wyalusing Township, **Bradford**

**County.** The received date of the application, as entered into the Department's eFACTS system, is December 10, 2018.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.*

**23-0003AD: Monroe Energy, LLC** (4101 Post Road, Trainer, PA 19061) for the expansion of the existing railcar loading station at the Trainer Refinery located at 4101 Post Road, Trainer Borough, **Delaware County**. The railcar loading station is currently used to load offload propane, n-butane, and isobutane from the refinery into railcars. This project will add an additional four loading racks to the existing six racks. Emissions from loading rack operations will continue to be sent to the refinery's main flare (Source ID C103), which utilizes a flare gas recovery system for flare minimization. This project also includes fugitive emissions from the railcar loading operations and piping components.

The project itself will result in a NO<sub>x</sub> emission increase 0.14 ton per year and a VOC emission increase of 9.03 tons per year. The 5-year and 10-year contemporaneous net emission increase is 0.22 ton NO<sub>x</sub> per year and 9.03 tons VOC per year, which are both below the significant emission rates of 25 tons per year. This project is not subject to the requirements of 25 Pa. Code Chapter 127, Subchapter E—New Source Review. Monroe shall apply the Best Available Technology (BAT) to this project.

Copies of the application, draft Plan Approval and other documents used in evaluation of the application are available for public inspection during normal business hours at 2 E. Main St., Norristown, PA 19401.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**59-00021B: Phoenix Resources, Inc.** (782 Antrim Rd., Wellsboro, PA 16901-8501) for the construction and temporary operation of a 40,000 gallon per day capacity Heartland leachate evaporator/concentrator equipped with an 18 MMBtu/hr ABUTEK, or equivalent, natural gas-fired flare, at the existing Phoenix Resources Landfill located in Duncan Township, **Tioga County**. The Department of Environmental Protection's (Department's) review of the information submitted by the company indicates that the air contamination sources will comply with all regulatory requirements, including monitoring, record-keeping, and reporting requirements, and pertaining to air contamination sources and the emission of air contaminants including 25 Pa. Code Chapter 123 and the best available technology requirement (BAT) of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue a plan approval for the proposed construction. The emissions from the proposed leachate evaporator/concentrator will not exceed the following limits: 0.01 grain per dry standard cubic foot and 9.53 TPY PM (filterable and condensable), 0.56 TPY VOCs, 0.17 lb/MMBtu and 16.13 TPY NO<sub>x</sub>, 0.024 lb/

MMBtu and 2.28 TPY CO; no visible emissions equal to or greater than 10% for a period or periods aggregating more than three minutes in any 1 hour and equal to or greater than 30% at any time. In addition to the emission limitations, the following is a brief description of the types of conditions the Department intends to place in the plan approval in order to ensure compliance with all applicable air quality regulatory requirements: performance testing requirement to verify compliance with the particulate matter emissions limitation; flare is to be fired only on natural gas; processing of onsite leachate only; unit is to be equipped with a leachate flowmeter; the air contaminant emissions are to be controlled by a series of mist eliminators equipped with a pressure gauge/alarm system; maintenance of records on natural gas burned, leachate processed and all leachate analytical data. The facility is a State Only facility. If the Department determines that the sources are constructed and operated in compliance with the plan approval conditions and the specifications of the application for Plan Approval 59-00021B, the applicant will subsequently apply for a State Only Operating Permit in accordance with 25 Pa. Code Subchapter F. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**10-401A: Commercial Asphalt Supply Inc.** (161 Plain Grove Rd., Slippery Rock, PA 16057) on December 21, 2018, effective December 31, 2018, has issued a plan approval extension to construct and operate a hot mix asphalt plant in Clearfield Township, **Butler County**. This will expire on June 30, 2019.

#### OPERATING PERMITS

**Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**38-05003: Carmeuse Lime, Inc.** (3 Clear Spring Road, Annville, PA 17003) for approval of a Reasonably Available Control Technology 2 (RACT 2) plan for the No. 5 Kiln at the lime manufacturing facility located in North Londonderry Township, **Lebanon County**, as a significant modification to the facility's Title V operating permit.

In accordance with 25 Pa. Code §§ 129.91—129.100, the Department of Environmental Protection has made a preliminary determination to approve a RACT 2 plan for the previously-mentioned facility.

The proposed SIP revision does not adopt any new regulations. It incorporates the provisions and requirements contained in the RACT 2 approval, which are intended to satisfy the requirements for the 1997 National Ambient Air Quality Standard (NAAQS) and the 2008 NAAQS for ozone.

The proposed RACT 2 plan will be issued as a significant modification to the facility's Title V operating permit (38-05003). The relevant RACT 2 requirements will also be submitted to the U.S. Environmental Protection Agency (EPA) for approval and incorporation into Pennsylvania's State Implementation Plan. Requirements that are not part of the RACT 2 approvals will be excluded from the SIP submittal.

The following is a summary of the proposed RACT 2 requirements for this facility that will be submitted to the EPA as part of the SIP:

RACT 2 Case-by-Case Requirements, 25 Pa. Code § 129.99:

(a) The NO<sub>x</sub> emissions from the No. 5 Kiln shall not exceed 4.6 lbs/ton of lime produced as measured by stack testing.

(b) The permittee shall conduct monitoring and testing of the No. 5 Kiln for NO<sub>x</sub> in accordance with a Department-approved emissions source test that meets the requirements of Chapter 139, Subchapter A (relating to sampling and testing methods and procedures). The source test shall be conducted one time in each 5-year calendar period.

(c) The permittee shall prepare and implement a burner management plan for the No. 5 Kiln. The permittee shall maintain records of any maintenance or modifications performed on the No. 5 Kiln burners. The permittee shall maintain written documentation of the current burner management plan for the No. 5 Kiln, and any maintenance or modifications performed on the No. 5 Kiln burners for five years. The records shall be made available to the Department upon written request pursuant to 25 Pa. Code § 129.100(d) and (i).

(d) The following data shall be recorded daily for the kiln. This data shall be maintained for at least 5-years and shall be made available to the Department upon request:

(1) Tons of limestone feed and lime produced (calculated).

(2) Consumption of all fuels.

*Public Comment Details:*

Persons wishing to file a written protest or provide comments or additional information, which they believe should be considered prior to the issuance of a permit, may submit the information to Thomas Hanlon, East Permitting Section Chief, Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. A 30-day comment period from the date of publication of this notice will exist for the submission of comments, protests and information. Each submission must contain the name, address and telephone number of the person submitting the comments, identification of the RACT 2 condition, including the permit number and a concise statement regarding the relevancy of the information or objections to issuance of the RACT 2 approval.

*Public hearing.* A public hearing will be held on February 21, 2019, at 10 a.m. at the DEP Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110, to accept oral comments on the proposed permit action and the proposed SIP revision. To register to speak at the hearing, please contact Dawne Wilkes at 717-705-4702. Speakers must pre-register in order to testify at the hearing. The last day to pre-register to speak at the hearing will be February 14, 2019.

Oral testimony at the hearing will be limited to a maximum of 5 minutes per individual and two written copies of the oral testimony are requested. Each organization is requested to designate one witness to present testimony on its behalf. Persons unable to attend the hearing, may submit three (3) copies of a written statement and exhibits within 10 days thereafter to Thomas Hanlon, 909 Elmerton Avenue, Harrisburg, PA 17110.

All pertinent documents are available for public review between 8 a.m. and 4 p.m. at the DEP Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110. Appointments for scheduling a review may be made by calling Dawne Wilkes at 717-705-4702.

Individuals who are in need of an accommodation for the hearing as provided for in the Americans with Disabilities Act should contact Dawne Wilkes at 717-705-4702 or make accommodations through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD).

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**62-00017: United Refining Company** (15 Bradley Street, Box 780, Warren, PA 16365-0780). The Department intends to issue a Title V Operating Permit (renewal) for the refinery located in Warren City, **Warren County**. The facility's major emission sources include five (5) natural gas/oil fired boilers, FCC heater, D.H.T heater # 1 and # 2, east and west reformer heaters, crude heaters (North & South), pretreater heater, saturated gas plant (debut) reboiler, vacuum process heater, prefractionator reboiler # 2, volcanic heater, miscellaneous tank heaters, isomerization unit, hydrogen plant, blow down system, Claus sulfur plant # 2, east and middle FCC KVG compressors, NSPS and State fugitive emissions, storage tanks, FCC unit, Sat Gas KVG compressor, Loading Rack Bottom Loading, waste water separators, Sulfur Plant Hot Oil Heater, emergency engines, and parts washers.

The refinery sources are subject to the New Source Performance Standards (NSPS) in 40 CFR 60, Subpart J and Ja, Subpart Kb, Subpart VV and VVa, Subpart GGG, and Subpart GGGa. The Benzene operations from the facility are subject to Part 61, Subpart FF. The facility is subject to the National Emission Standards for Hazardous Air Pollutant (NESHAP) in 40 CFR Part 63 Subpart ZZZZ (for Sources 113 and 114) for the Reciprocating Internal Combustion Engines. The FCC unit, reformers, and sulfur recovery are subject to Subpart UUU. Several of the refinery sources are subject to Subpart CC and the facility is subject to Subpart GGGGG (for Source 111) for the Remediation Material Management Units. The facility is subject to the new boiler NESHAP in 40 CFR 63 Subpart DDDDD.

The facility is major for Nitrogen Oxide (NO<sub>x</sub>) and therefore subject to Reasonably Available Control Technology (RACT) requirements of 25 Pa. Code §§ 129.91—129.95. The permit also contains the presumptive RACT 2 requirements for NO<sub>x</sub> and VOC from § 129.97. The facility submitted a Case-By-Case RACT for select sources which will be reviewed as a separate authorization. The facility is also major for sulfur oxides (SO<sub>x</sub>). The renewal permit contains the requirements of the September 29, 2017 Consent Order and Agreement between the Department and United Refining Company which address the State Implementation Plan including SO<sub>2</sub> limits for all applicable sources and the methods of compliance with



those limits. There are no sources in the facility that are subject to Compliance Assurance Monitoring (CAM) requirements in 40 CFR Part 64 because the sources are already subject to NESHAP requirements developed after November 15, 1990 (See 40 CFR 64.2(b)).

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public inspection during normal business hours at the Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335.

Any person wishing to provide the Department of Environmental Protection with additional information they believe should be considered prior to the issuance of this permit may submit the information to the Department at the previously listed address. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit (specify Permit # TV 62-00017) and concise statements regarding the relevancy of the information in the proposed permit or objections to issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Mr. Eric A. Gustafson, Program Manager, Air Quality, Department of Environmental Protection, Northwest Region, 230 Chestnut Street, Meadville, PA 16335. For additional information concerning the permit or the issuance procedure, contact Mr. Matthew M. Williams, Facilities Section Chief, Air Quality Program, at the same address or phone at (814) 332-6940.

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**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.*

**40-00115: Shamokin Filler Co., Inc.** (1550 Crestwood Drive, Mountaintop, PA 18707-2132) The Department intends to issue a State-Only (Natural Minor) Operating Permit renewal for operation of a coal products manufacturing operation located in Wright Township, **Luzerne County**. The sources include a thermal coal dryer, screening and conveying equipment, and silos. Sources are controlled by baghouses and dust collectors. The proposed permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**45-00011: Pleasant Valley School District** (1671 Route 209, Broadheadsville, PA 18322) The Department intends to issue a State-Only (Natural Minor) Operating Permit renewal for operation of sources at a school district located in Chestnuthill Township, **Monroe County**. The sources include two coal-fired boilers, four No. 2 oil-fired boilers, and a propane-fired boiler. Control

devices include two cyclones. The proposed permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**45-00027: Pleasant Valley School District** (1671 Route 209, Broadheadsville, PA 18322) The Department intends to issue a State-Only (Natural Minor) Operating Permit renewal for operation of sources at a school district located in Polk Township, **Monroe County**. The sources include a coal-fired boiler, a No. 2 oil-fired boiler. Control devices include a cyclone. The proposed permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

*Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**06-03054: Martin Stone Quarries, Inc.** (1355 North Reading Avenue, Bechtelsville, PA 19505) to issue a State Only Operating Permit for the quarry located in Colebrookdale Township, **Berks County**. The potential emissions from the facility are estimated at 57.7 tpy of NO<sub>x</sub>, 21.1 tpy of CO, 33.2 tpy of PM<sub>10</sub>, 4.1 tpy of SO<sub>x</sub> and 8.4 tpy of VOC. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR 60 Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants and 40 CFR 63, Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

**36-05152: Kellogg USA, Inc.** (2050 State Road, Lancaster, PA 17604) to issue a State Only Operating Permit for the breakfast food processing facility located in East Hempfield Township, **Lancaster County**. The estimated actual emissions from the facility in 2017 year are estimated at 25.84 tpy of NO<sub>x</sub>, 22.47 tpy of CO, 42.93 tpy of PM<sub>10</sub>, 0.8 tpy of SO<sub>x</sub>, 11.91 tpy of VOC and 0.32 tpy of HAPs. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units and 40 CFR Part 63 Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**49-00028: Wildwood Cemetery Co.** (1151 Cemetery Street, Williamsport, PA 17701) to issue a renewal State Only Operating Permit for their Pomfret Manor Cemetery facility located in the City of Sunbury, **Northumberland County**. The facility's main sources include one All Crematory Corp. model L-1701 propane-fired human crematory with a 0.72 MMBtu/hr primary chamber burner

and 1.4 MMBtu/hr secondary chamber burner, and one All Crematory Corp. model 2500 Elite propane-fired human crematory with a 0.70 MMBtu/hr primary chamber burner and 1.3 MMBtu/hr secondary chamber burner. This facility has the potential annual emissions 1.48 ton of carbon monoxide, 2.56 tons of nitrogen oxides, 0 ton of sulfur oxides, 0.14 ton of particulate matter, 0.14 ton of particulate matter less than 10 microns in size, 0.14 ton of particulate matter less than 2.5 microns in size, 0 ton of hazardous air pollutants, and 0.20 ton of volatile organic compounds. The potential emissions for all criteria pollutants remained same at the facility. No emission or equipment changes are being proposed by this action. The emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code Chapters 121—145, as well as 40 CFR Parts 60, 63 and 98. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

**14-00021: Hanson Aggregates PA, LLC** (7660 Imperial Way, Allentown, PA 18195) to issue a renewal State Only (Synthetic Minor) Operating Permit for the Curtin Gap Crushing Plant 139 located in Marion Township, **Centre County**. The facility is currently operating under State Only (Synthetic Minor) Operating Permit 14-00021. The facility's sources include a limestone crushing plant consisting of multiple crushers, conveyors and screens, one cold cleaning degreaser, several portable diesel generator engines, 0.5 mile of onsite unpaved haul roads. The facility has potential emissions of 3.79 TPY of CO; 16.04 TPY of NO<sub>x</sub>; 1.03 TPY of SO<sub>x</sub>; 14.20 TPY of PM/PM<sub>10</sub>; 3.97 TPY of VOCs; 1.64 TPY of combined hazardous air pollutants; 1,220 TPY GHGs. Ten pieces of the limestone processing equipment at this plant are subject to 40 CFR 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants. The emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code Chapters 121—145, as well as 40 CFR Part 60. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

**14-00040: Dominion Transmission, Inc.** (445 West Main Street, Clarksburg, WV 26301-2843) for their Centre Compressor Station located in Spring Township, **Centre County**. In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue a renewal of an Air Quality Operating Permit for the previously mentioned facility. The subject facility has the following potential emissions: 4.98 TPY of CO; 45.46 TPY of NO<sub>x</sub>; 1.47 TPY of SO<sub>x</sub>; 18.11 TPY of PM/PM<sub>10</sub>; 14.02 TPY of VOC; 3.75 TPY of HAP and 56,470 TPY of CO<sub>2</sub>e. The operating permit will include emission limits and work practice standards along with testing, monitoring,

record keeping and reporting requirements to ensure the facility complies with all applicable air quality regulations. Both turbine compressor engines (Source IDs P102 and P103) are subject to 40 CFR Part 60, Subpart KKKK—Standards of Performance for New Stationary Source—Stationary Combustion Turbines. The emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code Chapters 121—145, as well as 40 CFR Parts 60 and 63. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

**59-00006: Dominion Transmission, Inc.** (445 West Main St., Clarksburg, WV 26301) for their Boom Compressor Station located in Lawrence Township, **Tioga County**. In accordance with 25 Pa. Code §§ 127.424 and 127.425, the Department of Environmental Protection (DEP) has received an application and intends to issue a renewal of an Air Quality Operating Permit for the previously mentioned facility. The subject facility has the following potential emissions: 16.05 TPY of CO; 93.04 TPY of NO<sub>x</sub>; 0.04 TPY of SO<sub>x</sub>; 2.66 TPY of PM/PM<sub>10</sub>; 18.49 TPY of VOC; 6.72 TPY of total HAPs and 9,915 TPY of CO<sub>2</sub>e. The Department has determined that the sources at the facility satisfy best available technology (BAT) requirements, pursuant to 25 Pa. Code §§ 127.1 and 127.12, as well as the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, 40 CFR Part 63 Subpart ZZZZ Sections 63.6580—63.6675. The emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code Chapters 121—145, as well as 40 CFR Part 63. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

