

**FERGUSON TOWNSHIP BOARD OF SUPERVISORS**  
**Regular Meeting Agenda**  
**Monday, January 7, 2019**  
**7:00 PM**

**I. CALL TO ORDER**

**II. CITIZENS INPUT**

**III. SPECIAL ACTION ITEM:** Acceptance of the Resignation of Ms. Sara Carlson

**IV. APPROVAL OF MINUTES**

1. December 10, 2018, Board of Supervisors Regular Meeting

**V. UNFINISHED BUSINESS**

1. UAJA Demonstration Project – Greenbriar Subdivision
2. Review of Draft Sourcewater Protection Overlay District Ordinance

**VI. NEW BUSINESS**

1. Consent Agenda
2. Public Hearing on Resolution approving Settlement Offer with Navistar/Allegheny Trucks Inc.
3. Harner Farm Concept Plan presentation
4. Review of Draft Amendments to Ferguson Township Personnel Policy Manual
5. Authorization of Engineering Study to evaluate lengthening turn lanes at intersections of W. College, Science Park and Bristol Ave.
6. Authorization to submit Green-Light-Go, round 5 grant application for Traffic Signal improvements at various intersections

**VII. REPORTS**

1. COG Committee Reports
2. Other Regional Reports
3. Staff Reports

**VIII. COMMUNICATIONS TO THE BOARD**

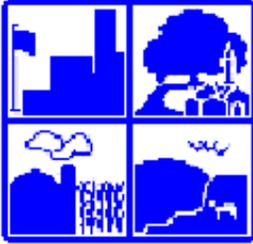
**IX. CALENDAR ITEMS – JANUARY**

1. Coffee and Conversation, January 12<sup>th</sup>, 8:00 a.m. – 9:30 a.m., Baileyville Community Hall.

**X. ADJOURNMENT**



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# TOWNSHIP OF FERGUSON

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## Board of Supervisors Regular Meeting Agenda Monday, January 7, 2019

### I. CALL TO ORDER

### II. CITIZENS INPUT

### III. SPECIAL ACTION ITEM: ACCEPTANCE OF THE RESIGNATION OF MS. SARA CARLSON

#### Narrative

Ms. Carlson submitted her resignation from the Ferguson Township Board of Supervisors with an effective date of December 31, 2018. Provided with the agenda is a copy of the letter of resignation. Per the Home Rule Charter, the Board must act to appoint a citizen from Ward III (Ms. Carlson's Ward) to serve the remainder of her term within 45 days of the effective date of the vacancy. Per Section 407(b) (attached) of the Second Class Township Code, the Board must accept Ms. Carlson's resignation by a majority vote, and the effective date of the vacancy begins the date of the acceptance of the resignation. If the Board fails to fill the vacancy within 30 days of the effective date, a special "vacancy board" consisting of the Board of Supervisors plus one registered elector of the Township is given 15 additional days to fill the vacancy before it proceeds to the Centre County Court of Common Pleas. It is recommended that applications be accepted for the registered elector position on the vacancy board and an appointment be made at the January 21<sup>st</sup> Regular Meeting.

*Recommended Motion: That the Board of Supervisors accept the resignation of Ms. Carlson and direct staff to accept applications for a registered elector to serve on the vacancy board.*

#### Staff Recommendation

That the Board of Supervisors **accept** the resignation and **direct** staff to accept applications to serve on the vacancy board.

### IV. APPROVAL OF MINUTES

1. December 10, 2018, Board of Supervisors Regular Meeting

### V. UNFINISHED BUSINESS

1. **UNIVERSITY AREA JOINT AUTHORITY DEMONSTRATION PROJECT – GREENBRIAR SUBDIVISION** 20 minutes

#### Narrative

As the Board is aware, the University Area Joint Authority (UAJA) has been working with the residents of Greenbriar for several months on a proposal to connect the development to the sanitary sewer system. Recently, a high-pressure system involving a smaller diameter main and a series of "grinder pumps" located at individual residences was approved by the UAJA Board. Following the approval, UAJA staff has submitted a highway occupancy permit to the Township for permission to construct the system in the public right-of-way. Township staff has placed, as a condition of approval of the permit, a requirement that UAJA use directional boring to reduce the number of pave cuts in Township streets. This is a standard condition that most utility operators agree to. The concern that the Township

has is that the number of proposed pave cuts pose the potential for settlement and can compromise the structural integrity of the road. The only street in Greenbriar currently in the Capital Improvement Plan for repaving is Sleepy Hollow Dr. in 2023. Therefore, it could be several years before the streets are repaved. UAJA has expressed cost concerns and has rejected the condition to bore under the roadway unless the property owners agree to absorb the additional cost. A copy of the letter the Authority sent to Greenbriar residents is provided with the agenda. Also provided with the agenda is a copy of an email communication from David Modricker, Director of Public Works, to Cory Miller, Executive Director of UAJA, expressing the Township staff's opinion relative to boring. Two Greenbriar residents have requested this item be added to the agenda this evening for discussion under Section 2.20 of the Home Rule Charter – Citizen's Right to be Heard. No action is required by the Board.

**2. REVIEW OF DRAFT SOURCEWATER PROTECTION OVERLAY DISTRICT ORDINANCE**

20 minutes

**Narrative**

The Board of Supervisors set the Public Hearing date of January 21, 2019 for the proposed ordinance consideration. The Ferguson Township Planning Commission met on December 4, 2018, and provided non-substantive comments as well as the Centre Region Planning Commission as part of their review and comment on December 6, 2018. Both sets of comments have been supplied within you meeting packets. Staff forwarded Public Hearing notice to proposed Zone I property owners and supplied a copy of the Ordinance and Appendices to the Centre County Planning and Community Development Office. Staff requests further feedback on recently received comments prior to the Public Hearing.

**Staff Recommendation**

That the Board of Supervisors *review and discuss* the comments on the draft Sourcewater Protection Overlay District Ordinance.

**VI. NEW BUSINESS**

**1. CONSENT AGENDA**

5 minutes

- a. 2017-C17 Pay Application: \$110,573.00
- b. Treasurer's Report – November 2018
- c. Voucher Report – November 2018
- d. Board Member Request – Beaver Branch Preservation
- e. Board Member Request – Pennsylvania Cap and Trade Petition

**2. A PUBLIC HEARING ON A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA APPROVING A SETTLEMENT OFFER WITH NAVISTAR, INC. AND ALLEGHENY TRUCKS, INC. TO RESOLVE PENDING LITIGATION IN THE CENTRE COUNTY COURT OF COMMON PLEAS DOCKET #15-4057.**

10 minutes

**Narrative**

In 2014, the Township acquired a Terrastar by Navistar single-axle dump truck. The truck has been inoperable since shortly after its acquisition, and the Township has been seeking to recuperate its costs through litigation. A settlement offer has been proposed by Navistar, Inc. of \$27,500, and the Township is able to retain ownership of the vehicle. Action by the Board is required to accept the settlement offer. Provided for the Board is a copy of the resolution as advertised for public hearing, as well as a letter from Joe Green, Esq., Township Solicitor, further describing the settlement.