**41-00010: Andritz, Inc.** (35 Sherman Street, Muncy, PA 17756-1227) to issue a State only operating permit for their facility located in Muncy Creek Township/Muncy Borough, **Lycoming County**. The facility is currently operating under Title V Operating Permit 41-00010. The facility's sources include eighty (80) natural gas-fired space heaters, all rated less than 2.5 million Btu per hour, six (6) natural gas-fired space heaters, all rated between 2.5 million and 4.0 million Btu per hour, a surface coating operation, a polyurethane foam packaging operation, a pattern shop, ten (10) degreasers, eight ladle torches, two (2) 1,000 pound per hour electric induction furnaces, two (2) 2,400 pound per hour electric induction furnaces, three (3) 4,000 pound per hour electric induction furnaces, a refiner plate molding line, a no-bake floor molding line, a general castings operation, three (3) natural gas/propane-fired emergency generators, all rated less than 55 kilowatts, two (2) 6,800 binder storage tanks and a plate finishing operation. The facility has potential

emissions of 41.54 tons per year of nitrogen oxides, 27.14 tons per year of carbon monoxide, 1.69 ton per year of sulfur oxides, 95.24 tons per year of particulate matter, 48.97 tons per year of volatile organic compounds and 17.38 tons of hazardous air pollutants. The foundry is subject to 40 CFR Part 63, Subpart ZZZZZ of the National Emissions Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources and the emergency generator engines are subject to 40 CFR Part 63, Subpart ZZZZ of the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The emission limits, throughput limitations and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 25 Pa. Code Chapters 121—145. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570.327.0550.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**33-00025: Punxsutawney Area Hospital** (81 Hillcrest Drive, Punxsutawney, PA 15767). The Department intends to renew a State Only Operating Permit for the hospital located in Young Township, **Jefferson County**. The primary sources at the facility are a 285 kW oil-fired emergency generator, a parts washer, and 2 dual-fueled 10.5 million Btu/hr boilers using natural gas as primary fuel and capable of firing oil in the event of a natural gas curtailment. Potential Emissions for the site are as follows: 60.82 tpy NO<sub>x</sub>; 18.66 tpy CO; 4.36 tpy TSP; 3.48 tpy SO<sub>x</sub>; and 4.62 tpy VOC. The facility is a Natural Minor. The emergency generator is subject to 40 CFR Part 63 Subpart ZZZZ, the NESHAP for Stationary RICE. The permit contains emission restrictions, recordkeeping, and work practice requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

**33-00174: Brownlee Lumber Company** (2652 Hazen Richardsville Road, Brookville, PA 15825). The Department intends to renew a State Only Operating Permit for the facility located in Warsaw Township, **Jefferson County**. The primary sources at the facility are a 125 hp wood boiler and saw mill operations. Emissions for the site are estimated to be 15.7 tpy CO; 5.7 tpy NO<sub>x</sub>; 0.65 tpy SO<sub>x</sub>; and 7.9 tpy TSP. The facility is a Natural Minor. The boiler is subject to 40 CFR Part 63 Subpart JJJJJ, the NESHAP for Area Source Boilers. The permit contains emission restrictions, recordkeeping, and work practice requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

## COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S.

§§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application and request for Section 401 water quality certification application may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

### *Coal Applications Received*

*New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.*

**03120103 and NPDES Permit No. PA0252271. Neiswonger Construction, Inc.** (17592 Route 322, Strattanville, PA 16258). Renewal application for continued mining to an existing bituminous surface mine, located in Sugarcreek Township, **Armstrong County**, affecting 108.3 acres. Receiving streams: unnamed tributaries to Patterson Creek and Buffalo Creek, classified for the following use: HQ-TSF. Creekside Mushroom Farm and Creekside Resthome are water supply intakes within 10 miles downstream from the point of discharge. Renewal application received: December 13, 2018.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 22851602T. Rausch Creek Coal Preparation Lykens, LLC**, (978 Gap Street, Valley View, PA 17983), transfer from Meadowbrook Coal Co., Inc. an existing anthracite coal preparation plant operation in Wiconisco Township, **Dauphin County** affecting 23.4 acres, receiving stream: Wiconisco Creek, classified for

the following uses: warm water and migratory fishes. Application received: November 14, 2018.

**Permit No. 54910206T. Rausch Creek Coal Preparation Lykens, LLC**, (978 Gap Street, Valley View, PA 17983), transfer from Meadowbrook Coal Co., Inc. an existing anthracite coal refuse reprocessing, refuse disposal and preparation plant operation in Tremont Township, **Schuylkill County** affecting 54.6 acres (formerly 190.0 acres), receiving streams: Stump Creek and Lorberry Creek, classified for the following uses: cold water and migratory fishes. Application received: November 14, 2018.

**Permit No. 54851336T3. Rausch Creek Coal Preparation Good Spring, LLC**, (978 Gap Street, Valley View, PA 17983), transfer from EmberClear Services, Inc. of an existing anthracite underground mine operation in Porter and Frailey Townships, **Schuylkill County** affecting 63.2 acres, receiving stream: Good Spring Creek, classified for the following uses: cold water and migratory fishes. Application received: November 14, 2018.

*Noncoal Applications Received*

*Effluent Limits*—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Table 2

Parameter	30-day Average	Daily Maximum	Instantaneous Maximum
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 67870301C14 and NPDES No. PA0010235. York Building Products Co., Inc.**, (950 Smile Way, York, PA 17401), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in City of York and West Manchester Township, **York County** affecting 245.2 acres, receiving stream: Willus Run, classified for the following use: warm water fishes. Application received: December 12, 2018.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if

deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

## Applications Received under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.*

**E54-372. PPL Electrical Utilities Corporation**, 2 North 9th Street, Allentown, PA 18101, in Branch, North Manheim, Norwegian, and Wayne Townships and City of Pottsville, **Schuylkill County**, U.S. Army Corps of Engineers, Philadelphia District.

To remove the existing structure and construct and maintain an electric aerial line crossing of West Branch Schuylkill River (CWF, MF) and adjacent wetlands for the Frackville-Orwigsburg & Fishbach-Pine Grove 69kV Line Rebuild project. The project is located approximately 0.06 mile south of the Gordon Nagle Trail and Indian Run Road intersection (Pottsville, PA Quadrangle, Latitude: 40° 39' 13"; Longitude: -76° 14' 4").

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.*

**E36-978: Conewago Industrial Park Association**, P.O. Box 332, Lemoyne, PA 17043 in West Donegal Township, **Lancaster County**, U.S. Army Corps of Engineers Baltimore District.

To place and maintain fill in the floodway of a UNT to Conewago Creek (TSF, MF) and palustrine emergent (PEM) wetlands, permanently impacting 0.05 acre of the floodway of a UNT to Conewago Creek (TSF, MF) and 0.072 acre of PEM wetlands, for the purpose of constructing a 7,500-square-foot building and associated parking. The project is located along Industrial Drive (Middletown, PA Quadrangle, Latitude: 40.163051, Longitude: -76.651629) in West Donegal Township, Lancaster County. To compensate for the wetland impacts, the applicant proposes to create 0.073 acre of wetlands onsite.

**E22-652: Susquehanna Township Authority**, 1900 Linglestown Road, Harrisburg, PA 17110 in Susquehanna Township, **Dauphin County**, U.S. Army Corps of Engineers Baltimore District.

To install and maintain an 8.0-inch diameter PVC sanitary sewer line across

1.) Slotznick Run and its floodway impacting 30 feet of stream (Latitude: 40° 16' 12.92"; Longitude: -76° 49' 33.53");

2.) Slotznick Run and its floodway impacting 30 feet of stream (Latitude: 40° 16' 8.55"; Longitude: -76° 49' 26.38");

3.) an exceptional value, palustrine emergent wetland, impacting 0.10 acre of wetland (Latitude: 40° 16' 18.70"; Longitude: -76° 49' 38.96");

4.) an exceptional value, palustrine emergent wetland, impacting 0.04 acre of wetland (Latitude: 40° 16' 16.72"; Longitude: -76° 49' 37.41");

5.) an exceptional value, palustrine emergent wetland, impacting 0.02 acre of wetland (Latitude: 40° 16' 10.31"; Longitude: -76° 49' 37.38");

6.) an exceptional value, palustrine emergent wetland, impacting 0.04 acre of wetland (Latitude: 40° 16' 11.18"; Longitude: -76° 49' 35.73");

7.) an exceptional value, palustrine emergent wetland, impacting 0.02 acre of wetland (Latitude: 40° 16' 13.11"; Longitude: -76° 49' 33.33"); and

8.) an exceptional value, palustrine emergent wetland, impacting 0.08 acre of wetland (Latitude: 40° 16' 8.04"; Longitude: -76° 49' 26.90")

all for the purpose of providing service to neighborhoods in the far southeast corner of the township. No wetland loss is proposed, and replacement is not required.

*Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.*

**E57-140. Bradford County Airport Authority**, 415 Route 187, Sugar Run, PA 18846, Wilmot Township, **Bradford County**, U.S. Army Corps of Engineers, Baltimore District.

DCNR has applied for a joint permit to construct a new roadway alignment for Mill Creek, constructing a new culvert structure on UNT to West Branch Mill Creek installing rock protection at the existing bridge on Mill Creek Road over East Branch Mill Creek and removal of pipe culverts and three (3) box culverts over West Branch Mill Creek on the abandoned portion of Mill Creek Road due to the October 2016 flood event.

The project is located at Quadrangle: Barbours; Latitude: 41° 29' 01", Longitude: -76° 45' 31".

*Northwest Region: Waterways and Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E10-515, Pikewood Land Partners LLC**, Laurel Pointe, in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 40° 40' 38.74"; W: -80° 04' 33.22").

This application was originally published on April 21, 2018, however due to additional impacts the project is being republished. The applicant proposes to construct a residential subdivision and associated roadways, utilities, stormwater management facilities, and other associated structures. The project will have 984 linear feet of permanent impacts to UNTs to Brush Run with drainage areas less than 100 acres, 0.29 acre of permanent impact to wetlands. The applicant is proposing to mitigation in the form of purchasing credits for the Enlow Fork Mitigation Bank.

*District Oil & Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**E5829-139: Forest Lake Township, Williams Field Services Company, LLC**; 400 IST Center, Suite 404, Horseheads, NY, 14845; Forest Lake Township, **Susquehanna County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) a 10-inch diameter steel natural gas gathering pipeline and temporary timber mat bridge crossing impacting 49 lineal feet of an unnamed tributary to Middle Branch Wyalusing Creek (CWF, MF) (Montrose West, PA Quadrangle; Latitude: 41° 51' 02", Longitude: -75° 59' 37"),

2) a 10-inch diameter steel natural gas gathering pipeline and temporary timber mat crossing impacting 971 square feet (0.02 acre) of a palustrine emergent wetland (PEM) (Montrose West, PA Quadrangle; Latitude: 41° 51' 08", Longitude: -75° 59' 20"),

3) a temporary timber mat bridge crossing impacting 40 lineal feet of an unnamed tributary to Middle Branch Wyalusing Creek (CWF, MF) (Montrose West, PA Quadrangle; Latitude: 41° 51' 08", Longitude: -75° 59' 21"),

4) a 10-inch diameter steel natural gas gathering pipeline and temporary timber mat crossing impacting 2,580 square feet (0.06 acre) of a palustrine emergent wetland (PEM) (Montrose West, PA Quadrangle; Latitude: 41° 51' 08", Longitude: -75° 59' 18"),

5) a temporary timber mat bridge crossing impacting 75 lineal feet of an unnamed tributary to Middle Branch Wyalusing Creek (CWF, MF) (Montrose West, PA Quadrangle; Latitude: 41° 51' 08", Longitude: -75° 59' 18"),

6) a 10-inch diameter steel natural gas gathering pipeline and temporary timber mat crossing impacting 6,029 square feet (0.14 acre) of a palustrine emergent wetland (PEM) (Montrose West, PA Quadrangle; Latitude: 41° 51' 12", Longitude: -75° 59' 16"),

7) a 10-inch diameter steel natural gas gathering pipeline and temporary timber mat bridge crossing impacting 55 lineal feet of a tributary to Middle Branch Wyalusing Creek (CWF, MF) (Montrose West, PA Quadrangle; Latitude: 41° 51' 12", Longitude: -75° 59' 16").

The natural gas gathering pipeline project consists of constructing approximately 1.1 mile of 10-inch steel natural gas pipeline located in Forest Lake Township, Susquehanna County. The project will result in 150 lineal feet of stream impacts and 9,580 square feet (0.22 acre) of

palustrine emergent wetland impacts to provide safe reliable conveyance of Marcellus Shale natural gas to market.

#### ENVIRONMENTAL ASSESSMENTS

*Northwest Region: Waterways and Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**EA25-055**, Millcreek Township, 3608 West 26th Street, Erie, PA 16506. Scott Run Restoration, in Millcreek Township, **Erie County**, ACOE Pittsburgh District (Swanville, PA Quadrangle N: 41.109908°; W: 80.152541°).

Applicant is requesting waiver of Chapter 105 permitting requirements under 105.12(a)(16) for installation of nine grade control structures along approximately 2,000 feet of Scott Run and riparian plantings along approximately 1,000 feet of Scott Run to stabilize the channel, reduce further incising and the resultant sediment transport, and to improve in-stream habitat for aquatic organisms.

#### EROSION AND SEDIMENT CONTROL PERMITS

The following parties have applied for Erosion and Sediment Control Permits for earth disturbance activities associated with either road maintenance or timber harvesting operations.

Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department proposes to issue a permit to discharge, subject to certain limitations in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

A person wishing to comment on a proposed permit are invited to submit a statement to the appropriate Department regional office listed before the application within 30 days of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing

may be held after consideration of comments received by the appropriate Department regional office during the 30-day public comment period.

Following the 30-day comment period, the appropriate regional office water management program manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board (Board).

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the appropriate regional office.

Persons with a disability that require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified regional office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### Applications received under sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402).

*Southwest Region: Oil and Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.*

**E63-07-017: Range Resources—Appalachia, LLC**, 3000 Town Center Boulevard, Canonsburg, PA 15317, ACOE Pittsburgh District.

Range Resources—Appalachia LLC is proposing to construct and maintain an access driveway and well pad for Marcellus Shale gas exploration. The Well Pad will be located on a hilltop off of State Road 0519 in North Strabane Township, **Washington County**, PA.

The existing land use of the site consists of field/meadow and woodlands. The well site requires the installation of a ConSpan O-series concrete pipe arch to cross a UNT to Little Chartiers Creek (designated use: High Quality Warm Water Fisheries). The crossing is necessary for the construction of an access driveway to the proposed well site. The limits of disturbance will be approximately 24.4 acres.

<i>Stream Crossings</i>	<i>Latitude/Longitude</i>	<i>Area of Impact</i>
UNT to Little Chartiers Creek (HQ-WWF)	Lat: N 40.217667 Long: W 80.144281	Temporary: 1,620 ft <sup>2</sup> Permanent: 540 ft <sup>2</sup>
UNT to Little Chartiers Creek (HQ-WWF) Floodway	Lat: N 40.217667 Long: W 80.144281	Temporary: 7,800 ft <sup>2</sup> Permanent: 3,000 ft <sup>2</sup>

## ACTIONS

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

#### FINAL ACTIONS TAKEN FOR NPDES PERMITS AND WQM PERMITS

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section III	WQM	Industrial, Sewage or Animal Wastes; Discharges to Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

Sections I—VI contain actions regarding industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with MS4, stormwater associated with construction activities and CAFOs. Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions in each General Permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should contact a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

#### **I. NPDES Renewal Permit Actions.**

*Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0043362 (Sewage)	Camp Equinunk Blue Ridge P.O. Box 808 East Hampton, NY 11937-0811	Wayne County Manchester Township	Unnamed Tributary of Little Equinunk Creek (1-A)	Yes
PA0033740 (Sewage)	Whispering Hollow South MHP WWTP 139 Country Club Road Northampton, PA 18067-3028	Northampton County Allen Township	Unnamed Tributary to Hokendauqua Creek (2-C)	Yes
PAS212209 (Storm Water)	Frank Casilio & Sons Bethlehem Plant 1035 Mauch Chunk Road Bethlehem, PA 18018-6622	Northampton County Bethlehem City	Monocacy Creek (2-C)	Yes

*Southcentral Region: Clean Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0021709 SEW	Birdsboro Borough Berks County	Birdsboro Municipal Authority 202 E Main Street Birdsboro, PA 19508-2025	Hay Creek in Watershed(s) 3-C	N
PA0080501 SEW	Montgomery Township Franklin County	Tuscarora School District 100 W Seminary Street Mercersburg, PA 17236-1217	Unnamed Tributary of West Branch Conococheague Creek in Watershed(s) 13-C	Y
PA0011371 IW	Reading City Berks County	Stanley Black & Decker 1000 Stanley Drive New Britain, CT 06053-1675	Schuylkill River in Watershed(s) 3-C	Y