*Recommended Motion: That the Board of Supervisors adopt the resolution approving a settlement offer with Navistar, Inc. and Allegheny Trucks, Inc., of \$27,500 to resolve pending litigation in the Centre County Court of Common Pleas.*

**Staff Recommendation**

That the Board of Supervisors **adopt** the resolution.

**3. PRESENTATION OF HARNER FARM CONCEPT PLAN**

20 minutes

**Narrative**

Aspen Whitehall Partners, LLC and Aspen Route 26 Partners, LLC are proposing the development of the 27-acre portion of the Harner Farm south of Whitehall Road. The proposed development includes 36 single-family lots ranging in size from 0.25 acres to 0.50 acres and two commercial lots. Two public roads will be constructed to serve the project. Under Chapter 22-302, Preapplication Conference, a potential applicant for a subdivision or land development can request a conference with the Planning Commission for the purpose of discussing or reviewing such proposed subdivision or land development. The Planning Commission held the Preapplication Conference at their December 4, 2018, meeting and provided comments directly to the applicant. Those comments are included within the memo in your packet along with the Concept Plan Narrative.

**Staff Recommendation**

That the Board of Supervisors **review and comment** on the proposed concept plan for Harner Farms.

**4. REVIEW OF DRAFT AMENDMENTS TO THE FERGUSON TOWNSHIP PERSONNEL POLICY MANUAL**

10 minutes

**Narrative**

The Township has adopted a personnel policy manual that governs employment-related standards, procedures, and practices for all uniformed and non-uniformed personnel. The policy manual is in need of several amendments due to changes in protocol, retirement of personnel, and new regulations. Provided with the agenda is a copy of the complete current personnel policy manual as adopted in 2015. Also provided with the agenda is a copy of the redlined amendments that staff is requesting. These include changes to the policies relative to the Sexual Harassment; Regular Pay Periods; Personal Days; Vacation; and Employment of Relatives. Amendments to the personnel policy manual are adopted by the Board by resolution. At this time, the Board is requested to review the proposed changes and suggest any modifications or additional amendments that may be warranted at this time.

*Recommended Motion: That the Board of Supervisors direct staff to prepare a resolution for public hearing amending the Ferguson Township Personnel Policy Manual.*

**Staff Recommendation**

That the Board of Supervisors **review and discuss** the proposed personnel policy manual amendments and **direct** staff to prepare a resolution for public hearing.

**5. AUTHORIZATION OF ENGINEERING STUDY TO EVALUATE LENGTHENING TURN LANES AT THE INTERSECTIONS OF WEST COLLEGE AVENUE AND SCIENCE PARK ROAD AND WEST COLLEGE AVENUE AND BRISTOL AVENUE**

10 minutes

**Narrative**

A Board member requested an evaluation be done to examine whether engineering warrants were met to lengthen the left turn lanes on West College Avenue (PA Route 26) at its intersections with Science Park Road and Bristol Avenue. If approved, the Township would complete the analysis in-house and submit the results to the Pennsylvania Department of Transportation for review and approval. If the results supported lengthening turn lanes, the project could be included in the 2019 line striping contract.

*Recommended Motion: That the Board of Supervisors direct staff to conduct an engineering study to determine if turn lane lengths should be increased on West College Avenue at its intersections with Science Park Road and Bristol Avenue. Further, that the Board direct staff to forward the results to the Pennsylvania Department of Transportation for review and approval, if warranted. And further, that the Board direct staff to add the pain line eradication and re-striping for the turn lane improvements to the 2019 line striping contract.*

**6. AUTHORIZATION FOR TOWNSHIP STAFF TO SUBMIT A GREEN-LIGHT-GO ROUND 5 GRANT APPLICATION FOR TRAFFIC SIGNAL DETECTION IMPROVEMENTS AT VARIOUS INTERSECTIONS** 5 minutes

**Narrative**

As in year's past, the Township is interested in submitting an application for the Pennsylvania Department of Transportation's Green-Light-Go Program to continue upgrading its signalized intersections with digital radar detection. The grant program requires a twenty percent (20%) match from the Township plus any cost overruns associated with the project. If successful, the grant will be used to fund traffic signal detection improvements at the intersections of Blue Course Drive and Martin Street, and Science Park Road and the Raytheon driveway.

*Recommended Motion: That the Board of Supervisors authorize staff to submit a Green-Light-Go Round 5 Grant Application for traffic signal detection improvements at various intersections.*

**Staff Recommendation**

That the Board of Supervisors **authorize** staff to submit the grant application.

**VI. STAFF AND COMMITTEE REPORTS**

1. **COG COMMITTEE REPORTS** 10 minutes
  - a. Executive Committee
  - b. Joint Parks Capital and Parks & Rec Authority
2. **OTHER REGIONAL REPORTS** 5 minutes
3. **STAFF REPORTS** 20 minutes
  - a. Township Manager
  - b. Planning and Zoning Director
  - c. Public Works Director - No written report

**VII. COMMUNICATIONS TO THE BOARD**

**VIII. CALENDAR ITEMS – JANUARY**

1. Coffee and Conversation, January 12<sup>th</sup>, 8:00 a.m. – 9:30 a.m., Baileyville Community Hall.

**IX. ADJOURNMENT**

Sara Carlson  
1763 Princeton Drive  
State College, Pennsylvania 16803  
[spock.sara@gmail.com](mailto:spock.sara@gmail.com)  
814-280-6460

December 22, 2018

Peter Buckland  
Board Chair  
Ferguson Township  
3147 Research Drive  
State College, Pennsylvania 16803

Dear Chairman Buckland:

As per our conversation on December 18, 2018, please accept this letter as notice of my resignation as Township Supervisor in Ferguson Township Ward 3 effective December 31, 2018. Due to ongoing health issues, I am no longer able to serve the residents of Ferguson Township effectively.

I would like to thank the residents of Ward 3, the township at large, my fellow board members, and the staff of Ferguson township for their expertise, support, and understanding. I offer my best wishes for continued success of the board and the township.

Sincerely,

Sara Carlson

CC: David Pribulka, Township Manager

Section 407. Vacancies in General.--(a) If the electors of any township fail to choose a supervisor, tax collector or auditor, or if any person elected to any office fails to serve in the office, or if a vacancy occurs in the office by death, resignation under subsection (b), removal from the township or otherwise, the board of supervisors may appoint a successor who is a registered elector of the township and has resided in that township continuously for at least one year prior to their appointment.

(b) A resignation:

(1) Shall not create a vacancy until the date that the resignation is accepted by a majority vote of the board of supervisors at a public meeting or the effective date of the tendered resignation, whichever is later. The board of supervisors must accept a tendered resignation no later than forty-five days after the resignation has been tendered to the board of supervisors, unless the resignation is withdrawn in writing prior to acceptance.

(2) That is not accepted as under paragraph (1) shall be deemed accepted forty-five days after the resignation has been tendered to the board of supervisors.

(c) If, for any reason, the board of supervisors refuses, fails, neglects or is unable to fill a vacancy within thirty days after the vacancy occurs, as under this section, the vacancy shall be filled within fifteen additional days by the vacancy board. The vacancy board shall consist of the board of supervisors and one registered elector of the township, who shall be appointed by the board of supervisors at the board's first meeting each calendar year or as soon thereafter as is practical. The appointed elector shall act as the chairperson of the vacancy board.

(d) If the vacancy board fails to fill the position within fifteen days, the chairperson, or if the position of the chairperson is vacant, the remaining members of the vacancy board shall petition the court of common pleas to fill the vacancy.

(e) If two or more vacancies in the office of supervisor occur on a three-member board, or three or more vacancies occur on a five-member board, the court of common pleas shall fill the vacancies upon presentation of a petition signed by at least fifteen registered electors of the township.

(f) A successor appointed under this section shall hold office until the first Monday in January after the first municipal election which occurs at least sixty days after the vacancy occurs, at which election an eligible person shall be elected for the unexpired term.

(407 amended July 7, 2017, P.L.294, No.16)

**Compiler's Note:** Section 9(2)(ii) of Act 167 of 2006 provided that section 407 is repealed insofar as it is inconsistent with Act 167.

**Compiler's Note:** Section 5 of Act 166 of 2006, which amended section 407, provided that elected assessors in office in townships of the second class as of the effective date of section 5 shall serve the remainder of their unexpired terms. Thereafter, assessors shall neither be elected nor appointed.

## FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting  
Monday, December 10, 2018  
7:00 PM

### I. ATTENDANCE

The Board of Supervisors held its second regular meeting of the month on Monday, December 10, 2018, at the Ferguson Township Municipal Building. In attendance were:

**Board:** Peter Buckland  
Laura Dininni  
Sara Carlson  
Tony Ricciardi

**Staff:** Dave Pribulka, Township Manager  
Dave Modricker, Public Works Director  
Ray Stolinas, Director of Planning & Zoning  
Chris Albright, Chief of Police

*Others in attendance included:* Faith Norris, Recording Secretary; Mark Kunkle.

### II. CALL TO ORDER

Mr. Buckland called the Monday, December 10, 2018, regular meeting to order at 7:00 p.m.

### III. CITIZENS INPUT – None

### IV. APPROVAL OF MINUTES

Ms. Dininni moved that the Board of Supervisors **approve** the December 3, 2018, Regular Meeting minutes. Ms. Carlson seconded the motion.

Noted were two changes: 1) strike duplicate motion on page 2 regarding Playground Safety course; and 2) add the recess taken after the sourcewater discussion.

The motion passed unanimously.

### V. UNFINISHED BUSINESS

#### a. A PUBLIC HEARING RESOLUTION ADOPTING THE BUDGET FOR THE FISCAL YEAR 2019, BEGINNING JANUARY 1, 2019 AND ENDING DECEMBER 31, 2019

Mr. Pribulka introduced the 2019 Township budget for approval. Changes were made prior to posting the final budget online.

Mr. Miller moved that the Board of Supervisors adopt the resolution approving the Ferguson Township Operating Budget for fiscal year 2019, beginning January 1, 2019 and ending December 31, 2019. Ms. Carlson seconded the motion.

Roll Call vote on Resolution 2018-27: Mr. Buckland – YES; Ms. Carlson – YES; Ms. Dininni – YES; Mr. Miller – YES; Mr. Ricciardi – YES.

#### b. A PUBLIC HEARING RESOLUTION REPEALING RESOLUTION 2017-29 AND ESTABLISHING A NEW FERGUSON TOWNSHIP SCHEDULE OF FEES FOR 2019

Mr. Pribulka introduced the fee schedule for review and approval. Discussion followed on a variance fee that was increased from \$200 to \$500 for zoning that was noted as possibly being cost-prohibitive if an individual was paying out of pocket. This was noted in the previous Board meeting by a resident. Mr. Pribulka noted that staff did review what other municipalities have set as a standard for the fee in addition to the escrow amount. Examples were shared along with what costs that are not passed on

to the applicant. A recommendation on amendments were made for the Board to decide on the fee moving forward.

Mr. Miller moved that the Board of Supervisors **adopt** the resolution repealing Resolution 2017-29 and establishing a new Ferguson Township Schedule of Fees for 2019. Ms. Dininni seconded the motion.

It was clarified the analysis was done solely for exceptions to the variances in section F of the fee schedule. More details followed specifically on section F-Zoning Hearing Board. Discussion followed on the recommendation for the application fee and separate escrow fee.

Ms. Carlson moved that the Board of Supervisors **amend** the motion to adjust the variance rate to \$300.00. Ms. Dininni seconded the motion. The amended motion passed unanimously.

Discussion followed on assessing fees for certain items under the Health Inspection category.

Roll Call vote for Resolution 2018-28: Ms. Carlson – YES; Ms. Dininni – YES; Mr. Miller – YES; Mr. Ricciardi; Mr. Buckland – YES.

c. ADOPTION OF THE 2019 CENTRE REGION COUNCIL OF GOVERNMENTS BUDGET

Mr. Pribulka introduced the 2019 COG budget for approval and reviewed the narrative.

Mr. Ricciardi moved that the Board of Supervisors **adopt** the 2019 Centre Region Council of Governments Budget. Mr. Miller seconded the motion.

A follow-up question was asked by a Board member about the revision in the operating budget for Whitehall Road Regional Park in relation to a reassessment. Mr. Miller noted the comments were referred to the Finance Committee for discussion for next year. More details were discussed.

The motion passed unanimously.