## NOTICES

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0085278 SEW	Montgomery Township Franklin County	Deerwood Community HOA 11375 Deerwood Drive Mercersburg, PA 17236-9772	Unnamed Tributary to Licking Creek in Watershed(s) 13-C	Y
PA0247421 SEW	Middlesex Township Cumberland County	Francine & Rodney Groff 7723 Wertzville Road Carlisle, PA 17013-9021	Unnamed Tributary to Conodoguinete Creek in Watershed(s) 7-B	Y
PA0087696 SEW	East Hanover Township Dauphin County	GSP Management Company P.O. Box 677 Morgantown, PA 19543	Unnamed Tributary to Manada Creek in Watershed(s) 7-D	Y
PA008010 IW	Bethel Township Lebanon County	Hain Pure Protein Corp 220 N Center Street Fredericksburg, PA 17026-9723	Beach Run in Watershed(s) 7-D	Y
PA0261262 SEW	South Annville Township Lebanon County	North Londonderry Township Authority 655 E Ridge Road Palmyra, PA 17078-9308	Killinger Creek in Watershed(s) 7-D	N
PA0084174 SEW	West Cocalico Township Lancaster County	Covance Research Products Inc. 310 Swamp Bridge Road Denver, PA 17517-8723	Unnamed Tributary to Cocalico Creek in Watershed(s) 7-J	Y
PA0080438 SEW	Brecknock Township Lancaster County	Northern Lancaster County Authority Beam Road STP 983 Beam Road Denver, PA 17517-8946	Muddy Creek in Watershed(s) 7-J	N
PA0081949 SEW	West Earl Township Lancaster County	West Earl Sewer Authority 157 W Metzler Road P.O. Box 725 Brownstown, PA 17508-5096	Conestoga River in Watershed(s) 7-J	N
PA0266795 SEW	West Lampeter Township Lancaster County	Christopher P. Scott 10 Stable Drive Elverson, PA 19520	Pequea Creek in Watershed(s) 7-K	Y
PA0266825 SEW	Broad Top Township Bedford County	Broad Top Township Bedford County P.O. Box 57 Defiance, PA 16633	Sandy Run in Watershed(s) 11-D	Y

*Northcentral Region: Clean Water Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0209074 (Sewage)	Hidden Valley MHP 97 Sandra Lee Drive Linden, PA 17744-9005	Lycoming County Woodward Township	Unnamed Tributary to Quenshukeny Run (10-A)	Y

*Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0218316 (Sewage)	Dunbar Township Municipal Authority STP P.O. Box 815 Connellsville, PA 15425-0815	Fayette County Dunbar Township	Youghioghenny River (19-D)	Yes



<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0217140 (Sewage)	Shelocta STP 602 Kolter Drive Indiana, PA 15701-3570	Indiana County Armstrong Township	Crooked Creek (17-E)	Yes
PA0205877 (Sewage)	Redstone Township Sewer Authority WWTP 1010 Main Street P.O. Box 753 Republic, PA 15475-0751	Fayette County Redstone Township	Dunlap Creek (19-C)	Yes
PA0091243 (Sewage)	Laurel Highlands Council- Boy Scouts of America 1275 Bedford Avenue Pittsburgh, PA 15219	Fayette County Wharton Township	Unnamed Tributary to Little Sandy Creek (19-G)	Yes
<i>Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.</i>				
<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0240176 (Sewage)	Gene A Strick SRSTP 641 Clermont Road Mount Jewett, PA 16740-2213	McKean County Hamlin Township	Warner Brook (16-C)	Yes
PA0272591 (Industrial)	Hickory Run Energy Station 7500 College Boulevard Suite 400 Overland Park, KS 66210-4016	Lawrence County North Beaver Township	Unnamed Tributary of Mahoning River and Unnamed Tributary to Mahoning River (20-B)	Yes

## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions.

*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

**NPDES Permit No. PA0026212**, Sewage, **Washington-East Washington Joint Authority**, 60 E Beau Street, Washington, PA 15301-4514.

This existing facility is in South Strabane Twp., **Washington County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated Sewage.

*Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**NPDES Permit No. PA0271403**, Sewage, SIC Code 8400, **Living Treasures I Inc.**, 268 Fox Road, New Castle, PA 16101-8026.

This proposed facility is located in Slippery Rock Township, **Lawrence County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

**NPDES Permit No. PA0265560**, Industrial, SIC Code 4941, **Aqua PA Inc.**, 665 S Dock Street, Sharon, PA 16146.

This proposed facility is located in Hamlin Township, **McKean County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Industrial.

**NPDES Permit No. PA0271845**, Sewage, SIC Code 4952, 8800, **Dewayne & Yvonne Thomas**, 11161 Phillipsville Road, Wattsburg, PA 16442.

This proposed facility is located in Venango Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

**NPDES Permit No. PA0271764**, Sewage, SIC Code 8800, **Cheryl Gruver**, 9615 Shunpike Road, Waterford, PA 16441-4142.

This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Sewage.

## III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law.

*Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

**WQM Permit No. 3917402**, Sewage, SIC Code 4952, **Lehigh County Authority Sand Springs WWTP**, 1053 Spruce Road, Allentown, PA 18106-9408.

This proposed facility is located in North Whitehall Township, **Lehigh County**.

Description of Proposed Action/Activity: Construction of replacement Treatment Plant and Outfall.

*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

**WQM Permit No. 1117406**, Sewage, SIC Code 4952, **City of Johnstown**, 401 Main Street, Johnstown, PA 15901.

This proposed facility is located in the City of Johnstown, **Cambria County**.

Description of Proposed Action/Activity: Proposed construction of sanitary sewer rehabilitation project to replace existing defective sewers in the Old Conemaugh and Hornerstown Area of the City of Johnstown.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the Water Quality Management (Part II) Permit has not identified any significant environmental impacts resulting from this proposal.

**WQM Permit No. WQG02651801**, Sewage, **Derry Township Municipal Authority**, P.O. Box 250, 5760 Route 982, New Derry, PA 15671.

This proposed facility is located in Derry Township, **Westmoreland County**.

Description of Proposed Action/Activity: Proposed construction of Pump Station, Force Main, and Sanitary Sewers to serve Keystone State Park and some existing residences with onlot septic systems. Treatment to be provided at the existing New Alexandria STP.

The Pennsylvania Infrastructure Investment Authority (PENNVEST) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the Water Quality Management (Part II) Permit has not identified any significant environmental impacts resulting from this proposal.

*Northwest Region: Clean Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2518415**, Sewage, **Dwayne & Yvonne Thomas**, 11161 Phillipsville Road, Wattsburg, PA 16442.

This proposed facility is located in Venango Township, **Erie County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

**WQM Permit No. 2518414**, Sewage, **Cheryl Gruver**, 9615 Shunpike Road, Waterford, PA 16441-4142.

This proposed facility is located in Summit Township, **Erie County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

#### **IV. NPDES Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4) Individual Permits Issued.**

*Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

<i>NPDES Permit No.</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>	<i>TMDL Plan Submitted (Y/N)</i>	<i>Pollutant Reduction Plan Submitted (Y/N)</i>
PAI136103	Edgeworth Borough 301 Beaver Road Edgeworth, PA 15143-1001	Edgeworth Borough Allegheny	Ohio River, Unnamed Tributary to Ohio River and Little Sewickley Creek/HQ-TSF and WWF	N	Y

#### **V. NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4) Actions.**

The following waiver applications have been approved for a 5-year period. The Department is issuing waivers for the following MS4s instead of NPDES permit coverage.

*Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

<i>NPDES Waiver No.</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG136226	South Buffalo Township 384 Iron Bridge Road Freeport, PA 16229-1760	South Buffalo Township Armstrong	Buffalo Creek Big Run (TSF, WWF)
PAG136335	Patterson Heights Borough Beaver County 600 7th Avenue Patterson Heights, PA 15010-3250	Patterson Heights Borough Beaver	Unnamed Tributary to Walnut Bottom Run/WWF
PAG136254	Upper Tyrone Township 170 Muni Drive Connellsville, PA 15425	Upper Tyrone Township Fayette	Jacobs Creek Unnamed Tributary to Jacobs Creek/WWF

The following waiver applications have been approved for a 5-year period. The Department is issuing waivers for the following MS4s instead of NPDES permit coverage.

*Northeast Regional Office: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701. Phone: 570.826.2511.*

<i>NPDES Waiver No.</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Receiving Water(s)/Use(s)</i>
PAG132232	Warrior Run Borough Corner of Front and Hanover Street Wilkes-Barre, PA 18706	Warrior Run Borough Luzerne	Unnamed Tributary to Nanticoke Creek/ CWF and MF

### **VII. Approvals to Use NPDES and/or Other General Permits.**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

#### **List of NPDES and/or Other General Permit Types.**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Petroleum Product Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharges from Hydrostatic Testing of Tanks and Pipelines
PAG-11	General Permit for Discharges from Aquatic Animal Production Facilities
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)
PAG-14	(To Be Announced)
PAG-15	General Permit for Discharges from the Application of Pesticides

#### *General Permit Type—PAG-02*

*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

*Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAC390064	Saucon Enterprises Inc 2258 Macarthur Rd Whitehall, PA 18052	Lehigh	N Whitehall Twp	Fells Creek (CWF, MF)
PAC390071	Coplay Aggregates Inc 21 E 10th St Northampton, PA 18067	Lehigh	Whitehall Twp	Coplay Creek (CWF, MF)

*Northampton County Conservation District, 14 Gracedale Ave., Greystone Building, Nazareth, PA 18064-9211.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAC480046	Santino Calantoni Nancy Run Estates Family Limited Partnership 6065 William Penn Hwy Easton, PA 18042	Northampton	Bethlehem Twp	Nancy Run (CWF, MF)

*Schuylkill Conservation District, 1206 AG Center Drive, Pottsville, PA 17901-9733.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAC540051	Sylvan Health Properties LLC Michael P Kelly 401 Moltke Ave Scranton, PA 18505	Schuylkill	N Manheim Twp	W Branch of Schuylkill River (CWF, MF)

*Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.*

*Facility Location:  
Municipality & County*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
PAC060149	M&G Realty, Inc. 2295 Susquehanna Trail Suite C York, PA 17404	Schuylkill River (WWF) Maiden Creek (WWF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
PAC060144	Members 1st Federal Credit Union 5000 Louise Drive Mechanicsburg, PA 17055	Cacoosing Creek (CWF, MF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
PAC060177	Irish Creek Excavating, Inc. 2069 Tower Road Mohrsville, PA 19541	Irish Creek (WWF, MF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
PAC060149	M&G Realty, Inc. 2295 Susquehanna Trail Suite C York, PA 17404	Schuylkill River (WWF) Maiden Creek (WWF)	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610.372.4657
PAC210079	Club Road Properties Limited 4400 Deer Path Road Harrisburg, PA 17110	Conodoguinet Creek (WWF)	Cumberland County Conservation District 310 Allen Road Suite 301 Carlisle, PA 17013-9101 717.240.7812
PAC210097	FOB Properties, LLC Plainfield 670 Longs Gap Road Carlisle, PA 17013	Alexander Spring Creek (CWF)	Cumberland County Conservation District 310 Allen Road Suite 301 Carlisle, PA 17013-9101 717.240.7812
PAC380092	Melvin Weaver 161 Spring Grove Road East Earl, PA 17519	UNT Tulpehocken Creek (TSF) Millcreek (TSF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
PAC380065	Tom Richey 120 North Pointe Bouvard Suite 300 Lancaster, PA 17601	Snitz Creek (TSF)	Lebanon County Conservation District 2120 Cornwall Road Lebanon, PA 17042-9788 717.277.5275
PAC670195	York Building Products Company Inc. 950 Smile Way York, PA 17404	Little Conewago Creek (TSF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Hanover Borough & Penn Township York County Issued	PAC670212	Elsner Engineering Works Inc. 475 Fame Avenue Hanover, PA 17331	Oil Creek (WWF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430
Manchester Township York County Issued	PAC670228	OSS West York Realty LLC 1855 Powder Mill Road York, PA 17402	Willis Run (WWF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717.840.7430

*Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
White Deer Twp Union Cnty	PAC600001 Major Amendment Renewal	GAF Keystone LLC Patrick Crowley 2093 Old Hwy 15 New Columbia, PA 17856	West Branch of Susquehanna River WWF	Union County Conservation District Union County Government Center 155 N 15th St Lewisburg, PA 17837 (570) 524-3860

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake,  
Waterways and Wetlands Program Manager, 412-442-4000.*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office and Phone No.</i>
Chippewa Township Big Beaver Borough	PAC040049	Columbia Gas of Pennsylvania 2021 West State Street New Castle, PA 16101	Wallace Run (WWF)	Beaver County Conservation District 156 Cowpath Road Aliquippa, PA 15001 (724) 378-1701
Georges Township	PAC260036	Argon ST, a Boeing Company 90 Laurel Drive Smithfield, PA 15478	Muddy Run (WWF)	Fayette County Conservation District 10 Nickman Plaza Lemont Furnace, PA 15456 (724) 438-4497
South Union Township	PAC260034	George Family Limited Partnership 1165 National Pike Uniontown, PA 15401	Redstone Creek (WWF)	Fayette County Conservation District 10 Nickman Plaza Lemont Furnace, PA 15456 (724) 438-4497
Stewart Township	PAC260035	Plum Contracting 864 Croft Road Greensburg, PA 15601	Stull Run (WWF)	Fayette County Conservation District 10 Nickman Plaza Lemont Furnace, PA 15456 (724) 438-4497
City of Johnstown	PAC110025	City of Johnstown 401 Main Street Johnstown, PA 15901	Stonycreek River (WWF); Little Conemaugh River (WWF); Solomon Run (WWF)	Cambria County Conservation District 401 Candlelight Drive Suite 229 Ebensburg, PA 15931 (814) 472-2120
Center Township	PAC320028	Indiana County Development Corporation 801 Water Street Indiana, PA 15701	UNT to Two Lick Creek (CWF)	Indiana County Conservation District 625 Kolter Drive Suite 8 Indiana, PA 15701 (724) 471-4751

## NOTICES

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office and Phone No.</i>
North Strabane Township	PAC630111	Sheetz, Inc. 817 Brookfield Drive Seven Fields, PA 16046	UNT to Chartiers Creek (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098
Cecil Township	PAC630112	Thomas A. Robinson Family Limited Partnership 1299 McLaughlin Run Road Bridgeville, PA 15017	McPherson Creek (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098
Smith Township	PAC630114	Orion Development RA LXX, LLC 4125 Freedom Way Weirton, WV 26062	UNT to Burgetts Fork (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098
Donegal Township	PAC630115	Thomas Marten Company 281 Shaler Road West Alexander, PA 15376	UNT to Middle Wheeling Creek (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098
Robinson Township	PAC630117	McDonald Sportsmens Association P.O. Box 636 Midway, PA 15060	UNT to Robinson Run (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Washington Township Erie County	PAC250057	Edinboro 6N, LLC 2540 Village Common Drive Erie, PA 16506	UNT Conneautee Creek WWF; MF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403

*General Permit Type—PAG-03*

<i>Facility Location Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Moon Township Allegheny County	PAG036240	PA Department of Military & Veterans Affairs Air National Guard 171 Air Refueling Wing 300 Tanker Road Coraopolis, PA 15108-4805	Unnamed Tributary to McClarens Run and McClarens Run—20-G	DEP Southwest Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000

<i>Facility Location Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Jessup Borough Lackawanna County	PAG032225 A-1	Fastenal Inc. 1225 Mid Valley Drive Jessup, PA 18434-1820	Sterry Creek—5-A	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

*General Permit Type—PAG-8 (SSN)*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Kenneth Moore—New Park Road Farm 1512 New Park Road Fawn, PA 17352 Fawn Township York County	PAG08 PAG07 WMGR-099	Synagro 1605 Dooley Road P.O. Box B Whitefield, MD 21160	Same As Facility	DEP—SCRO— Clean Water Program 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707

*General Permit Type—PAG-10*

<i>Facility Location Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Brooklyn Township Susquehanna County	PAG102363	Williams Field Services Company LLC 310 State Road 29 North Tunkannock, PA 18657	Unnamed Tributary to Dry Creek—4-F	DEP Northeast Regional Office Clean Water Program 2 Public Square Wilkes-Barre, PA 18701-1915 570.826.2511

*General Permit Type—PAG-13*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Lower Allen Township Cumberland County	PAG133711	Lower Allen Township Cumberland County 2233 Gettysburg Road Camp Hill, PA 17011	Yellow Breeches Creek, Cedar Run, Unnamed Tributary to Cedar Run, and Unnamed Tributary to Yellow Breeches Creek—7-E	DEP Southcentral Regional Office Clean Water Program 909 Elmerton Avenue Harrisburg, PA 17110-8200 717.705.4800
Mahoning Township Montour County	PAG134831	Mahoning Township Montour County 849 Bloom Road Danville, PA 17821-1351	Mahoning Creek— 5-E	DEP Northcentral Regional Office Clean Water Program 208 W Third Street Suite 101 Williamsport, PA 17701-6448 570.327.3636

**STATE CONSERVATION COMMISSION****NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs**

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under 3 Pa.C.S. Chapter 5, for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits or NOIs for coverage under a general permit for CAFOs under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

Persons aggrieved by an action may appeal under 3 Pa.C.S. § 517, section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704 to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge actions, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

**NUTRIENT MANAGEMENT PLAN  
PUBLIC NOTICE SPREADSHEET—ACTIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>AEU's</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Sloat Crane Poultry Farm 170 Daugherty Rd York, PA 17404	York	110	524.86	Poultry	NA	Approved
Daniel Petre 3409 Smoketown Rd Spring Grove, PA 17362	York	6.0	513.34	Poultry	NA	Approved
Leonard Martin 221 Deep Run Rd Myerstown, PA 17067	Berks	12	385.15	Broilers, Poultry	NA	Approved
Heisler's Egg Farm, Inc. 757 Valley Rd Tamaqua, PA 18252	Schuylkill	158.4	1,522.9	Poultry (Layers)	HQ	Approved

**PUBLIC WATER SUPPLY PERMITS**

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this document to a lawyer at once.

Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**SAFE DRINKING WATER**

**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P.S. 721.1—721.17).**

*Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Operations Permit No. 4617511** issued to: **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 10910 **PWS ID # 1460073**, Schuylkill Township, **Chester County**, on December 24, 2018 for the operation of two (2) Hydro-Pneumatic Surge Tanks approved under construction permit # 1517515.

*Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Permit No. 4018520MA**, Public Water Supply.

Applicant	<b>PA American Water Company</b> (Hillside Tank) 800 W. Hershey Park Drive Hershey, PA 17033
[Township or Borough]	Kingston Township <b>Luzerne County</b>
Responsible Official	Mr. David Kaufman Vice President-Engineering 800 W. Hershey Park Drive Hershey, PA 17033
Type of Facility	Public Water Supply



Consulting Engineer Bruce Brubaker, P.E.,  
PA-American Water Co.  
852 Wesley Drive  
Mechanicsburg, PA 17055

Permit Issued 12/06/2018

*Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 0616512**, Public Water Supply.

Applicant **Reading Area Water Authority**  
Municipality Ontelaunee Township  
County **Berks**  
Responsible Official William Murray, Executive Director  
1801 Kutztown Road  
Reading, PA 19604  
Type of Facility Rehabilitation of the existing filters.  
Consulting Engineer Darryl E. Jenkins  
SSM Group, Inc  
P.O. Box 6307  
Reading, PA 19610-0307  
Permit to Construct Issued 2/13/2018

**Permit No. 2818504, Minor Amendment**, Public Water Supply.

Applicant **Montgomery Township Supervisors**  
Municipality Montgomery Township  
County **Franklin**  
Responsible Official Mike Rife, Montgomery Township Supervisor  
113464 Fort Loudon Road  
Mercersburg, PA 17236  
Type of Facility Installation of a treatment system consisting of aeration with catalytic carbon and birm filtration for the removal of iron and manganese.  
Consulting Engineer Randolph S. Bailey, P.E.  
Wm. F. Hill & Assoc., Inc.  
207 Baltimore Street  
Gettysburg, PA 17325  
Permit to Construct Issued 12/26/2018

**Permit No. 2218508**, Public Water Supply.

Applicant **Capitol Region Water**  
Municipality Susquehanna Township  
County **Dauphin**  
Responsible Official Michael McFadden, Water System Superintendent  
100 Pine Drive  
Harrisburg, PA 17101  
Type of Facility Removal and replacement of the existing dry granular/powder sodium fluorosilicate feed system with a liquid hydrofluorosilicic acid system.

Consulting Engineer Michael J. Mehaffey, P.E.  
Gannett Fleming, Inc.  
P.O. Box 67100  
Harrisburg, PA 17106-7100

Permit to Construct Issued 12/24/2018

**Comprehensive Operation Permit No. 2217512 MA** issued to: **Capital Region Water (PWS ID No. 7220049)**, Harrisburg, **Dauphin County** on 12/27/2018 for the operation of facilities approved under Construction Permit No. 2217512 MA.

**Operation Permit No. 2118511 MA** issued to: **SUEZ Water Pennsylvania (PWS ID No. 7210054)**, Upper Allen Township, **Cumberland County** on 12/27/2018 for facilities at Center Square submitted under Application No. 2118511 MA.

**Operation Permit No. 0617521** issued to: **Reading Area Water Authority (PWS ID No. 3061007)**, Bethel Township, **Berks County** on 12/26/2018 for facilities at Central Logistics Park submitted under Application No. 0617521.

*Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.*

**Permit No. 4118501MA—Operation—Public Water Supply.**

Applicant **Williamsport Municipal Water Authority**  
Township/Borough City of Williamsport  
County **Lycoming County**  
Responsible Official Mr. Michael D. Miller, Executive Director  
Williamsport Municipal Water Authority  
253 West Fourth Street  
Williamsport, PA 17701  
Type of Facility Public Water Supply—Operation  
Consulting Engineer N/A  
Permit Issued December 27, 2018  
Description of Action Authorizes Williamsport Municipal Water Authority to operate the GridBee GS-12 portable, electric submersible mixer in the Hill Street finished, water-storage tank.

*Northwest Region: Safe Drinking Water Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Operation Permit** issued to **Clermont Water Association, PWSID No. 6420006**, Sergeant Township, **McKean County**. Permit Number 4218501 issued December 28, 2018 for the operation of the Clermont Well No. CWA-2. This permit is issued in response to an operation inspection conducted by the Department of Environmental Protection personnel on November 30, 2018.

#### SEWAGE FACILITIES ACT PLAN APPROVAL

**Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, as amended, 35 P.S. § 750.5.**

*Southwest Regional Office, Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412-442-4000.*

*Plan Location:* City of Pittsburgh, ALCOSAN Wastewater Treatment Plant

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
City of Pittsburgh	414 Grant Street 510 City County Building Pittsburgh, PA 15219	Allegheny

*Plan Description:* The approved plan provides for the expansion of the ALCOSAN Wastewater Treatment Facility. Primary treatment capacity will be expanded to 600 MGD and Secondary treatment capacity will be expanded to 295 MGD.

The Department's review of the sewage facilities Special Study has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the Authority.

## 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—6026.907).**

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Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P.S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Parker Residence**, 831 Pleasant, Yeadon Borough, **Delaware County**. Patrick S. Crawford, PG, Crawford Environmental Services, 20 Cardinal Drive, Birdsboro, PA 19508 on behalf of Brian Reynolds, Service Energy, LLC, P.O. Box 1000, Cheswold, DE 19936 submitted a Final Report concerning remediation of site soil contaminated with heating oil. The report is intended to document remediation of the site to meet the Statewide health standard.

**First Blue Bell Cleaner Service**, 1734 DeKalb Pike, Whitpain Township, **Montgomery County**. James Carey, GHD Services, Inc., 135 Raritan Center Parkway, Suite 5, Edison, NJ 08837 on behalf of Robert Carson, Regency Blue Bell, LP, c/o Levin Management Corporation, 975 US Highway 22 West, North Plainfield, NJ 07060 submitted a Final Report concerning remediation of site soil contaminated with PCE and TCE. The report is intended to document remediation of the site to meet the site-specific standard.

**1340-1348 South 13th Street**, 1340-1348 South 13th Street, City of Philadelphia, **Philadelphia County**. Andrew D. Miller, Ally Services Company, 7047 Germantown Avenue, Suite 101, Philadelphia, PA 19110 submitted a Final Report concerning remediation of site soil and groundwater contaminated with lead and unleaded gasoline. The report is intended to document remediation of the site to meet the Statewide health standard.

**Davisville Shopping Center**, 800 East Street Road, Warminster Township, **Bucks County**. Jeffrey A. Smith, PG, Langan Engineering & Environmental Service, Inc., 1818 Market Street, Suite 3300, Philadelphia, PA 19103 on behalf of Matthew J. Kelly, IL Davisville Associates, LP, 307 Fellowship Road, Suite 300, Mount Laurel, NJ 08054 submitted a Remedial Investigation Report/Cleanup Plan/Final Report concerning remediation of site groundwater contaminated with TCE and PCE. The report is intended to document remediation of the site to meet the site-specific standard.

**Turkey Hill Mini Market # 82**, 1074 Gap Newport Pike, West Fallowfield Township, **Chester County**. Carl G. Rinkevich II, Reliance Environmental, Inc., 235 North Duke Street, Lancaster, PA 17602 on behalf of Jim Claytor, Turkey Hill Mini Markets, 257 Centerville Road, Lancaster, PA 17602 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 standard.

**PECO Bristol MGP**, Mifflin and Linden Street, Bristol Borough, **Bucks County**. Douglas Kier, PG, AECOM, 625 West Ridge Pike, Suite E-100, Conshohocken, PA 19428 on behalf of Peter Farrand, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19103 submitted a Remedial Investigation Report/Final Report concerning remediation of site soil and groundwater contaminated with PAHs. The report is intended to document remediation of the site to meet the site-specific standard.

**Wyeth Lab**, 611 East Niels Street, Borough of West Chester, **Chester County**. Daniel P. Sheehan, Arcadis, U.S., Inc., Suite 820, 824 East Market Street, Wilmington, DE 19801 on behalf of Eli Kahn, 611 East Niels Street, LLC, 120 Pennsylvania Avenue, Malvern, PA 19355 submitted a Remedial Investigation Report/Cleanup Plan/Risk Assessment Report concerning

remediation of site groundwater contaminated with chlorinated solvents, other organics, PAHs, and metals. The report is intended to document remediation of the site to meet the site-specific standard.

**Madison Lansdale Station**, Madison Street & South Wood Street, Lansdale Borough, **Montgomery County**. Jeffrey T. Bauer, 1600 Manor Drive, Suite 220, Chalfont, PA 18914 on behalf of John Knott, Lansdale Multi-Family Development, LP, 301 Oxford Valley Road, Suite 1203A, Yardley, PA 19067 submitted a Final Report concerning remediation of site soil contaminated with other organics. The report is intended to document remediation of the site to meet the Statewide health standard.

**1201 South 35th Street**, 1201 South 35th Street, City of Philadelphia, **Philadelphia County**. Angelo Waters, PE, LLED AP, Urban Engineers, Inc., 53 Walnut Street, Philadelphia, PA 19106 on behalf of Kate McNamara, Esq., Philadelphia Industrial Development Corporation, 1500 Market Street, Suite 2600 West, Philadelphia, PA 19012 submitted a Final Report concerning the remediation of site soil contaminated with benzo(a)pyrene. The report is intended to document remediation of the site to meet the Statewide health standard.

**1242 West Baltimore Pike**, 1242 West Baltimore Pike, Middletown Township, **Delaware County**. Thomas A. Petrecz, Penn & E&R, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Kathryn McKee Black, The McKee Group, 940 West Sproul Road, Suite 301, Springfield, PA 19064 submitted a Final Report concerning the remediation of site soil and groundwater contaminated with VOCs. The report is intended to document remediation of the site to meet the Statewide health standard.

*Northeast Region: Eric Supey, Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Stewart Silk Mill**, 620 Coal Street, Easton City, **Northampton County**. Moonstone Environmental, LLC, 1150 Glenlivet Drive, Suite A-23, Allentown, PA 18106, on behalf of TCH Realty & Development Company, 900 South Avenue, Suite 300, Staten Island, NY 10314, submitted a combined Remedial Investigation Report, Risk Assessment, and Cleanup Plan concerning remediation of soil at this former industrial and manufacturing site was contaminated with metals, volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls. The report is intended to document plans to remediate the site to meet Site-Specific Standards.

**R. Myers Pad 1**, 15049 Dimock to Nicholson Road, Lathrop Township, **Susquehanna County**. Woodward & Curran, 12 Frear Hill Road, Tunkhannock, PA 18657, on behalf of Cabot Oil & Gas Corporation, 2000 Park Lane, Suite 300, Pittsburgh, PA 15275, submitted a Final Report concerning remediation of a release of synthetic oil-based drilling mud to soil and groundwater. The report is intended to document remediation of the site to meet a combination of Background and Statewide Health Standards.

**WY 18 West Well Pad**, 927 Sugar Hollow Road, Eaton Township, **Wyoming County**. Woodward & Curran, 12 Frear Hill Road, Tunkhannock, PA 18657, on behalf of Southwestern Production Company, 917 State Route 92 North, Tunkhannock, PA 18657, submitted a Final Report concerning remediation of a release of brine to the soil. The report is intended to document remediation of the site to meet Statewide Health Standards.

**Lorenzi Property**, 41 Shale Road, Berlin Township, **Wayne County**. Bluestone Environmental Inc., 196 Beach Lake Highway, Honesdale, PA 18431, on behalf of Joseph Lorenzi, 41 Shale Road, Beach Lake, PA 18405, submitted a final report concerning remediation of site soil contaminated with heating oil from an underground storage tank. The report is intended to document remediation of the site to meet Statewide Health Standards.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995 PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101–6026.907).**

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**WP Warrington, LLC**, 2081-2901 Garden Avenue, Warrington Township, **Bucks County**. James Connor, PG, Compliance Management International, 1350 Welsh Road, Suite 200, North Wales, PA 19454 on behalf of Bill Rountree, PE, WP Warrington, LLC, 20 South Olive Street, Suite 203, Media, PA 19063 submitted a Remedial Investigation Report/Cleanup Plan/Risk Assessment Report concerning the remediation of site groundwater and soil contaminated with benzo(a)pyrene, vanadium and arsenic. The Report was approved by the Department on November 19, 2018.

**Colonia Heritage Mobil Homes**, 221 Vaux Drive, New Britain Township, **Bucks County**. Alan R. Hirschfeld, PG, L&A Environmental Specialties, Inc., 219 Lauren Road, Schwenksville, PA 19473 on behalf of James Morrow, GHR Consulting Services, Inc., P.O. Box 362, Montgomeryville, PA 18936 submitted a Final Report concerning the remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on November 14, 2018.

**300-302-MacDade Boulevard Property**, 300-302 MacDade Boulevard, Collingdale Borough, **Delaware County**. Richard S. Werner, PG, Environmental Consulting, Inc., 2002 Renaissance Boulevard, King of Prussia, PA 19406 on behalf of David D. Waltz, The Bryn Mawr Trust Company, 801 Lancaster Avenue, Bryn Mawr, PA 19010 submitted a Risk Assessment Report/Remedial Investigation Report/Cleanup Plan/Final Report concerning the remediation of site soil and groundwater contaminated with tetrachloroethylene. The Report was disapproved by the Department on November 30, 2018.

**Berwyn Shopping Center**, 500 Lancaster Avenue, Pottstown Township, **Chester County**. Aaron Epstein, PG, Partner Engineering and Science, Inc., 100 Deerfield Lane, Suite 200, Malvern, PA 19355 on behalf of Theresa Susco, Berwyn Center, LP, 725 Conshohocken State Road, Bala Cynwyd, PA 19001 submitted a Cleanup Plan/Final Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents. The Report was disapproved by the Department on December 10, 2018.

**1201 South 35th Street**, 1201 South 35th Street, City of Philadelphia, **Philadelphia County**. Angelo Waters, PE, LLED AP, Urban Engineers, Inc., 53 Walnut Street, Philadelphia, PA 19106 on behalf of Kate McNamara, Esq., Philadelphia Industrial Development Corporation, 1500 Market Street, Suite 2600 West, Philadelphia, PA 19012 submitted a Final Report concerning the remediation of site soil contaminated with benzo(a)pyrene. The Final Report did not demonstrate attainment of the standard and was disapproved by the Department on November 16, 2018.

**Spray Products Corporation**, 1323 Conshohocken Road, Plymouth Township, **Montgomery County**. Bruce Middleman, Stantec Consulting Services, Inc., 400 Davis Drive, Suite 400, Plymouth Meeting, PA 19462 on behalf of Jamison Bell, Spray Products Corporation, 1323 Conshohocken Road, Plymouth Meeting, PA 19462 submitted a Remedial Investigation Report/Cleanup Plan concerning the remediation of site soil and groundwater contaminated with other organics. The Report was approved by the Department on December 7, 2018.

**Dreshertown Plaza**, 1424 Dreshertown Plaza, Upper Dublin Township, **Montgomery County**. Craig Herr, PG, RT Environmental Services, Inc., 215 West Church Road, King of Prussia, PA 19406-3207 on behalf of Jim Bladel, Dreshertown Plaza, LP, 1301 Lancaster Avenue, Berwyn, PA 18312 submitted a Cleanup Plan concerning the remediation of site soil contaminated with petroleum. The Report was disapproved by the Department on December 8, 2018.

**Kinder Morgan Liquids Terminals, LLC**, 3300 North Delaware Avenue, City of Philadelphia, **Philadelphia County**. Gregory Connell, Groundwater & Environmental Services, Inc., 440 Creamery Way, Suite 500, Exton, PA 19341 on behalf of Richard Sherman, Kinder Morgan Liquids Terminals, LLC, One Terminal Road, Carteret, NJ 07008 submitted a Cleanup Plan/Risk Assessment Report concerning the remediation of site soil and groundwater contaminated with petroleum and inorganic compounds. The Report was approved by the Department on December 6, 2018.

**Taco Bell/Pizza Hut**, 121 North MacDade Boulevard, Glenolden Borough, **Delaware County**. Jason Pero, Resource Control Consultants, 10 Lippincott Lane, Unit 1, Mt. Holly, NJ 19007 on behalf of Joe DePascale, Winterstar Corporation, AKA Summerwood Corporation, 14 Balligomingo Road, Conshohocken, PA 19428 submitted a remedial Investigation Report/Cleanup Plan concerning the remediation of site soil and groundwater contaminated with VOCs. The Report was approved by the Department on December 4, 2018.

**Exeter 6400 Bristol LLC**, 6400 Bristol Pike, Bristol Township, **Bucks County**. Michael A. Christie, P.G., Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Jason A. Honesty, Exeter 6400 Bristol LLC, 1010 West Elm Street, Suite 600, Conshohocken, PA 19428 submitted a Remedial Investigation Report/Cleanup Plan/Risk Assessment Report concerning the remediation of site soil and groundwater contaminated with SVOCs, VOCs and metals. The Report was disapproved by the Department on November 7, 2018.