VI. **NEW BUSINESS**

a. CONSENT AGENDA

1. 2018-C8, Alpha Space, Final Pay Application: \$902.59
2. 2018-C22 Tudek Barn: \$20,000.00
3. 2016-C19 W. College/Corl St. Upgrade: \$29,384.08

Mr. Carlson moved that the Board of Supervisors **approve** the Consent Agenda. Mr. Ricciardi seconded the motion. The motion passed unanimously.

b. ZONDING APPEALS/VARIANCES

1. Request for Variances – 3020 Research Drive

Mr. Buckland turned the meeting over to Mr. Miller for the variance request and recused himself due to a conflict of interest.

Mr. Stolinis introduced and reviewed the variance request and discussed shared parking under Chapter 27 of the code.

A clarification was made that the variance is for the requirement for shared parking alterations for a Land Development Plan that requires approval by the Board of Supervisors.

Ms. Dininni moved that the Board of Supervisors **remain neutral** on the variance requests for 3020 Research Drive. Ms. Carlson seconded the motion. The motion passed unanimously.

c. A PUBLIC HEARING RESOLUTION LEVYING TAXES AND ASSESSMENTS FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2019 AND ENDING DECEMBER 31, 2019

Mr. Buckland introduced the resolution. Mr. Pribulka reviewed the taxes and Assessments. The only assessment change noted was in the street light fee that is necessary to keep fund list in balance.

Mr. Ricciardi moved that the Board of Supervisors **adopt** the resolution levying taxes and assessments for the fiscal year 2019, beginning January 1, 2019 and ending December 31, 2019. Ms. Dininni seconded the motion.

Mr. Buckland noted an editorial correction that needed to be made in the resolution regarding the .09 cents per front foot.

Roll Call vote for Resolution 2018-29: Ms. Dininni – YES; Mr. Miller – YES; Mr. Ricciardi – YES; Mr. Buckland – YES; Ms. Carlson – YES.

d. A PUBLIC HEARING RESOLUTION REPEALING RESOLUTION 2017-32 AND ADOPTING A REVISED COMPENSATION PLAN FOR NON-UNIFORMED EMPLOYEES WITH AN EFFECTIVE DATE OF JANUARY 1, 2019

Mr. Pribulka introduced the item for public hearing and reviewed the changes.

Ms. Carlson moved that the Board of Supervisors **adopt** the resolution repealing Resolution 2017-32 and adopting a revised compensation plan for non-uniformed employees with an effective date of January 1, 2019. Ms. Dininni seconded the motion.

Roll Call vote for Resolution 2018-30: Mr. Miller – YES; Mr. Ricciardi – YES; Mr. Buckland – YES; Ms. Carlson – YES; Ms. Dininni – YES.

e. A PUBLIC HEARING ON A RESOLUTION ESTABLISHING CONTRIBUTIONS TO THE POLICE PENSION FUND BY MEMBERS

Mr. Pribulka introduced the item for public hearing and reviewed the requirements and contributions for 2019.

Ms. Dininni moved that the Board of Supervisors **adopt** the resolution establishing contributions to the Police Pension Fund by its members in 2019. Mr. Miller seconded the motion.

Roll Call vote for Resolution 2018-31: Mr. Ricciardi – YES; Mr. Buckland – YES; Ms. Carlson – YES; Ms. Dininni – YES; Mr. Miller – YES.

f. CONTINUED DISCUSSION OF COMPOSTING TOILETS AT LOCAL AND REGIONAL PARK

Mr. Pribulka introduced the item for discussion with some history of technology and associated cost range. Communication was shared that was received from the State College Borough Water Authority. This could be a positive investment for parks outside the growth boundary as Mr. Pribulka stated.

Discussion followed on using this service, performance, maintenance, methodology, disposal and incorporating the Ferguson Parks Committee into the discussions. Following a discussion on utilization, a follow-up will be done with UAJA on disposal and how it fits into the regional sewer service boundary. Act 537 Plan was discussed.

Following the discussion, Mr. Pribulka recommended the item be given to the Ferguson Parks Committee for review and recommendation back to the Board. Discussion followed on the Recreation, Parks, and Open Space Plan and how it related to restroom facilities in parks.

Mr. Buckland moved that the Board of Supervisors **forward** the composting toilet agenda item for discussion to the Ferguson Parks Committee for recommendation back to the Board about their incorporation into Ferguson Township Parks. Ms. Carlson seconded the motion. The motion passed unanimously.

g. AUTHORIZATION OF FERGUSON TOWNSHIP PUBLIC WORKS GARAGE VRF HVAC SYSTEM

Mr. Modricker introduced the item for authorization and gave some background on the proposed project. Discussion followed on the heating and cooling elements based on consultant recommendation for the Variable Refrigerant Flow (VRF) HVAC system for the proposed Ferguson Township Public Works office section of the facility. This will assist with the certification and design processes. No comments were made.

Ms. Dininni moved that the Board of Supervisors **approve** the VRF HVAC system. Mr. Miller seconded the motion. The motion passed unanimously.

VII. **STAFF AND COMMITTEE REPORTS**

a. COG COMMITTEE REPORTS

1. Ad Hoc Facilities Committee. The committee met on December 4<sup>th</sup>. Mr. Buckland noted discussion was held on the assessment of space utilization in the COG building. Another discussion was how to assess facilities across COG. Details followed on both discussions. A draft facilities manual is available. The Board discussed the possibility of employing a facilities manager at COG in the future.
2. Human Resources Committee. The committee met on December 5<sup>th</sup>. Mr. Ricciardi noted most of the discussion was on the first draft of the COG handbook that will be presented at the General Forum-details followed on specific language reviewed and gave credit to those who have put a lot of work into updating the handbook. The next meeting is scheduled for January 9<sup>th</sup>.
3. PSE Committee. The committee met last Thursday. Mr. Buckland stated refuse, recycling and composting discussions-modest rates hikes discussed for 2019; preparation of MOU; reviewed amended contract language per motion at the meeting; details followed on proposed truck structure for the composting program and issues surrounding the emissions in the environment along with other options. A detail discussion followed on options.

b. OTHER REGIONAL COMMITTEES

- i. Parks & Rec. Regional Comprehensive Plan Steering Committee. The committee met on December 4<sup>th</sup>. Ms. Dininni stated the primarily topic was going through the survey - draft will go out to the Board; January 30, 2019, at 7:00 p.m. a Town Hall will be held at the State College Area High School to discuss what is important in the Centre region for stakeholders – snow day will be February 6<sup>th</sup>.

Ms. Carlson noted that the Public Safety and Finance committees cancelled their recent meetings. However, there are Finance strategic goals for the year that can be provided for anyone who is interested in seeing that information.

**c. STAFF REPORTS**

1. Township Manager. No written report. Mr. Pribulka attended a productive joint meeting with Centre County Association of Realtors last week to discuss affordable housing initiatives in regards to ideas on drafting the workforce housing development agreement for Pine Hall TTD; represented along with the Zoning Officer at the Centre Region Planning Commission Meeting last week to discuss the draft sourcewater protection overlay district ordinance – received comment letter from discussions and good feedback was provided-details followed on review dates and public hearing. The first Board of Supervisors meeting for 2019 is scheduled for January 7<sup>th</sup>.
2. Planning and Zoning Director. The Planning Commission met last Tuesday. Discussion took place on the sourcewater protection overlay district and recommendations were provided to the Board by the Planning Director for consideration; and review of the Harner Farm concept plan – update followed and will potentially be placed on the January 7<sup>th</sup> Board agenda to review as a concept plan. The November Permit Report and yearly comparison of permits were provided with the report.
3. Public Works Director. No written report. Ms. Dininni thanked Mr. Modricker for the work done on the Beaver Branch flood plan. Mr. Modricker noted it was shoulder damage that was repaired.

Mr. Buckland noted communication regarding responsiveness and timing near Bachman Lane for Brush and Leaf collection. A follow-up will be done.

4. Chief of Police. Chief Albright reported November and year-to-date statistics. Part 1 crimes and calls for service are down for the year; notable incidents reviewed; officers hosted Know Your Rights event at the Hub at PSU and run-hide-fight training drills at several schools; Sgt Hendrick and Sgt Morrison presented crime scene processing and emergency vehicle and operation control at this year's Citizens' Police Academy; shared positive letters from community members.

**VIII. COMMUNICATIONS TO THE BOARD - ...**

- A. Ms. Dininni had communication from Ferguson Township Lions that are hosting a supply drive for Beacon Lodge Camp. Details followed on wish list and drop off/pick up this Wednesday.

**IX. CALENDAR ITEMS**

- a. Holiday Office Closures - December 24-25, 2018
- b. Board of Supervisors Worksession to Interview ABC Applicants – December 13<sup>th</sup>, 6:30 p.m.
- c. Board of Supervisors Reorganizational Meeting – January 7, 2019, 7:00 p.m.
- d. Executive session coming up regarding an employee. Day and time to be determined.

**X. ADJOURNMENT**

Mr. Buckland called for adjournment. With no further business to come before the Board of Supervisors, Ms. Dininni motioned to adjourn the meeting. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

David Pribulka, Township Manager  
For the Board of Supervisors



December 28, 2018

**RE: Greenbriar Pressure Sewer Project**

Dear Property Owner:

At the October UAJA Board meeting, the UAJA Board approved an offer to the property owners in Greenbriar. That offer was based on the assumption that UAJA would complete the work in the paved areas by cutting the pavement, excavating, and restoring the pavement according to the Ferguson Township Ordinances. The next step was to obtain a Pave Cut and Roadway Occupancy Permit from Ferguson Township, which would have finalized the cost. That permit was received from Ferguson Township December 12, 2018, and included a requirement that UAJA bore all of the road crossings so that the pavement would not be cut. The reason for this requirement is that utility pavement cuts weaken the pavement, potentially allow uneven settling, and will likely result in the life of the pavement being diminished.

UAJA estimates that this requirement would add \$400,000 to the project cost. UAJA will not bore the crossings, for several reasons. The most important reason is that boring will require a contractor, and that would reduce the control that UAJA has over the project. In existing neighborhoods, UAJA uses our own crews, so that we can work with the property owners to make the project as painless as possible. It is very difficult to control the work of a contractor under Pennsylvania laws. There are unknowns associated with boring. The potential for disruption of service for other utilities, particularly from the cast iron water mains, is high. The boring head might be deflected by large rocks during boring. These unknowns may result in costly change orders as the project would progress.

Since UAJA will not bore the crossings, the alternative that is acceptable to Ferguson Township is to mill and overlay all of the streets in the project area at the completion of the project. This allows UAJA to complete the project as designed, using UAJA crews. Based on Ferguson Township estimates, it would cost approximately \$500,000 to mill and overlay all of the streets in Greenbriar affected by the project.

While the UAJA Board has not taken formal action on this (it was not an agenda item at the December 18<sup>th</sup> meeting), board discussion indicates UAJA is not willing to absorb this additional cost. Since there are 89 properties to be served by the sewer project, this results in \$5,617 being added to the cost to be paid by each property owner at the time of connection.

The final offer to the property owners will be on the January 16, 2019 UAJA board meeting agenda, with the formal offer letters being sent within a few days of the meeting. If nothing changes to allow UAJA to cut the pavement without requiring milling and overlay, the offer will likely be as follows:

1. Property owner pays UAJA \$6,047 in tapping fees and connection fees at the time of connection.
2. Property owner pays UAJA \$5,617 for the paving cost.
3. Property owner contracts with an electrician to run 240 volt single phase electrical service to the control panel provided by UAJA.
4. UAJA installs grinder pump stations, customer lines to the grinder pump stations, the standard control panel, and all of the mains.

Thank you for your patience. As is often the case, design and permitting are the hardest part of the project. Construction is usually the easy part.

Sincerely,

UNIVERSITY AREA JOINT AUTHORITY



CORY R. MILLER  
Executive Director

## **Pribulka,David**

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**From:** Modricker,David  
**Sent:** Friday, December 14, 2018 10:08 AM  
**To:** Cory Miller; Pribulka,David  
**Cc:** Seybert,Ron; King,Lance; McDonald,Steve  
**Subject:** RE: Greenbriar Design

Hi Cory,

I am in receipt of your email and responding on behalf of myself and David Pribulka.

I am sure we will work out a solution in the best interest of the stakeholders (Greenbriar residents, Ferguson Township, and UAJA).

Regarding boring. It is my opinion based on some limited research and discussion with other contractors and utility providers, that boring is cost effective and often less expensive than the cost of open cutting and restoring the road.

This is a typical condition placed on road occupancy permits.

Columbia Gas will be boring laterals in this same neighborhood.

The requirement to bore under street tree canopy is a typical condition. The arborist is willing to work with UAJA and determine the limits of boring and has an air spade to help locate root masses that could limit the amount of boring.

We have discussed boring in the past, in particular during the pre-submission meeting with HRG and David Smith and Mark Harter from your office.

I have a number of calls in to PaDEP to discuss typical low pressure sanitary sewer installation details. I do not believe casing and jacking is a requirement.

UAJA typically installs gravity sewer and does not typically install low pressure sewer systems.

Boring under roads to install low pressure sanitary sewer is customary for the industry. I understand that UAJA does not have experience with boring in-house.