**1242 West Baltimore Pike**, 1242 West Baltimore Pike, Middletown Township, **Delaware County**. Thomas A. Petrecz, Penn & E&R, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Kathryn McKee Black, The McKee Group, 940 West Sproul Road, Suite 301, Springfield, PA 19064 submitted a Final Report concerning the remediation of site soil and groundwater contaminated with VOCs. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on December 3, 2018.

**Sunoco Station 0004-8413**, 1 East Uwchlan Avenue, **Chester County**. Marco Droese, PG, Aquaterra Technologies, Inc., 122 South Church Street, West Chester, PA 19382 on behalf of William J. Brochu, Retail/Services Stations Operations, a series of Evergreen Resources Group, LLC, 2 Righter Parkway, Suite 200, Wilmington, PA 19803 submitted a Final Report concerning the remediation of site soil contaminated with unleaded gasoline. The Final Report did not demonstrate attainment of the Statewide health standard and site-specific standards and was disapproved by the Department on November 6, 2018.

**Markley Properties LLC**, 1861 Markley Street, Norristown Borough, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Brian Burke, Travelers

Insurance, P.O. Box 430, Buffalo, NY 14240-0430 submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide health standard and was approved by the Department on November 28, 2018.

**Rohm & Haas Chemical LLC, Bristol Manufacturing Area**, 200 Route 413, Bristol Township, **Bucks County**. David J. Kistner, AECOM, 625 West Ridge Pike, Suite E-100, Conshohocken, PA 19428 on behalf of Jerome E. Cibrik, Rohm and Haas Company, P.O. Box, 8361, 2001 Union Carbide Drive, South Charleston, WV 25303 submitted a remedial Investigation Report/Cleanup Plan concerning the remediation of site soil and groundwater contaminated with organics and inorganics. The Report was disapproved by the Department on November 14, 2018.

*Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Fabri-Kal**, 955 Oak Hill Road, Wright Township, **Luzerne County**, United Environmental Services, P.O. Box 701, Schuylkill Haven, PA 17972, on behalf of Pocono Produce, P.O. Box 669, Stroudsburg, PA 18360, submitted a final report concerning remediation of site soil contaminated with diesel fuel from a delivery truck. The report documented remediation of the site to meet Statewide Health Standards and was approved by DEP on December 26, 2018.

**Cornerstone Real Estate/Alburtis Apartments**, 117 South Main Street, Alburtis Borough, **Lehigh County**, Black Rock Environmental, P.O. Box 288, Nazareth, PA 18064, on behalf of Cornerstone Real Estate, 3910 Adler Place # 100, Bethlehem, PA 18017, submitted a final report concerning remediation of site soil contaminated with heating oil from an aboveground storage tank. The report documented remediation of the site to meet Statewide Health Standards and was approved by DEP on December 28, 2018.

*Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Former Exxon Station 22387 ("Site")**, 2001 Brownsville Road, City of Pittsburgh, **Allegheny County**. Arcadis U.S., Inc., 6041 Wallace Road Extension, Suite 300, Wexford, PA 15090, on behalf of ExxonMobil Environmental Services, 1900 East Linden Avenue, Building 28A, Linden, NJ 07036 has submitted a Final Report concerning the remediation of Site soil and groundwater using the Statewide Health Standard and Site Specific Standard. The report was published in the *Pittsburgh Post-Gazette* on September 5, 2018. The report was approved by the Department on December 21, 2018.

**Giant Eagle Southside**, 2021 Wharton Street, **Allegheny County**. American Geosciences, Inc., 3925 Reed Blvd., Suite 400, Murrysville, PA 15668 on behalf of Twenty First Street Associates, 535 Smithfield Street, Pittsburgh, PA 15222 has submitted a Remedial Investigation Report where elevated concentrations of 1,2-dichloroethane were found in site groundwater. The Report was approved by the Department on December 24, 2018.

## DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

**Determination of Applicability for General Permit Issued Under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and 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 No. WMGR029SE001. Safety-Kleen Systems, Inc.**, 2600 North Central Expressway, Suite 400, Richardson, TX 75080. This permit application is for the ten-year renewal of coverage under General Permit WMGR029SE001 (Formerly WMGR029D) for the processing of waste oil at Safety-Kleen Fairless Hills Service Center located at 77 Towpath Road in Falls Township, **Bucks County**. The application of determination of applicability was issued by the Southeast Regional Office on December 13, 2018.

Persons interested in reviewing the general permit may contact the Pennsylvania Department of Environmental Protection ("DEP") Waste Management Program Manager, Southeast Regional Office, 2 East Main Street, Norristown, PA 19401-4915, or by telephone at 484.250.5960. TDD users may contact the DEP through the Pennsylvania AT&T Relay Service, (800) 654.5984.

## 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.*

*Contact: James Beach, New Source Review Chief—Telephone: 484-250-5920.*

**GP9-09-0085: KPK Development Corporation** (1082 Temperance Lane, Richboro, PA 18954) On December 27, 2018 for one (1) Diesel Fuel-Fired IC Engine (Caterpillar Tier 2, C32 3412, 750 hp) in Falls Township, **Bucks County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**GP9-50-03007A: Atlantic Metal Industries LLC** (2213 Shafer Road, Stroudsburg, PA 18360) on December 19, 2018, for two Waukesha L5792V engines, each rated at 1,500 bhp, under GP9, to power a metal scrap shredder, at the facility located in Liverpool Township, **Perry County**.

**GP19-07-03043A: McLanahan Corp.** (200 Wall Street, Hollidaysburg, PA 16648) on December 21, 2018, for an abrasive blasting operation controlled by a cartridge collector, under GP19, at the Beaver Street facility located in Hollidaysburg Borough, **Blair County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Ed Orris, P.E., New Source Review Chief—Telephone: 412-442-4168.*

**GP1-63-00650: Reaxis, Inc.** (941 Robinson Highway, McDonald, PA 15057) on December 21, 2018, to allow the construction and operation of a small natural gas-fired boiler rated at 14.645 MMBtu/hr at its facility located in Robinson Township, **Washington County**.

**GP11-56-00310C: PBS Coal, Inc.** (P.O. Box 260, Friedens, PA 15541) on December 24, 2018 to allow the installation and operation of three (3) nonroad diesel-fired engines rated at 300 bhp, 440 bhp, and 175 bhp in conjunction with a portable nonmetallic mineral processing plant located in Brothersvalley Township, **Somerset County**.

**GP3-56-00310C: PBS Coal, Inc.** (P.O. Box 260, Friedens, PA 15541) on December 24, 2018 to allow the operation of a portable nonmetallic mineral processing plant consisting of one crusher and vibratory screen and associated conveyors located in Brothersvalley Township, **Somerset County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.*

**GP9-49-327D: Herndon Reload Co.** (386 Pennsylvania Avenue, Herndon, PA 17830) on December 14, 2018, for the authorization to construct and temporarily operate a 1995 manufactured 12.7 liter model 6067GK60 Detroit Diesel compression ignition diesel-fired engine, S/N 06R0632108, rated at 424 bhp, equipped with a DCL MINE-X Model DC18 oxidation catalyst for carbon monoxide (CO) control, pursuant to the General Plan Approval and/or General Operating Permit for Diesel or No. 2 fuel-fired Internal Combustion Engines (BAQ-GPA/GP-9) at the Herndon Reload facility located in the Borough of Herndon, **Northumberland County**.

**GP3-08-331D: FS Lopke Contracting, Inc.** (3430 State Route 434, Apalachin, NY 13732-1232) on December 7, 2018, for the relocation of a portable crushing and sizing operation pursuant to the General Plan Approval and/or General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at the Wysox quarry in Towanda Township, **Bradford County**.

**GP9-08-331D: FS Lopke Contracting, Inc.** (3430 State Route 434, Apalachin, NY 13732-1232) on December 7, 2018, for the relocation of a 127 bhp diesel engine to power a portable mineral processing operation pursuant to the General Plan Approval and/or General Operating Permit for Diesel or # 2 fuel-fired Internal Combustion Engines (BAQ-GPA/GP-9) at the Wysox Quarry located in Towanda Township, **Bradford County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**67-05142A: Johnson Controls, Inc.** (100 JCI Way, York, PA 17406) on December 20, 2018, for the installation of a spray coating booth, at a new industrial air handling equipment manufacturing facility located at 100 JCI Way in East Manchester Township, **York County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**47-00014D: United States Gypsum Company** (60 PPL Road, Danville, PA 17821-7963) on December 26, 2018, was issued a Plan Approval for the modification to the Board Kiln Dryer (Source ID P114) at their Washingtonville Plant in Derry Township, **Montour County**

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: James A. Beach, New Source Review Chief—Telephone: 484-250-5920.*

**23-0016E: PQ Corporation** (1201 W Front St., Chester, PA 19013-3436) On December 21, 2018 for a change to the averaging period for the carbon monoxide (CO) pound per hour (lb/hr) emission limit applicable to the # 4 Sodium Silicate Furnace (Source ID 102) in Chester City, **Delaware County**.

**46-0292: League Collegiate Wear, Inc.** (401 E 4th St., Bldg 8, Bridgeport, PA 19405-1815) On December 26, 2018 for the continued operation of the existing Screen Cleaning Operations (Source ID: 201) at the facility in Bridgeport Borough, **Montgomery County**.

**46-0020J: Superior Tube Co Inc.** (3900 Germantown Pike, Collegeville, PA 19426-3112) On December 26, 2018 for an increase in the hydrogen fluoride emissions limit for their existing pickling and passivation operation in Lower Providence Township, **Montgomery County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**14-00002S: Graymont (PA), Inc.** (965 East College Avenue, Pleasant Gap, PA 16823) was issued an extension to the authorization that permits natural gas use in Kilns No. 6 & 7 to June 11, 2019, from December 13, 2018. These rotary kilns (Source IDs P408 and P413) are located at their Pleasant Gap plant in Spring Township, **Centre County**.

**Title V Operating Permits Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**22-05014: The AMES Co., Inc.** (1500 South Cameron Street, Harrisburg, PA 17104-3143) on December 21,

2018, for the wheelbarrow manufacturing facility located in the City of Harrisburg, **Dauphin County**. The Title V permit was renewed.

**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**31-03008: Bradford Forest, Inc.** (22510 Croghan Pike, US Route 522, Shade Gap, PA 17255) on December 19, 2018, for the hardwood lumber processing facility located in Dublin Township, **Huntingdon County**. The State-only permit was renewed.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**55-00012: Wood-Mode, Inc.** (1 2nd St, P.O. Box 250, Kreamer, PA 17833) on December 18, 2018, was issued a renewal State only “synthetic minor” operating permit for their facility located Selinsgrove Borough, **Snyder County**. The facility’s main sources include sanding and milling equipment as well as a coating operation. The renewal State only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**59-00007: NRG REMA, LLC** (250 Power Plant Dr., P.O. Box F, Shawville, PA 16873) on December 18, 2018, was issued a renewal State Only (Synthetic Minor) operating permit for their Blossburg Generating Station located in Covington Township, **Tioga County**. The State Only (Synthetic Minor) operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**08-00010: Global Tungsten & Powders Corp.** (1 Hawes Street, Towanda, PA 18848) on December 27, 2018, was issued a renewal State only “synthetic minor” operating permit for their facility located Towanda Borough and North Towanda Township, **Bradford County**. The facility’s main sources include multiple calciners, furnaces, chemical processing vessels, and gas-fired boilers. The renewal State only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.*

**46-00005: Merck Sharp & Dohme, Corp** (770 Sumneytown Pike, West Point, PA 19486-0004) On December 28, 2018, ERCs created from the permanent shutdown of the Rotary Kiln Incinerator (RKI), permitted Source Number 005, as follows: NO<sub>x</sub>—10.43 tons and

PM<sub>10</sub>—1.36 ton. These ERCs can be used for the purpose of banking, trading, or selling. The facility is in Upper Gwynedd Township, **Montgomery County**.

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**38-05019: Helix Ironwood LLC** (305 Prescott Road, Lebanon, PA 17042-9178) on December 18, 2018, for the Ironwood electrical generating station located in South Lebanon Township, **Lebanon County**. The Title V permit was administratively amended in order to add back in the acid rain provisions that were erroneously deleted during an earlier permit action.

**07-05027: Watco Company LLC** (585 Berwind Road, Hollidaysburg, PA 16648-0349) on December 19, 2018, for the railcar reconditioning facility located in Frankstown Township, **Blair County**. The State-only permit was administratively amended in order to reflect a change of ownership.

**67-03142: Gas Supply Resources LLC** (5718 Westheimer Road, Suite 1900, Houston, TX 77057-5745) on December 20, 2018, for the York propane terminal located in West Manchester Township, **York County**. The State-only permit was administratively amended in order to reflect a change of ownership.

**36-03121: Cenveo Corporation** (3575 Hempland Road, Lancaster, PA 17601-6912) on December 19, 2018, for the printing facility located in West Hempfield Township, **Lancaster County**. The State-only permit was administratively amended in order to incorporate the requirements of Plan Approval No. 36-03121E.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law; the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.20a). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to applications will also address the application permitting requirements of the following statutes: the Air Quality Pollution Act (35 P.S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1002).**

*Coal Permits Issued*

*California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.*

**30121301 and NPDES No. PA0236195. Consol Pennsylvania Coal Company LLC** (1000 Consol Energy Drive, Canonsburg, PA 15317). To revise the permit for the Harvey Mine in Richhill, Morris and Washington Townships, **Greene County** and related NPDES permit to revise 2,325 previously permitted underground and

subsidence control boundary acres from development only mining to longwall mining. No additional discharges. The application was considered administratively complete on July 21, 2016. Application received: March 14, 2016. Permit issued: December 19, 2018.

**30841317 and NPDES No. PA0213527. Consol Pennsylvania Coal Company LLC** (1000 Consol Energy Drive, Canonsburg, PA 15317). To revise the permit for the Enlow Fork Mine in Morris and Richhill Townships, **Greene County** and Morris Township, **Washington County** and related NPDES permit to revise 3956 previously permitted underground and subsidence control area acres from development only mining to longwall mining. No additional discharges. The application was considered administratively complete on January 15, 2016. Application received: September 18, 2015. Permit issued: December 21, 2018.

**63921301 and NPDES No. PA0214434. UMCO Energy, Inc.**, (46226 National Road, St. Clarisville, PA 43950). To renew the mining permit for the High Quality Mine in Fallowfield and Carroll Townships, **Washington County**. No additional discharges. The application was considered administratively complete on March 17, 2015. Application received: December 6, 2013. Permit issued: December 20, 2018.

**11841601 and NPDES No. PA0069143 and GP12-11841601. E.P. Bender Coal Company, Inc.** (P.O. Box 594, Carrolltown, PA 15722). To renew the permit for the Fallentimber Preparation Plant in Reade Township, **Cambria County** and related NPDES permit. Includes renewal of Air Quality GPA/GP12 Authorization. Approval is authorized under General Permit BAQ-GPA/GP12 and is required to meet all applicable limitations, terms, and conditions of authorization GP12-11841601. No additional discharges. The application was considered administratively complete on August 5, 2016. Application received: February 1, 2016. Permit issued: December 21, 2018.

**32051301 and NPDES No. PA0215228. Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201). To revise the permit for the Barrett Deep Mine in Buffington and Brush Valley Townships, **Indiana County** and related NPDES permit to add underground and subsidence control plan area acres to Barrett Deep Mine from the adjacent Brush Valley Mine. Underground Acres Proposed 212.4, Subsidence Control Plan Acres Proposed 212.4. No additional discharges. The application was considered administratively complete on September 27, 2018. Application received: August 15, 2018. Permit issued: December 24, 2018.

**30841317 and NPDES No. PA0213527. Consol Pennsylvania Coal Company, LLC**, (1000 Consol Energy Drive, Canonsburg, PA 15317). To revise the permit for the Enlow Fork Mine in Richhill and Washington Townships, **Greene County** and related NPDES permit for installation of a bleeder shaft. Surface Acres Proposed 14.8. No additional discharges. The application was considered administratively complete on July 28, 2017. Application received: April 7, 2017. Permit issued: December 21, 2018.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.*

**Permit No. 07920101 and NPDES No. PA0599581, E.P. Bender Coal Co., Inc.**, P.O. Box 594, Carrolltown, PA 15722, permit renewal for the continued operation and restoration of a bituminous surface mine in Allegheny Township, **Blair County** affecting 474.0 acres. Receiving streams: unnamed tributaries to/and Sugar Run classified

for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: August 30, 2018. Permit issued: December 21, 2018.

**Permit No. 56960107 and NPDES No. PA0234231, PBS Coals, Inc.**, 1576 Stoystown Road, P.O. Box 260, Friedens, PA 15541, commencement, operation and restoration of a bituminous surface & auger mine to change the land use from Wildlife Habitat and Forestland to Pastureland in Jenner Township, **Somerset County**, affecting 135 acres. Receiving streams: unnamed tributaries to/and Quemahoning Creek, classified for the following use: cold water fishes. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning SWI. Application received: October 25, 2018. Permit issued: December 26, 2018.

*Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.*

**16130101. RFI Energy, Inc.** (P.O. Box 162, Sligo, PA 16255) Renewal of an existing bituminous surface mine in Licking & Toby Townships, **Clarion County**, affecting 65.0 acres. Receiving streams: Unnamed tributary No. 2 to Licking Creek. This renewal is issued for reclamation only. Application received: September 2, 2018. Permit Issued: December 20, 2018.

**24880103 and NPDES Permit No. PA0104779. Energy Resources, Inc.** (c/o Murray Energy Corporation, 46226 National Road, St. Clairsville, OH 43950) Renewal of an existing bituminous surface mine and associated NPDES permit in Horton Township, **Elk County**, affecting 541.0 acres. Receiving streams: South Branch Laurel Run, unnamed tributary to Laurel Run, unnamed tributary to Mead Run, unnamed tributary to Vineyard Run and Vineyard Run, and West Branch Walburn Run. This renewal is issued for reclamation only. Application received: September 19, 2018. Permit Issued: December 20, 2018.

**16090102. Reichard Contracting, Inc.** (212 Olean Trail, New Bethlehem, PA 16242) Revision to an existing bituminous surface and auger mine to change the post-mining land use from forestland to unmanaged natural habitat on the properties of Jack A. & Paulette C. Schultz, Edward Jay Baer and Dorothy Marie Divelbiss in Porter Township, **Clarion County**. Receiving streams: Three unnamed tributaries to Leisure Run and Leisure Run, one unnamed tributary to Long Run. Application received: August 27, 2018. Permit Issued: December 19, 2018.

**24080101 and NPDES Permit No. PA0258555. RES Coal, LLC** (224 Grange Hall Road, P.O. Box 228, Armagh, PA 15920) Renewal of an existing bituminous surface and auger mine and associated NPDES permit in Fox Township, **Elk County**, affecting 225.0 acres. Receiving streams: Kyler Run. Application received: August 27, 2018. Permit Issued: December 19, 2018.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 54180202. Rausch Creek Fuel, LLC**, (978 Gap Street, Valley View, PA 17983), commencement, operation and restoration of an anthracite coal refuse reprocessing operation in Frailey Township, **Schuylkill County** affecting 11.8 acres, receiving stream: Good Spring Creek. Application received: June 29, 2018. Permit issued: December 20, 2018.



**Permit No. PAM118034. Rausch Creek Fuel, LLC**, (978 Gap Street, Valley View, PA 17983), General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 54180202 in Frailey Township, **Schuylkill County**, receiving stream: Good Spring Creek. Application received: June 29, 2018. Permit issued: December 20, 2018.

*Noncoal Permits Issued*

*Knox District Mining Office: P.O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.*

**PAM618078. Fred Whelpley Excavation** (2599 Horizon Dr., Brockway, PA 15824) General NPDES Permit for stormwater discharges associated with mining activities on Surface Permit No. 33900802 in Snyder Township, **Jefferson County**. Receiving streams: Unnamed tributary to Little Toby Creek. Application received: November 27, 2018. Permit Issued: December 19, 2018.

**PAM618079. Reichard Contracting, Inc.** (212 Olean Trail, New Bethlehem, PA 16242) General NPDES Permit for stormwater discharges associated with mining activities on Surface Permit No. 16970801 in Porter Township, **Clarion County**. Receiving streams: Jack Run & Leisure Run. Application received: November 29, 2018. Permit Issued: December 19, 2018.

**PAM614004. Waste Management Disposal Services of PA, Inc.** (1000 New Ford Mill Road, Morrisville, PA 19067) Renewal of an existing General NPDES Permit for stormwater discharges associated with mining activities on Surface Permit No. 25990303 in Summit Township, **Erie County**. Receiving streams: Unnamed tributary to Walnut Creek. Application received: November 19, 2018. Permit Issued: December 19, 2018.

**24092801 and NPDES Permit No. PA0280640. S. E. Dyne Stone Sales, LLC** (P.O. Box 733, Kane, PA 16735) Revision to an existing small industrial minerals mine to add an NPDES permit in Highland Township, **Elk County**. Receiving streams: Wolf Run. Application received: August 6, 2018. Permit Issued: December 19, 2018.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. PAM118022. Pennsy Supply, Inc.**, (P.O. Box 3331, Harrisburg, PA 17105), General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 40980302 in Salem Township, **Luzerne County**, receiving stream: Susquehanna River. Application received: May 29, 2018. Permit issued: December 24, 2018.

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

*Blasting Permits Issued*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 35184107. John H. Brainard**, (P.O. Box 66, Clifford, PA 18413), construction blasting for Barhite house foundation in Waverly Township, **Lackawanna County** with an expiration date of January 30, 2019. Permit issued: December 20, 2018.

**Permit No. 35184108. Holbert Explosives, Inc.**, (237 Mast Hope Plank Road, Suite A, Lackawaxen, PA 18435), construction blasting for a warehouse in Jessup Borough, **Lackawanna County** with an expiration date of December 20, 2019. Permit issued: December 20, 2018.

**Permit No. 54184102. Maine Drilling & Blasting, Inc.**, (P.O. Box 1140, Gardiner, ME 04345), construction blasting for 196 Vista Road in Upper Mahantango Township, **Schuylkill County** with an expiration date of November 30, 2019. Permit issued: December 20, 2018.

**Permit No. 36184143. Maine Drilling & Blasting, Inc.**, (P.O. Box 1140, Gardiner, ME 04345), construction blasting for Hampden Heath in East Hempfield Township, **Lancaster County** with an expiration date of December 17, 2019. Permit issued: December 20, 2018.

**Permit No. 40184111. Maurer & Scott Sales, Inc.**, (122 Thomas Street, Coopersburg, PA 18036), construction blasting for Center Point II B East in Pittston Township, **Luzerne County** with an expiration date of February 1, 2020. Permit issued: December 21, 2018.

**FEDERAL WATER POLLUTION CONTROL ACT SECTION 401**

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.**

*Permits, Environmental Assessments and 401 Water Quality Certifications Issued:*

**WATER OBSTRUCTIONS AND ENCROACHMENTS**

*Southeast Region: Waterway and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.*

**E51-267. Delaware River Waterfront Corporation**, 121 N. Columbus Boulevard, Philadelphia, PA 19106, City of Philadelphia, **Philadelphia County**, ACOE Philadelphia District.

To construct and maintain a new steel pile bulkhead, to place fill in approximately 1.8 acre in the Delaware River, and to remove a total of 2.4 acres of existing fill and structures in the area between Pier 27 to Pier 30 and Pier 31 to Pier 35 in Delaware River, resulting in a net restoration of 0.60 acre of open water of the Delaware River near the area of Spring Garden and Festival piers. This work is for the purpose of developing 575 residential apartments, 36,000 SF of street level retail space, parking and two interconnected areas of public open space along the waterfront including a promenade.

This site development incorporates the following requirements set forth in the Master Plan for the Central Delaware Overlay District:

- Continuation of the Spring Garden Street View corridor through the development to the Delaware River
- A public Waterfront Promenade
- Integration of Compelling public spaces and amenities creating a vibrant public destination
- Extension of the Multi- Use Recreational Trail
- Active ground floor retail and dining that faces a public plaza and Spring Garden Street view corridor to support the public space.

The site is located approximately 2,000 feet north of the Ben Franklin Bridge crossing of the Delaware River (Philadelphia, PA USGS map Lat. 39.959277, Long. -75.136134).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

**E23-537. Newtown Township, Delaware County Municipal Authority**, 209 Bishop Hollow Road, Newtown Square, PA 19073, Newtown Township, **Delaware County**, ACOE Philadelphia District.

To construct and maintain an extension of an existing public network of gravity sanitary sewer collection pipes, pump stations, and force mains. The work includes thirteen (13) stream crossings in and along Hunter Run, Preston Run, an unnamed tributary of Preston Run, and Reeses Run. The project purpose is for providing sewer service within the overall Central Delaware County Authority, a.k.a. "Camelot service area public Sewer Expansion Project."

The site is located near Bishop Hollow Road and West Chester Pike (Media, PA, USGS Map; Latitude: 39.9829; Longitude: -75.4348).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

**E15-900. Township of Kennett**, 801 Burrows Run Road, Chadds Ford, PA 19317, Kennett Square Township, **Chester County**, ACOE Philadelphia District.

To construct and maintain a single span steel bridge across the West Branch of Red Clay Creek (TSF, MF) having a waterway opening of 43.32 feet wide by 3.2 feet wide by 3.2 feet high and measuring 18.99 feet in length associated with the Rehabilitation of Chandler Mill Road Bridge Project. The site is located Chandler Mill Road over the West Branch Red Clay Creek in Kennett Square, Chester County (USGS PA, Kennett Square Quadrangle—Latitude 39.811389 N, Longitude 75.713333 W).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

**E15-906: Kennett Township**, 801 Burrows Run Rd, Kennett Square, PA 19348, Chadds Ford, Kennett Township, **Chester County**, ACOE Philadelphia District.

Kennett Township is proposing to perform the below listed water obstruction and encroachment activities within the floodway and 100-year floodplain of the West Branch Red Clay Creek (TSF-MF):

1. To construct and maintain a 5-foot wide pedestrian-only trail adjacent to Chandler Mill Rd. with portions of the project within the floodway and 100-year floodplain of the West Branch Red Clay Creek (TSF-MF) at five (5) locations. The proposed trail will be supported by Helical Piles and elevated above native soil material resulting in a total of 4,536 square feet of permanent floodway and 7,287 square feet of permanent floodplain impacts.
2. To construct and maintain three (3) culvert extensions varying between an additional 4 to 8 linear feet carrying flows from unnamed tributaries to West Branch Red Clay Creek (TSF-MF) resulting in a total of 829 square feet of permanent floodway impact. This activity includes the construction of new concrete end walls.

The proposed project is located on Chandler Mill Rd. between Hillandale and Buck Roads in Kennett Township, Chester County (USGS PA Kennett Square Quadrangle—Latitude 39.812433 N, Longitude 75.714715 W).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.*

**E02-1773, Shell Pipeline Company, LP**, 150 North Dairy Ashford, Houston, TX 77079, Findlay and North Fayette Townships, **Allegheny County**, Pittsburgh ACOE District.

Has been given consent to:

1. Construct and maintain three (3) ethane pipe crossings under unnamed tributaries (UNT) to Little Racoon Run (WWF),

2. Construct and maintain a 52-foot long ethane pipe crossing under Potato Garden Run (WWF) and an additional twenty-two (22) crossings under UNT to Potato Garden Run (WWF),

3. Construct and maintain six (6) ethane pipe crossings under UNT to Raredon Run (WWF),

For the purpose of constructing an ethane supply pipeline from fractionation facilities in Ohio and Pennsylvania, to a chemical plant in Monaca, Pennsylvania. Approximately 98-miles of pipeline will be constructed in parts of Ohio, West Virginia and Pennsylvania. The Pennsylvania portion of this project, which will consist of approximately 45.5 miles of pipeline, will be located in Allegheny (DEP File Number E02-1773), Beaver (DEP File Number E04-369) and Washington (DEP File Number E63-710) Counties. This authorization (DEP File Number E02-1773) is for the portion of this multi-state and multi-county pipeline project that is located in Allegheny County. In Allegheny County, this project will cumulatively result in 1,943 LF of permanent impacts to various watercourses, 978 LF of temporary impacts to various watercourses, 0.66 acre of permanent impact to PEM wetlands, 0.01 acre of permanent impact to PSS wetlands, less than 0.01 acre of permanent impact to PFO wetlands, 0.31 acre of temporary impact to PEM wetlands and 0.11 acre of temporary impact to PSS wetlands. Mitigation will include restoring the disturbed area back to its original condition and grade, and stabilizing the disturbed area. In addition, existing wetlands will be enhanced at the Neshannock Creek Restoration Site, in Mercer County, to provide approximately 1.33 acre of PFO wetland, to compensate for conversion impacts to wetlands for the entire project, including permanent conversion impacts to 0.01 acre of PSS wetland in Allegheny County. This project enters Allegheny County at approximately 3,150 feet south-southeast of the intersection of Old Steubenville Pike and State Route 980 (Quadrangle: Clinton, PA; Latitude 40° 25' 7.42"; Longitude: -80° 17' 16.45"), and exits Allegheny County at approximately 3,400 feet south-southwest of the intersection of Hookstown Grade Road and Campmeeting Road (Quadrangle: Aliquippa, PA; Latitude: 40° 30' 44.29"; Longitude: -80° 18' 39.20"). This project is located in Findlay and North Fayette Townships, Allegheny County.

**E04-369, Shell Pipeline Company LP**, 150 North Dairy Ashford, Houston, TX 77079; Greene Township, Independence Township, Potter Township, and Raccoon Townships; **Beaver County**, Pittsburgh ACOE District.

Has been given consent to:

1. Construct and maintain four (4) ethane pipe crossings under unnamed tributaries (UNT) to North Fork Tomlinson Run (WWF),

2. Construct and maintain a 44-foot long ethane pipe crossing under Mill Creek (WWF) and eight (8) ethane pipe crossings under UNT to Mill Creek (TSF),

3. Construct and maintain a 72-foot long ethane pipe crossing under Peggs Run (WWF) and three (3) ethane pipe crossings under UNT to Peggs Run (WWF),

4. Construct and maintain three (3) ethane pipe crossings under UNT to Haden Run (WWF),

5. Construct and maintain a 50-foot long ethane pipe crossing under Service Creek (WWF) and thirteen (13) ethane pipe crossings under UNT to Service Creek (HQ-CWF),

6. Construct and maintain two (2) ethane pipe crossings under Gums Run (WWF) and eight (8) ethane pipe crossings under UNT to Gums Run (WWF),

7. Construct and maintain two (2) ethane pipe crossings under Raccoon Creek (WWF) and twenty (20) ethane pipe crossings under UNT to Raccoon Creek (WWF),

8. Construct and maintain a 65-foot long ethane pipe crossing under Fishpot Run (WWF) and five (5) ethane pipe crossings under UNT to Fishpot Run (WWF),

9. Construct and maintain eight (8) ethane pipe crossings under UNT to Frames Run (WWF),

10. Construct and maintain three (3) ethane pipe crossings under UNT to Raredon Run (WWF), and maintain a 45-foot long ethane pipe crossing under UNT to the Ohio River (WWF),

11. Construct and maintain forty (40) ethane pipe crossings under unnamed wetlands.

For the purposes of constructing an ethane supply pipeline (project) from fractionation facilities in Ohio and Pennsylvania to a petrochemical plant in Monaca, Pennsylvania. Approximately 98-miles of pipeline will be constructed in parts of Ohio, West Virginia and Pennsylvania. The Pennsylvania portion of this project, which will consist of approximately 45.5 miles of pipeline, will be located in Allegheny (DEP File Number E02-1773), Beaver (DEP File Number E04-369) and Washington (DEP File Number E63-710) Counties. This authorization (DEP File Number E04-369) is for the portion of this multi-state and multi-county pipeline project that is located in Beaver County. In Beaver County, this project will cumulatively result in 4,359 LF of permanent impacts to various watercourses, 3,029 LF of temporary impacts to various watercourses, 0.07 acre of permanent impact to open waters, 0.04 acre of temporary impact to open waters, 1.2 acre of permanent impacts to PEM wetlands, 1.38 acre of temporary impacts to PEM wetlands, 0.06 acre of permanent impacts to PSS wetlands, 0.02 acre of permanent impacts to PSS wetland, 0.06 acre of permanent impacts to PFO wetlands, and 0.11 acre of temporary impacts to PFO wetland. Mitigation will include restoring the disturbed area back to its original condition and grade, and stabilizing the disturbed area. In addition, existing wetlands will be enhanced at the Neshannock Creek Restoration Site, in Mercer County, to provide approximately 1.33 acre of PFO wetland, to compensate for conversion impacts to wetlands for the entire project, including permanent conversion impacts to 0.06 acre of PSS wetland and 0.05 acre of PFO wetland in Beaver County. This project enters Beaver County at approximately 1,910 feet northwest of the intersection of Stewart Run Road and Snyder Road (Quadrangle: East Liverpool South, PA, Latitude 40° 34' 57.77"; Longitude: -80° 31' 5.57") and leaves Beaver County at approximately 950 feet south-southwest of the intersection of Hookstown Grade Road and Potts Hollow Road (Quadrangle: Aliquippa, PA, Latitude 40° 30' 59.91"; Longitude: -80° 18' 24.70"), with a connection to the Monaca Pipeline approximately 845 feet northeast of the intersection of Frankfort Road and Old Frankfort Road (Quadrangle: Beaver, PA, Latitude 40° 39' 26.39"; Longitude: -80° 20' 25.37"). This project is located in Greene, Independence, Potter and Raccoon Townships, in Beaver County.

**E63-710, Shell Pipeline Company, LP**, 150 North Dairy Ashford, Houston, TX 77079, Chartiers, Mount Pleasant and Robinson Townships, **Washington County**, Pittsburgh ACOE District.