There is a cost if UAJA hire's a contractor, rents equipment, or hires additional staff. I understand you plan to double your field staff. In any case it is a cost. What cost you choose to pass on to the customer is your decision.

If both UAJA and Columbia Gas cut the road to install sewer laterals, we will have close to 100 trench cuts across the road network. The Greenbriar road network is 2.11 miles in length or 11,140 linear feet in length. Utility trenches have been shown to cause significant deterioration of roadways. Today's cost to edge mill and overlay the roads in the neighborhood is approximately \$500,000.

Ideally, a road is microsurfaced every 7 years though we may not have funding to do it this often it may be 10 or 12 years, and repaving is subject to a road assessment but takes place typically over 20 years and often closer to 40 years. There are about 100 miles of roadway in the Township.

The roads in this neighborhood were paved in 2004 and microsurfaced in 2013 and 2014.

The cost to microsurface the roads in this neighborhood is approximately \$134,000.

I have been charged by the Board of Supervisors to be the custodian of the Township right of way and administer chapter 21 part 1 of the code of ordinances. I am trying to be a good custodian for the Township and balance the needs of stakeholders and apply standards to occupy the roadway fairly and consistently with all utility providers.

I am happy to meet with you and the Township Manager. Prior to meeting, please provide me your cost estimate for the several hundred thousand dollars of additional cost for my review. Please consider labor, material, and equipment and the savings from not needing to excavate the trench, backfill the trench with compacted 2A stone, temporary bituminous patch, traffic control flaggers, re-mobilization, additional traffic control, sawcutting, and permanently paving the patch with 5" base course and 1 ½" asphalt wearing course.

Sincerely,

Dave M

David J. Modricker P.E.  
Public Works Director  
Ferguson Township  
3147 Research Drive  
State College, PA  
814-238-4651

APWA Central Pa Chapter President 2018

This message is confidential and intended only for the recipient. Do not forward. If this message was sent in error, and you are not the intended recipient, please delete and disregard this message. Thank you.

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**From:** Cory Miller <crmiller@uaja.org>  
**Sent:** Thursday, December 13, 2018 3:42 PM  
**To:** Pribulka, David <dprbulka@twp.ferguson.pa.us>  
**Cc:** Modricker, David <dmodricker@twp.ferguson.pa.us>; Seybert, Ron <rseybert@twp.ferguson.pa.us>  
**Subject:** RE: Greenbriar Design

David,

UAJA has been developing the Greenbriar Sewer project with the assumption that UAJA could cut the pavement and repair the cuts according to the Ferguson Township specifications, which reference PennDOT specifications. The deal that UAJA is offering to the property owners in Greenbriar is based on that assumption. In a meeting August 15, 2018 with UAJA staff and Ferguson Township staff, Ferguson staff agreed to UAJA cutting pavement and patching. This was back when there was to be a gravity sewer design.

The change to a pressure sewer system was designed with the same assumption. The paving on all of the streets is more than five years old, thus there was no reason for UAJA to think that we would not be allowed to cut the pavement and patch. We applied for the Ferguson Township Pave Cut and Road Occupancy Permit, and we find a special condition: *"Bore all service laterals under the roadway. If boring cannot be accomplished due to underground obstructions or conflicts such as encountering rock, open cutting roadway is permitted."*

By UAJA estimates, this will add several hundred thousand dollars to the project cost. In addition, unless we bore and jack the crossings, we cannot ensure continuous slope direction. While this is a pressure sewer and maintaining an exact grade is not important, it is still important to have all of the pipe slope such that it will drain. In addition, UAJA

specifications require a casing pipe for all bores. The only exception is for Beneficial Reuse lines, because they operate the same as a drinking water system.

While UAJA does not have the Tree Permit at this time, UAJA staff has been told verbally that it is likely that the same boring requirement will be applied to the trees. This requirement will also add significantly to the project cost. UAJA understands that trees are important, and we have been very successful working in close proximity to mature trees without damage. We can work around most of the trees without damage, even within the drip line.

For this project to move forward under the deal offered to the property owners by UAJA, a way must be found to meet the new Ferguson Township requirements without adding cost to the project. If that cannot be accomplished, then the additional cost to UAJA will have to be passed on to the property owners.

This needs to be resolved quickly, because UAJA needs to begin ordering materials for the project.

Let me know a date and time that works for you. We can be available any day/time next week except Wednesday.

Thanks,

Cory Miller  
Executive Director  
University Area Joint Authority  
(814) 238-5361

December 10, 2018

Mr. David Pribulka  
Township Manager  
Ferguson Township  
3147 Research Drive  
State College, PA 16801

**RE: PROPOSED ZONING ORDINANCE AMENDMENT – SOURCE WATER PROTECTION OVERLAY DISTRICT**

Dear Dave:

The Joint Articles of Agreement of the Centre Regional Planning Commission (CRPC) require that the CRPC review any proposed action of a governing body of a participating municipality relating to:

1. *The location, opening, vacation, extension, narrowing or enlargement of any street, public ground, or watercourse;*
2. *The location, erection, demolition or sale of any public structures located within a municipality;*
3. *The adoption, amendment or repeal of any official map, subdivision and land development ordinance, zoning ordinance or planned residential ordinance.*

This process facilitates regional cooperation and coordination by allowing members of the CRPC to provide advisory comments to the governing body for its consideration.

At its regularly scheduled meeting on December 6, 2018, the CRPC reviewed the proposed zoning ordinance amendment and offered the following comments for the Township Board of Supervisors to consider:

Content Comments

1. Asked if there were any additional reporting requirements that were not deleted with Section 7. The Township Manager confirmed that reporting requirements, except those that may be required with a land development plan had been deleted.
2. Consider amending Section 10.B.6 by providing a more specific statement or timeframe on when technology upgrades are needed to allow the continuation of a nonconforming use. This would provide certainty for property owners as how to legally maintain nonconforming land uses.
3. In Section 8, Penn State requested to continue the informal review process on submissions that the University receives periodically, as opposed to being included in a more formal review process on new Regulated Land Uses and Activities.

4. Confirm that General Agricultural Research is deleted from the table of regulated land uses. The Zoning Officer confirmed General Agriculture Research is not a regulated use.
5. The CRPC asked for clarification on what triggers the review of a new land use. The Township Manager indicated this will be triggered by a change of use, complaint, or self-reporting by the property owner.
6. Page 9, Section 4Bi – In line one, consider inserting “pre-packaged” between “sell” and “fuels”. The concern is that without that qualifier, the types of businesses listed are exempted from the ordinance. In line three, change “package” to “packaged”.
7. Page 22, Section 14 – **The wording of this repealer is not consistent with the repealer contained on Page 9 in Section 4C.** Which one takes precedence?