Has been given consent to:

Construct and maintain two (2) ethane pipe crossings under Westland Run (WWF) and an additional nine (9) 12" ethane pipe crossings under UNT to Wetland Run (WWF),

Construct and maintain a 38-foot long ethane pipe crossing under Millers Run (WWF) and an additional ten (10) 12" ethane pipe crossings under UNT to Millers Run (WWF),

Construct and maintain a 10-foot long ethane pipe crossing under Robinson Run (WWF) and an additional four (4) ethane pipe crossings under UNT to Millers Run (WWF),

Construct and maintain five (5) ethane pipe crossings under UNT to Little Raccoon Run (WWF),

For the purposes of constructing an ethane supply pipeline (project) from fractionation facilities in Ohio and Pennsylvania to a chemical plant in Monaca, Pennsylvania. Approximately 98-miles of pipeline will be constructed in parts of Ohio, West Virginia and Pennsylvania. The Pennsylvania portion of this project, which will consist of approximately 45.5 miles of pipeline, will be located in Allegheny (DEP File Number E02-1773), Beaver (DEP File Number E04-369) and Washington (DEP File Number E63-710) Counties. This authorization (DEP File Number E63-710) is for the portion of this multi-state and multi-county pipeline project that is located in Washington County. In Washington County, this project will cumulatively result in 1,909 LF of permanent impacts to various watercourses, 1,060 LF of temporary impacts to various watercourses, 0.02 acre of permanent impact to open waters, 0.02 acre of temporary impact to open waters, 0.7 acre of permanent impacts to PEM wetlands, 0.45 acre of temporary impacts to PEM wetlands, 0.05 acre of permanent impacts to PFO wetlands, and less than 0.01 acre of temporary impact to PFO wetlands. Mitigation will include restoring the disturbed area back to its original condition and grade, and stabilizing the disturbed area. In addition, existing wetlands will be enhanced at the Neshannock Creek Restoration Site, in Mercer County, to provide approximately 1.33 acre of PFO wetland, to compensate for conversion impacts to wetlands for the entire project, including permanent conversion impacts to 0.05 acre of PFO wetland in Washington County. This project enters Washington County approximately 3,150 feet south-southeast of the intersection of Old Steubenville Pike and State Route 980 (Quadrangle: Clinton, PA), Latitude 40° 25' 7.42"; Longitude: -80° 17' 16.45"), with a connection to the Houston Plant approximately 1,500 feet north-northwest of the intersection of Western Avenue and Ullom Road (Quadrangle: Midway, PA, Latitude 40° 15' 48.69"; Longitude: -80° 15' 50.54"). This project is located in Chartiers, Mount Pleasant and Robinson Townships, Washington County.

*District Oil and Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA.*

**E4129-122: ARD Operating, LLC**, 33 West Third Street, Suite 300, Williamsport, PA 17701, Cascade & Gamble Townships, **Lycoming County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) A 16-inch water pipeline and a timber mat bridge impacting 2,273 square feet of palustrine emergent (PEM) wetland (Bodines, PA Quadrangle 41° 24' 15"N 76° 59' 09"W);

2) A 16-inch water pipeline impacting 952 square feet of floodway of an unnamed tributary to West Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 24' 14"N 76° 59' 14"W);

3) A 16-inch water pipeline and a timber mat bridge impacting 116 square feet of PEM wetland (Bodines, PA Quadrangle 41° 24' 56"N 76° 58' 18"W);

4) A 16-inch water pipeline and a timber mat bridge impacting 13 linear feet of an unnamed tributary to West Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 25' 05"N 76° 58' 14"W);

5) A 16-inch water pipeline and a timber mat bridge impacting 2,884 square feet of PEM wetland (Bodines, PA Quadrangle 41° 25' 08"N 76° 58' 13"W);

6) A 16-inch water pipeline and a timber mat bridge impacting 12 linear feet of an unnamed tributary to West Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 25' 09"N 76° 58' 11"W);

7) A 16-inch water pipeline and a timber mat bridge impacting 13 linear feet of an unnamed tributary to West Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 25' 10"N 76° 58' 09"W);

8) A 16-inch water pipeline and a timber mat bridge impacting 1,056 square feet of PEM wetland (Bodines, PA Quadrangle 41° 25' 11"N 76° 58' 07"W);

9) A 16-inch water pipeline and a timber mat bridge impacting 24 linear feet of an unnamed tributary to West Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 25' 14"N 76° 58' 00"W);

10) A 16-inch water pipeline and a timber mat bridge impacting 892 square feet of PEM wetland (Bodines, PA Quadrangle 41° 25' 25"N 76° 57' 41"W);

11) A 16-inch water pipeline and a timber mat bridge impacting 86 square feet of PEM wetland (Bodines, PA Quadrangle 41° 25' 26"N 76° 57' 38"W);

12) A 16-inch water pipeline and a timber mat bridge impacting 26 linear feet of unnamed tributaries to East Branch Murray Run (EV) and 969 square feet of PEM wetlands (Bodines, PA Quadrangle 41° 25' 26"N 76° 57' 35"W);

13) A 16-inch water pipeline and a timber mat bridge impacting 12 linear feet of an unnamed tributary to East Branch Murray Run (EV) and 610 square feet of PEM wetland (Bodines, PA Quadrangle 41° 25' 36"N 76° 56' 49"W);

14) A 16-inch water pipeline impacting 1,942 square feet of floodway of an unnamed tributary to East Branch Murray Run (EV) (Bodines, PA Quadrangle 41° 25' 38"N 76° 56' 28"W);

15) A 16-inch water pipeline and a timber mat bridge impacting 14 linear feet of East Branch Murray Run (EV) and 4,880 square feet of adjacent palustrine emergent (PEM) wetland (Bodines, PA Quadrangle 41° 25' 38"N 76° 56' 27"W);

16) A 16-inch water pipeline and a timber mat bridge impacting 13 linear feet of an unnamed tributary to Slacks Run (HQ-CWF) and 3,155 square feet of adjacent PEM wetland (Bodines, PA Quadrangle 41° 26' 22"N 76° 55' 32"W);

17) A 16-inch water pipeline and a timber mat bridge impacting 12 linear feet of an unnamed tributary to Slacks Run (HQ-CWF) (Bodines, PA Quadrangle 41° 26' 24"N 76° 55' 31"W).

The project will result in a total of 139 linear feet of stream impacts, 0.07 acre of additional floodway impacts, and 0.39 acre of wetland impacts all for the purpose of installing water pipeline and temporary access roadway for Marcellus well development.

#### ENVIRONMENTAL ASSESSMENTS

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**EA10-051, Seneca Landfill, Inc.**, 121 Brickyard Road, Mars, PA 16046. SR 89 Remediation Project, in Washington Township, **Butler County**, ACOE Pittsburgh District (Hilliards, PA Quadrangles N: 41.094943°; W: 79.846891°).

To construct, operate, and maintain a passive acid mine drainage (AMD) treatment system consisting of a 16,000 square foot Terraced Iron Formation (TIF) Channel, a 2,000 ton Jennings-type Vertical Flow Pond (JVFP) with 1,500 cubic yard organic media, and a 37,000 square foot Treatment Wetland. This project meets the water quality parameters for coverage by the Environmental Assessment published in the *Pennsylvania Bulletin* on December 13, 1996 for restoration projects approved under Title 4 of the Surface Mining Control and Reclamation Act of 1977. This project qualifies for waiver of permit requirements under 105.12(a)(16).

#### EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

*Southwest District: Oil & Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.*

ESCGP-2 # ESX18-059-0032  
Applicant Name CNX Gas Company, LLC  
Contact Person Adam White  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317  
County Greene County  
Township(s) Richhill Township

Receiving Stream(s) and Classification(s) UNTs to Jacobs Run and Jacobs Run (HQ-WWF)/South Fork Ten Mile Creek Watershed  
Secondary Receiving Water—Claylick Run (HQ-WWF)

ESCGP-2 # ESG18-005-0009  
Applicant Name Penn Energy Resources, LLC  
Contact Person Scott Sweder  
Address 1000 Commerce Drive Park Place One, Suite 400  
City, State, Zip Pittsburgh, PA 15275  
County Armstrong  
Township(s) North Buffalo Twp  
Receiving Stream(s) and Classification(s) Unnamed Tributaries to Buffalo Creek, Unnamed Tributary to Sipes Run, Buffalo Creek (HQ-TSF), Allegheny River (WWF)

ESCGP-2 # ESX18-125-0027  
Applicant Name EQT Production Company  
Contact Person Todd Klaner  
Address 2400 Ansys Drive, Suite 200  
City, State, Zip Canonsburg, PA 15317  
County Washington  
Township(s) West Finely Twp  
Receiving Stream(s) and Classification(s) Robinson Fork and Blockhouse Run, Wheeling Buffalo Creek (WWF)

ESCGP-2 # ESX18-125-0035  
Applicant Name Range Resources Appalachia, LLC  
Contact Person Karl Matz  
Address 3000 Town Center Blvd  
City, State, Zip Canonsburg, PA 15317  
County Washington  
Township(s) Amwell Twp  
Receiving Stream(s) and Classification(s) UNTs to Smith Run and Smith Run of Tenmile Creek Watershed.  
Chapter 93, classifies these streams as Trout Stock Fishery (TSF) for Designated and Existing Use

ESCGP-2 # ESG14-125-0042  
Applicant Name Rice Drilling B LLC  
Contact Person Todd Klaner  
Address 2400 Ansys Drive, Suite 200  
City, State, Zip Canonsburg, PA 15317  
County Washington  
Township(s) South Strabane Twp  
Receiving Stream(s) and Classification(s) Unnamed Tributary to Little Chartiers Creek, Little Chartiers Creek (HQ), Chartiers Creek, Ohio River (WWF)

ESCGP-2 # ESX16-059-0049 Major Revision  
Applicant Name Rice Midstream Holdings, LLC  
Contact Person Brint Goettel  
Address 2200 Rice Drive  
City, State, Zip Canonsburg, PA 15317  
County Greene County  
Township(s) Aleppo and Richhill Townships  
Receiving Stream(s) and Classification(s) UNTs to South Fork Dunkard Fork and South Fork Dunkard Fork (TSF), UNTs to North Fork Dunkard (TSF), Mudlick Fork and UNTs to Mudlick Fork (TSF)—Wheeling Creek Watershed; UNTs to Harts Run (WWF)—Fish Creek Watershed  
Secondary Receiving Water—Wheeling Creek (TSF) and Fish Creek (WWF)

ESCGP-2 # ESX17-059-0034 Major Revision  
Applicant Name CNX Gas Company, LLC  
Contact Person Adam White  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317  
County Greene County  
Township(s) Richhill Township

Receiving Stream(s) and Classification(s) UNTS to Crabapple Creek (WWF) and Crabapple Creek (WWF)/Wheeling Creek Watershed  
Secondary Receiving Water—Wheeling Creek (WWF)

ESCGP-2 # ESX18-059-0028

Applicant Name CNX Midstream Operating Company, LLC

Contact Person Carol Phillips  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317

County Greene County

Township(s) Richhill Township

Receiving Stream(s) and Classification(s) UNTs to Crabapple Creek (WWF), UNTs to Dunkard Fork (WWF), and UNTs to North Fork Dunkard Fork (TSF)/Wheeling Creek Watershed

Secondary Receiving Water—Crabapple Creek (WWF), Dunkard Fork (WWF), and North Fork Dunkard Fork (TSF)

ESCGP-2 # ESX18-129-0007

Applicant Name Chevron Appalachia, LLC

Contact Person Branden Weimer  
Address 700 Cherrington Parkway  
City, State, Zip Coraopolis, PA 15108

County Westmoreland County

Township(s) South Huntingdon Township

Receiving Stream(s) and Classification(s) UNTs To Youghiogheny River and Youghiogheny River (WWF)/Youghiogheny River Watershed; UNTs To Painters Run, Painters Run (WWF), and UNTs To Hunters Run/Sewickley Creek Watershed  
Secondary Receiving Water—Monongahela River, Youghiogheny River, Painters Run, and Hunters Run (WWF)

ESCGP-2 # ESX18-059-0031

Applicant Name CNX Midstream Operating Company, LLC

Contact Person Carol Phillips  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317

County Greene County

Township(s) Richhill Township

Receiving Stream(s) and Classification(s) UNTs To Dunkard Fork (WWF), UNTs To North Fork Dunkard Fork and North Fork Dunkard Fork (TSF), and UNTs to South Fork Dunkard Fork and South Fork Dunkard Fork (TSF)/Wheeling Creek Watershed  
Secondary Receiving Water—Dunkard Fork (WWF)

ESCGP-2 # ESX18-059-0033

Applicant Name CNX Midstream Operating Company, LLC

Contact Person Carol Phillips  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317

County Greene County

Township(s) Richhill Township

Receiving Stream(s) and Classification(s) UNTs To Chaney Run and Chaney Run (WWF), UNTs To Wharton Run and Wharton Run (WWF), and UNTs To Dunkard Fork and Dunkard Fork (WWF)/Wheeling Creek Watershed  
Secondary Receiving Water—Dunkard Fork (WWF)

ESCGP-2 # ESX18-059-0026

Applicant Name Greylock Production, LLC

Contact Person Carol Phillips  
Address 101 Heritage Run Road, Suite 1  
City, State, Zip Indiana, PA 15701

County Greene County

Township(s) Jefferson Township  
Receiving Stream(s) and Classification(s) UNTs to Muddy Creek (WWF)

Secondary Receiving Water—Muddy Creek (WWF)

ESCGP-2 # ESX16-125-0034

Applicant Name Rice Drilling B, LLC

Contact Person Todd Klaner  
Address 2400 Ansys Drive, Suite 200  
City, State, Zip Canonsburg, PA 15317

County Washington

Township(s) North Bethlehem

Receiving Stream(s) and Classification(s) (3) UNTs to Daniels Run of Tenmile Creek Watershed. Chapter 93, classifies these streams as Trout Stock Fisheries (TSF) for designated and existing use

ESCGP-2 # ESG14-125-0076

Applicant Name Rice Drilling B, LLC

Contact Person Todd Klaner  
Address 2400 Ansys Drive, Suite 200  
City, State, Zip Canonsburg, PA 15317

County Washington

Township(s) North Strabane

Receiving Stream(s) and Classification(s) Unnamed tributaries to Little Chartiers Creek (HQ), Chartiers Creek, Ohio River (WWF)

ESCGP-2 # ESX14-003-0001

Applicant Name CNX Gas Company

Contact Person Adam White  
Address 1000 Consol Energy Drive  
City, State, Zip Canonsburg, PA 15317

County Allegheny

Township(s) Findlay Twp

Receiving Stream(s) and Classification(s) Unnamed Tributaries to Montour Run, Tributaries 36710 and 36715 to Montour Run, Montour Run (WWF), Unnamed Tributaries to North Fork Montour Run (TSF), Ohio River (WWF)

ESCGP-2 # ESX18-005-0012

Applicant Name Snyder Brothers Inc

Contact Person Carl Rose  
Address 90 Glade Drive  
City, State, Zip Kittanning, PA 16201

County Armstrong

Township(s) Washington Twp

Receiving Stream(s) and Classification(s) Tributaries 49006 and 49012 to Hullings Run, Hullings Run (TSF), Allegheny River (WWF)

ESCGP-2 # ESX17-059-0022

Applicant Name EQM Gathering OPCO, LLC

Contact Person Brinton Goettel  
Address 2200 Energy Drive  
City, State, Zip Canonsburg, PA 15317

County Greene

Township(s) Jefferson

Receiving Stream(s) and Classification(s) Rush Run (WWF), UNTs to Rush Run (WWF), UNTs to South Fork Tenmile Creek (WWF)  
Secondary Receiving Water: Monongahela River (WWF)

ESCGP-2 # ESX18-005-0005

Applicant Name Snyder Bros, Inc

Contact Person Carl Rose  
Address P.O. Box 1022  
City, State, Zip Kittanning, PA 16201

County Armstrong County

Township(s) Rayburn Township

Receiving Stream(s) and Classification(s) Tribs 46976, 46978, & 46995 to Cowanshannock Creek (WWF) & Cowanshannock Creek (WWF)

ESCGP-2 # ESX18-125-0007  
 Applicant Name EQT Production Company  
 Contact Person Todd Klaner  
 Address 2400 Ansys Drive, Suite 200  
 City, State, Zip Canonsburg, PA 15317  
 County Washington County  
 Township(s) Amwell Township  
 Receiving Stream(s) and Classification(s) UNTs to Hufford Run (TSF) and Hufford Run (TSF)

ESCGP-2 # ESX18-005-0011  
 Applicant Name EXCO Resources (PA), LLC  
 Contact Person Brian Rushe  
 Address 13448 State Route 422, Suite 1  
 City, State, Zip Kittanning, PA 16201  
 County Armstrong County  
 Township(s) Rayburn Township  
 Receiving Stream(s) and Classification(s) UNT to Cowanshannock Creek, Cowanshannock Creek, Allegheny River (WWF)

ESCGP-2 # ESX18-059-0025  
 Applicant Name Greylock Production, LLC  
 Contact Person Travis Wendel  
 Address 101 Heritage Run Road, Suite 1  
 City, State, Zip Indiana, PA 15701  
 County Greene  
 Township(s) Jefferson Township  
 Receiving Stream(s) and Classification(s) UNTs to Muddy Creek (WWF)/Muddy Creek (WWF)

ESCGP-2 # ESX18-059-0020  
 Applicant Name Chevron Appalachia, LLC  
 Contact Person Branden Weimer  
 Address 700 Cherrington Parkway  
 City, State, Zip Coraopolis, PA 15108  
 County Greene  
 Township(s) Dunkard Township  
 Receiving Stream(s) and Classification(s) UNTs to Roberts Run (WWF), Roberts Run (WWF), UNTs to Meadow Run (WWF)/Monongahela River Watershed (WWF)

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.*

<i>ESCGP-2 No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
ESG00007170003	Shell Pipeline Company, LP 150 North Dairy Ashford Houston, TX 77079	Beaver County; Washington County; Allegheny County	Beaver: Independence Township; Raccoon Township; Green Township; Potter Township Washington: Chartiers Township; Mount Pleasant Township; Robinson Township Allegheny: North Fayette Township; Findlay Township	North Fork Tomlinson Run (WWF); Mill Creek (TSF); Peggs Run (WWF); Haden Run (WWF); Service Creek (WWF); UNT to Service Creek (HQ-CWF); Raccoon Creek (WWF); Gums Run (WWF); Fishpot Run (WWF); Ohio River (WWF); Raredon Run (WWF); Frames Run (WWF)
ESG0012517007-2	Columbia Gas Transmission, LLC 1700 MacCorkle Avenue, SE Charleston, WV 25314	Washington County	Robinson Township; Mount Pleasant Township	Robinson Run (WWF); Little Raccoon Creek (WWF)

*Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

ESCGP-2 # ESG29-113-14-0021 (01)  
 Applicant Name Chief Oil and Gas LLC  
 Contact Person Jeffrey Deegan  
 Address 1720 Sycamore Rd.  
 City, State, Zip Montoursville, PA 17754  
 County Sullivan  
 Township(s) Elkland Twp.  
 Receiving Stream(s) and Classification(s) Elk Creek (EV)

ESCGP-2 # ESG29-117-18-0034  
 Applicant Name REPSOL Oil and Gas USA, LLC  
 Contact Person Lance Ridall  
 Address 337 Daniel Zenker Drive  
 City, State, Zip Horseheads, NY 14845  
 County Tioga  
 Township(s) Ward Twp.  
 Receiving Stream(s) and Classification(s) Fellows Creek (CWF), Tioga River (CWF)

ESCGP-2 # ESX29-115-18-0073  
 Applicant Name Cabot Oil and Gas Corporation  
 Contact Person Kenneth Marcum  
 Address 2000 Park Lane, Suite 300  
 City, State, Zip Pittsburgh, PA 15275

County Susquehanna  
 Township(s) Lenox Twp.  
 Receiving Stream(s) and Classification(s) Unnamed tributary to Willow Brook (CWF-MF), unnamed tributary to Utlely Brook (CWF-MF), unnamed tributary to Martins Creek (CWF-MF), unnamed tributary to Millard Creek (CWF-MF)

ESCGP-2 # ESX29-115-18-0008 (01)  
 Applicant Name Cabot Oil and Gas Corporation  
 Contact Person Kenneth Marcum  
 Address 2000 Park Lane, Suite 300  
 City, State, Zip Pittsburgh, PA 15275  
 County Susquehanna  
 Township(s) Springville Twp.  
 Receiving Stream(s) and Classification(s) White Creek (CWF-MF); Thomas Creek (CWF-MF) and unnamed tributary thereto

ESCGP-2 # ESX29-115-18-0068  
 Applicant Name SWN Production Company, LLC  
 Contact Person Nicki Atkinson  
 Address 917 State Route 92 North  
 City, State, Zip Tunkhannock, PA 18657  
 County Susquehanna  
 Township(s) New Milford Twp.

Receiving Stream(s) and Classification(s) Butler Creek (CWF-MF) and unnamed tributary thereto

ESCGP-2 # ESG29-105-18-0001(01)  
Applicant Name JKLM Energy, LLC  
Contact Person Scott C. Blauvelt  
Address 2200 Georgetown Drive, Suite 500  
City, State, Zip Sewickley, PA 15143  
County Potter  
Township(s) Ulysses Twp.

Receiving Stream(s) and Classification(s) Primary Watershed(s): UNTs to Cushing Hollow (HQ-CWF).  
Secondary Watershed(s): Cushing Hollow (HQ-CWF).

ESCGP-2 # ESG29-117-18-0041  
Applicant Name REPSOL Oil and Gas USA, LLC  
Contact Person Lance Ridall  
Address 337 Daniel Zenker Drive  
City, State, Zip Horseheads, NY 14845  
County Tioga  
Township(s) Liberty Twp.  
Receiving Stream(s) and Classification(s) Zimmerman Creek (HQ-CWF), Blacks Creek (CWF)

ESCGP-2 # ESG29-117-18-0039  
Applicant Name REPSOL Oil and Gas USA, LLC  
Contact Person Lance Ridall  
Address 337 Daniel Zenker Drive  
City, State, Zip Horseheads, NY 14845  
County Tioga  
Township(s) Liberty Twp.  
Receiving Stream(s) and Classification(s) Blacks Creek (CWF)

#### CORRECTIVE ACTION UNDER ACT 32, 1989

##### PREAMBLE 2

**The following plans and reports were submitted under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).**

Provisions of 25 Pa. Code Chapter 245 Subchapter D, Administration of the Storage Tank and Spill Prevention Program, require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A remedial action plan is submitted to summarize the site characterization, document the design and construction details for the remedial action, and describe how the remedial action will attain the selected remediation standard. The remedial action plan also provides results of studies performed and data collected to support the remedial action and a description of postremediation care requirements. A remedial action completion report is submitted to document cleanup of a release of a regulated substance at a site to the selected remediation standard. A remedial action completion report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or non-residential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning plans or reports, please contact the Environmental Cleanup Program Manager in the DEP Regional Office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may

telephone the DEP through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**CF Mart # 3035**, Storage Tank ID # 58-39706, 3615 State Route 374, Lenox Township, **Susquehanna County**. MEA, Inc., 1365 Ackermanville Road, Bangor, PA 18013 on behalf of Convenient Food Marts of Pennsylvania, 215 Clark Avenue, Clarks Summit, PA 18411 has submitted a Remedial Action Plan concerning remediation of groundwater contaminated with Benzene and 1,2,4-Trimethylbenzene. The report is intended to document remediation of the site to meet the Statewide Health Standards.

**Turkey Hill # 196**, Storage Tank ID # 40-52120, 198 North Pennsylvania Avenue, Wilkes-Barre City, **Luzerne County**. McKee Environmental, 218 Washington Avenue, Bellefonte, PA 16823 on behalf of Tukey Hill Minit Markets, 257 Centerville Road, Lancaster, PA 17603 has submitted a Remedial Action Completion Report concerning remediation of soil contaminated with Benzene, Toluene, and Xylene. The report is intended to document remediation of the site to meet the Statewide Health Standards.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Sheetz # 392**, Storage Tank ID # 28-39419, 3875 Norland Avenue, Chambersburg, **Franklin County**. Mountain Research LLC, 825 25th Street, Altoona, PA 16601, on behalf of Sheetz, Inc., 351 Sheetz Way, Claysburg, PA 16625 has submitted a Remedial Action Completion Report concerning remediation of groundwater contaminated with unleaded gasoline. The Remedial Action Completion Report demonstrated attainment of the Used Aquifer Residential Statewide Health Standard for groundwater and was approved by the Department on December 26, 2018.

## SPECIAL NOTICES

### Water Quality Certification Sweden Vally Project; PA Facilities FERC Docket No. CP18-45-000

**WQ05-020**—The Pennsylvania Department of Environmental Protection (Department) certifies that the construction, operation and maintenance of the Project complies with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The Department further certifies that the construction, operation and maintenance of the project complies with Commonwealth water quality standards and that the construction, operation and maintenance of the project does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the project complies with the conditions for this certification, including the criteria and conditions of the following permits:

1. *Discharge Permit*—Applicant has obtained a Statewide NPDES Permit (File No. PAG109601). DETI shall comply with this National Pollutant Discharge Elimination System (NPDES) permit(s) for the discharge of water



from the hydrostatic testing of the pipeline associated with the Project pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance) and all other applicable regulations.

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), 25 Pa. Code Chapter 105, and all other applicable implementing regulations.

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a Water Obstruction and Encroachment Permit(s) for the construction, operation and maintenance of all stream and wetland crossings associated with the Project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), 25 Pa. Code Chapter 105, 25 Pa. Code Chapter 106, and all other applicable regulations.

4. *Other Water Quality Requirements*—Applicant shall obtain any other permits, authorizations or approvals required to construct, operate, and maintain the Project from any interstate or international agency as required by an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands.

5. *Water Quality Monitoring*—DEP retains the right to specify additional studies or monitoring to ensure that the receiving water quality associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.

6. *Operation*—Applicant shall properly operate and maintain at all times all Project facilities and systems of treatment and control (and related appurtenances) installed to achieve compliance with the terms and conditions of this State Water Quality Certification (SWQC) and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

7. *Inspection*—The Project, including all relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of DEP or delegated County Conservation District to determine compliance with this SWQC, including all required permits, authorizations and approvals required by this SWQC. The Applicant shall provide a copy of this SWQC to an authorized representative conducting an inspection of the Project.

8. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project or any portion(s) thereof, the Applicant shall provide a copy of this SWQC and copies of any permits, authorizations or approvals obtained to comply with the SWQC upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the [DEP Regional Office or RPCO] of such intent. Notice to DEP shall include a transfer agreement signed by the existing and new owners containing a specific date for transfer of

responsibility, coverage, and liability under the SWQC and any permits, authorizations and approvals obtained to comply with the SWQC. The new owner shall submit to DEP a new application form for the SWQC and any permits, authorizations and approvals required to comply with the SWQC signed by the new owner.

9. *Correspondence*—All correspondence with and submittals to the Department concerning this Certification shall be addressed to the Department of Environmental Protection, Regional Permit Coordination Office, Attn: Domenic Rocco, P.E., 400 Market Street, Harrisburg, PA 17101.

10. *Reservation of Rights*—DEP may modify, suspend or revoke this SWQC if (i) DEP becomes aware of new facts about the Project that warrant such action; or (ii) DEP determines that the Applicant has not complied with the terms and conditions of this SWQC. DEP may require additional measures to achieve compliance with any applicable law or regulation.

11. *Other Laws*—Nothing in this SWQC shall be construed to preclude the institution of any legal action or to relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation.

12. *Severability*—The provisions of this SWQC are severable and should any provision of this SWQC be declared invalid or unenforceable, the remainder of the SWQC shall not be affected thereby.

[Pa.B. Doc. No. 19-51. Filed for public inspection January 11, 2019, 9:00 a.m.]

## DEPARTMENT OF HUMAN SERVICES

### Medical Assistance Program Fee Schedule Revisions; Clinical Laboratory Procedure Coding System Updates

The Department of Human Services (Department) announces changes to the Medical Assistance (MA) Program Fee Schedule. These changes are effective for dates of service on and after January 14, 2019.

The Department is adding two clinical laboratory procedure codes related to Noninvasive Prenatal Screening to the MA Program Fee Schedule due to changes in American College of Obstetricians and Gynecologists (ACOG) guidelines. In ACOG Practice Bulletin No. 163, ACOG recommends that “all women should be given the option of aneuploidy screening or diagnostic testing for fetal genetic disorders, regardless of maternal age.”

Clinical laboratory procedure codes 81420 and 81507 being added to the MA Program Fee Schedule will require prior authorization, as authorized under section 443.6(b)(7) of the Human Services Code (62 P.S. § 443.6(b)(7)). The Department will issue a bulletin to advise MA providers of the updates to the MA Program Fee Schedule.

#### *Procedure Codes Being Added*

The Department is adding clinical laboratory procedure codes 81420 and 81507 to the MA Program Fee Schedule as follows:

<i>Procedure Code</i>	<i>Description</i>	<i>Provider Type</i>	<i>Provider Specialty</i>	<i>Place of Service</i>	<i>MA Fee</i>	<i>Prior Auth.</i>	<i>Units</i>	<i>Limits</i>
81420	Fetal chromosomal aneuploidy (eg, trisomy 21, monosomy X) genomic sequence analysis panel, circulating cell-free fetal DNA in maternal blood, must include analysis of chromosomes 13, 18 and 21	01	183	22	\$607.24	yes	per test	once per day
		28	280	81				
81507	Fetal aneuploidy (trisomy 21, 18 and 13) DNA sequence analysis of selected regions using maternal plasma, algorithm reported as a risk score for each trisomy	01	183	22	\$636.00	yes	per test	once per day
		28	280	81				

*Fiscal Impact*

The estimated fiscal impact in Fiscal Year 2018-2019 is \$0.081 million (\$0.039 million in State funds and \$0.042 million in Federal funds). The estimated annualized fiscal impact is \$0.324 million (\$0.155 million in State funds and \$0.169 in Federal funds).

*Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department of Human Services, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received will be reviewed and considered for any subsequent revisions to the MA Program Fee Schedule.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

TERESA D. MILLER,  
*Secretary*

**Fiscal Note:** 14-NOT-1305. (1) General Fund; (2) Implementing Year 2018-19 is \$39,000; (3) 1st Succeeding Year 2019-20 through 5th Succeeding Year 2023-24 are \$155,000; (4) 2017-18 Program—\$477,690,000; 2016-17 Program—\$450,970,000; 2015-16 Program—\$392,918,000; (7) MA—Fee-for-Service; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 19-52. Filed for public inspection January 11, 2019, 9:00 a.m.]

**ENVIRONMENTAL HEARING BOARD****East Rockhill Township v. Department of Environmental Protection and Hanson Aggregates PA, LLC, Permittee; EHB Doc. No. 2019-001-M**

East Rockhill Township has appealed the renewal by the Department of Environmental Protection of NPDES Permit No. PA0594121 to Hanson Aggregates PA, LLC, in conjunction with the existing Surface Mining Permit No. 7974SM1C9, for the Rock Hill Quarry operation located in Rock Hill Township, Bucks County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code

§ 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,  
*Chairperson*

[Pa.B. Doc. No. 19-53. Filed for public inspection January 11, 2019, 9:00 a.m.]

**ENVIRONMENTAL HEARING BOARD****Todd and Sandi Hippauf v. Department of Environmental Protection and Hanson Aggregates PA, LLC, Permittee; EHB Doc. No. 2018-128-M**

Todd and Sandi Hippauf have appealed the renewal by the Department of Environmental Protection of NPDES Permit No. PA0594121 to Hanson Aggregates PA, LLC, in conjunction with the existing Surface Mining Permit No. 7974SM1C9, for the Rock Hill Quarry operation located in Rock Hill Township, Bucks County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box

8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,  
*Chairperson*

[Pa.B. Doc. No. 19-54. Filed for public inspection January 11, 2019, 9:00 a.m.]

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## ENVIRONMENTAL HEARING BOARD

### Lehigh Township v. Department of Environmental Protection; EHB Doc. No. 2018-127-L

Lehigh Township has appealed the approval by the Department of Environmental Protection of an NPDES General Permit (PAG-13) to Lehigh Township for stormwater discharges from small municipal separate storm sewer systems located in Lehigh Township, Northampton County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,  
*Chairperson*

[Pa.B. Doc. No. 19-55. Filed for public inspection January 11, 2019, 9:00 a.m.]

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## ENVIRONMENTAL HEARING BOARD

### Lynda Williams v. Department of Environmental Protection and Estate of Harry Simon, Permittee; EHB Doc. No. 2018-067-C

Lynda Williams has appealed the issuance by the Department of Environmental Protection of an NPDES

Permit No. PAD150046 to the estate of Harry Simon for the 1364 Grove Road Subdivision located in West Whiteland Township, Chester County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,  
*Chairperson*

[Pa.B. Doc. No. 19-56. Filed for public inspection January 11, 2019, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Application for Approval to Acquire Control of Lackawanna American Insurance Company, Lackawanna Casualty Company and Lackawanna National Insurance Company

Delaware Life Insurance Company has filed an application for approval to acquire control of Lackawanna American Insurance Company, a domestic stock casualty insurance company, Lackawanna Casualty Company, a domestic stock casualty insurance company and Lackawanna National Insurance Company, a domestic stock casualty insurance company. The filing was received on December 31, 2018, and was made under the requirements of Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413).

Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, syerger@pa.gov.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-57. Filed for public inspection January 11, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Designation as a Certified Reinsurer

Endurance Specialty Insurance Ltd. has applied for designation as a certified reinsurer in this Commonwealth. The application was received on November 29, 2018, and was made under section 319.1(a) of The Insurance Company Law of 1921 (40 P.S. § 442.1(a)) and 31 Pa. Code § 161.3a (relating to requirements for certified reinsurers).

Persons who wish to comment on the application are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Kimberly A. Rankin, Director, Bureau of Company Licensing and Financial Analysis, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, krankin@pa.gov. Comments received will be forwarded to the applicant for appropriate response.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-58. Filed for public inspection January 11, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Domestic Certificate of Authority by Circle Medical Assurance Company

Circle Medical Assurance Company has applied for a Certificate of Authority to operate as a stock casualty insurance company in this Commonwealth. The initial filing was received on December 11, 2018, and was made under The Insurance Company Law of 1921 (40 P.S. §§ 341—1007.15).

Persons wishing to comment on the application are invited to submit a written statement to the Insurance Department (Department) within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda E. Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, cbybee@pa.gov.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-59. Filed for public inspection January 11, 2019, 9:00 a.m.]

## STATE BOARD OF DENTISTRY

### Bureau of Professional and Occupational Affairs v. Nicholas F. Breen, DDS; Case No. 17-46-11693

Nicholas F. Breen, DDS, Pennsylvania license No. DS026746L, last known of Pennsauken, NJ, was denied his request for reinstatement of dental license, based on failure to appear for hearing and satisfy his burden of proof.

Individuals may obtain a copy of the adjudication by writing to Kerry E. Maloney, Board Counsel, State Board of Dentistry, P.O. Box 69523, Harrisburg, PA 17106-9523.

This order represents the final State Board of Dentistry (Board) decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of their petition for review. The Board contact for receiving service of appeals is the previously-named Board counsel.

JOHN F. ERHARD, III, DDS,  
*Chairperson*

[Pa.B. Doc. No. 19-60. Filed for public inspection January 11, 2019, 9:00 a.m.]