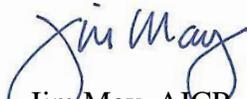
#### Editorial Comments

1. Page 6 – The definition of retention basin is not accurate. Consider adding the following to line 2: After “event” add “of a certain size”. After “the end of the storm” add “or during storms that produce more precipitation than the basin is designed to hold”.
2. Page 7 – Subsection “S” says “Other tanks excluded by regulations under the Act.” It is not clear which Act is being referred to.
3. Page 9 – Insert a carriage return between the definitions of “Water-Source Heat Pump” and “Water Table”.
4. Page 13, Section 8A1 – Correct lettering of subsections “b” and “c” to “a” and “b”.
5. Pages 13 thru 22 – Renumber Sections 8 thru 15 to reflect the removal of Section 7 (or designate Section 7 as “Reserved”).
6. Pages 14-15 and 15-16. In Table 1, the requirements for Zone II for Land Use Activities 17 and 18, and 24 thru 28 are cut off by the format of the table (use of a solid line at the bottom/top of the pages) as the Table continues from one page to the next. Consider changing format of the line to dashed and/or inserting “- continued -” at the bottom/top of the respective pages.
7. Page 19, Section 10C5 – In line 2, consider adding after “increased” the following phrase: “except for fluctuations resulting from the delivery of supplies to replenish stocks up to previously reported levels and the decrease attributable to proper use of the substances”.
8. Page 21, Section 11A5 – Remove “either”.
9. Page 21, Section 11A8 – Consider adding language related to places where vehicles are deiced before/after trips.

10. Page 21, Section 11A9 and 10. It is not clear why the language added to subsection 9 was not made part of subsection 10 and one of the subsections eliminated.
11. Page 21, Section 11A12 – Renumber to “11” (or “10” if the suggestion above is implemented).
12. Page 22, Section 13B – In line one, change “relive” to “relieve”.
13. MAP – There is no location shown for the Rock Springs well on the Township-wide map even though the well’s location is shown in an inset. On the Township-wide map, there is no Zone II defined for the Dearmit well field or Rock Springs well. Page 10 Section 5B of the ordinance says that the default size of Zone II is “...a 1/2 mile radius around a well...”

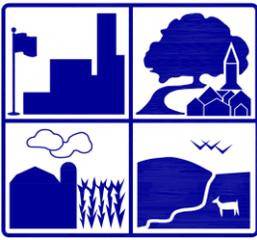
Please call or e-mail if you have questions, or if you require additional information.

Sincerely,



Jim May, AICP  
Director

cc: Centre Regional Planning Commission  
Ray Stolinis, Ferguson Township Planning and Zoning Director



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# TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801  
Telephone: 814-238-4651 • Fax: 814-238-3454  
[www.twp.ferguson.pa.us](http://www.twp.ferguson.pa.us)

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TO: Ferguson Township Board of Supervisors

FROM: Raymond J. Stolinas, Jr., AICP, Director of Planning & Zoning

DATE: December 4, 2018

SUBJECT: Source Water Protection Overlay District Draft Ordinance  
Planning Commission Comments

At the December 4<sup>th</sup> Planning Commission meeting, members discussed the draft ordinance, with red line changes, as a result of the Ad Hoc Board generated list of recommendations to the Board of Supervisors. The Planning Commission provided the following comments on the proposed draft Source Water Protection Ordinance:

1. Consider removing "private wells" from the purpose and intent statement on the first page or revise language for clarification of what a private well is.
2. On page 1, last sentence, consider changing the word "farming" to "agriculture operations".
3. On the second page, in the top paragraph, remove the word "scientifically".
4. On page 3, "Agriculture Operation" definition, remove the last sentence within the definition.
5. On page 3, "Alteration, Structural" definition, the last line should say "the moving of a building from one location to another."
6. On page 4, remove the "Facility Profile Sheet" definition.
7. On page 5, "Land Development" definition, where does the "Minor Subdivision" in the Subdivision and Land Development Ordinance (SALDO) come into play regarding costs incurred or approvals?
8. Clarify the definition of "Zone II" versus "Township Wide Zone II" versus "Township Wide Sourcewater Protection Overlay District".
9. Consider showing the map with Zone I and another color for Zone II and another appendix that shows the Penn State University well radii and headwaters.
10. Consider adding "Fire-Suppression Storage Tanks" on page 8 under the Storage Tank list.
11. In Section 6, second paragraph, clarify "This evidence must include applicable geographic data with respect to the property and any other pertinent documentation for consideration."
12. In Section 8, under number 1, remove the reference to Section 7.
13. In Section 8, under letter A., number 2., consider placing the water supplier review fee in the Township Fee Schedule as an escrow.
14. Consider including a definition for "Freight or Truck Terminals".
15. On Page 20, omit letter "F." as it refers to Section 7.
16. On Page 20, Section 2., add after "following requirements", "in addition to Plan Review Procedures and Requirements within the Ferguson Township Subdivision and Land Development Ordinance".
17. On Page 20, consider including a definition for the term "Qualified Professional".
18. On Page 21, number 5 omit the word "either."

There was a lengthy discussion regarding how the above comments would be relayed to the Board of Supervisors before the Public Hearing scheduled in January 2019. The Planning Commission requested the Planning & Zoning Director to prepare a memo for the Board's December 10, 2018 detailing these recommendations.

The Planning Commission also realized that the Ad Hoc Source Water Board recommended that notification be sent to all property owners within the proposed Zone I capture areas. Staff can provide notice upon authorization by the Township Manager or Board of Supervisors.

# **SOURCE WATER PROTECTION OVERLAY DISTRICT**

**AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, AMENDING THE CODE OF ORDINANCES, CHAPTER 27, ZONING ORDINANCE, PART 2, DISTRICT REGULATIONS, BY ESTABLISHING A NEW SECTION 27-216 CONCERNING SOURCE WATER PROTECTION OVERLAY DISTRICT REQUIREMENTS. THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF FERGUSON HEREBY ORDAINS: SECTION 1, CHAPTER 27, FERGUSON TOWNSHIP ZONING ORDINANCE, PART 2, DISTRICT REGULATIONS, SECTION 27-216, IS HEREBY ESTABLISHED TO READ AS FOLLOWS: §27-216. SOURCE WATER PROTECTION OVERLAY DISTRICT REQUIREMENTS. THE SOURCE WATER PROTECTION OVERLAY DISTRICT REQUIREMENTS ARE INTENDED FOR THE REGULATION OF LAND USES WITHIN THE SOURCE WATER PROTECTION OVERLAY DISTRICT FOR THE PURPOSE OF PROTECTING GROUNDWATER AND SURFACE WATER, WHILE DEFINING SOURCE WATER TERMS, REQUIRING ADDITIONAL REVIEW FROM PUBLIC WATER SUPPLIERS, PROVIDING FOR CERTAIN REGULATED LAND USES AND ACTIVITIES WITHIN THE SOURCE WATER PROTECTION OVERLAY DISTRICT, PROVIDING LAND DEVELOPMENT DESIGN STANDARDS, THE REQUIREMENT OF ENVIRONMENTAL EMERGENCY RESPONSE PLANS, AND ESTABLISHING THE MEANS FOR ENFORCEMENT OF THE ORDINANCE**

## **SECTION 1. PURPOSE AND INTENT**

The purpose of this Ordinance is to protect the health, safety, and welfare of residents and the ecosystems of the township, provide protections for sources of public drinking water supplies, and safeguard the future supply of safe and sustaining drinking water. The designation of a Source Water Protection Overlay District, as provided herein, and the regulation of activities within such Source Water Protection Overlay District are intended to reduce the potential for ground water and surface water contamination and minimize adverse environmental impacts.

The Source Water Protection Overlay District further intends to:

- Protect groundwater-based public and private water supply sources within the Township from contamination.
- Minimize the risk from spills, leaks and other discharges into groundwater within the Source Water Protection Overlay District.
- Manage land use activities that store, handle, and produce hazardous materials or regulated substances which can contaminate water supply sources through inadequate management.
- Encourage Best Management Practices (BMP) to limit degradation of groundwater and surface water quality.
- Provide many of the Source Water protections that are set forth as goals in the existing Source Water Protection reports or plans formulated by such entities as the State College Borough Water Authority, Pennsylvania State University, Bellefonte Borough Water Authority, College Township Water Authority, and any other private water companies utilizing groundwater within the Township for public consumption.
- Update ordinance requirements periodically, taking into account any new technologies or practices in agricultural operations. When new technologies, farming practices, or development

activities could lead to unacceptable harm to people or our source water that is plausible but uncertain, the township shall take actions to avoid or diminish that harm.

- Help mitigate the impacts of a changing climate on the groundwater and surface water resources within the Township by defining the Source Water Protection Overlay District to be the entire Township, thereby including the future southwest extension of the Zone II area.

## SECTION 2. STATUTORY AUTHORITY

Section 1428 of the Federal Safe Drinking Water Act Amendments of 1986 requires the States to establish Wellhead Protection Programs to protect groundwater from contamination. In Pennsylvania, the responsibilities for development and implementation of Source Water (Wellhead) Protection Programs is shared between water suppliers, the Commonwealth, and local municipal governments. The Pennsylvania Department of Environmental Protection (PA DEP) recognizes that, in Pennsylvania, DEP is responsible for regulating water suppliers and discharges of contaminants. Pennsylvania DEP also recognizes that it is the responsibility of local governments to regulate land use. Ferguson Township is empowered to regulate land use activities through the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended, which provides authorization to the Township to enact ordinances regulating development and land uses to ensure the public health, safety, and welfare; provisions for safe, reliable, and adequate water supply; considering current and future water resources availability, uses, and limitations (including provisions adequate to protect water supply sources).

## SECTION 3. DEFINITIONS

For the purposes of this Section, certain terms and words used herein shall be interpreted as presented below.

- A. Words used in the present tense include the future tense; the singular number includes the plural; and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.
- B. The word "includes" or "including" shall not limit the term to the specific example, but is intended to extend its meaning to all other instances of like kind and character.
- C. The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation, or any other similar entity.
- D. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.
- E. The words "used or occupied" include the words "intended, designed, maintained, or arranged to be used, occupied or maintained".

**Agriculture:** Any use of land or structures for farming, dairying, pasturage, land tilling, horticulture, floriculture, arboriculture, silviculture, or animal husbandry.

**Agricultural Business:** A farm that is actively producing agricultural products for purchase and sale. It may include any farm marketing or agricultural tourism endeavor such as farm markets, farm direct marketing, farm stays, farm visits, roadside markets or stands, U-Pick operations, community supported agriculture, rural tourism, farm museums, corn mazes, cider mills, vineyards and wineries, pumpkin patches, petting farms, on-farm retail meat shops, on-farm retail dairies and creameries, on-farm woolen goods shops,

maple syrup farms, Christmas tree farms, multi-farmers' markets, on-farm retail nurseries, on-farm gift shops, on-farm flowers, herbs and spices stores, on-farm bakeries, on-farm restaurants or cafes, and other value added production facilities.

**Agricultural Erosion and Sedimentation Control Plans:** A site specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff, required by Chapter 102 (relating to erosion and sedimentation control). The agricultural erosion and sediment control components of a conservation plan may meet this requirement, if allowed under Chapter 102.

**Agricultural Operation:** An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock, and livestock products; and in the production, harvesting, and preparation for market of use of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

**Agricultural Service Business:** A business engaged in providing services for agricultural operations, including sales and service of farm implements, fertilizer/pesticide/herbicide, agricultural product storage and distribution facilities, testing services, and seed and feed operations.

**Alteration:** As applied to land, a change in topography as a result of the moving of soil and rock from one location or position to another, also the changing of surface conditions by causing the surface to be more or less impervious; land disturbance. This term shall not apply to agricultural plowing and tilling activity.

**Alteration, Structural:** Any change or rearrangement in the supporting members of an existing building such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress and egress, or any enlargement to or diminution of a building or structure, or the moving of a building from one location to another.

**Aquifer:** A water-bearing layer of rock that will yield water in a usable quantity to a well or spring.

**Best Management Practices (BMPs):** Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. Additionally, agricultural practices are intended to be consistent with the Pennsylvania Nutrient Management Chapter.

**Carbonate:** A sediment formed by the organic or inorganic precipitation of mineral compounds characterized by the fundamental chemical in CO<sub>3</sub>, the principal element in limestone and dolomite strata.

**Detention Basin:** An impoundment structure designed to manage stormwater runoff by temporarily storing the runoff and releasing it at a predetermined rate.

**Dolomite:** A rock that contains a variable portion of magnesium carbonite and calcium carbonite.

**Existing Use:** The use of a property as of the date this ordinance was adopted.

**Expansion:** An increase in the size of an existing structure or use, including the physical size of a property, building, parking lot, and other improvements.

**Extraordinary Development Proposal:** A land development plan application that exceeds the prescribed 90-day time limit as outlined in Section 508. Approval of Plats as stipulated within the Act of 1968, P.L. 805, No. 247, the PA Municipalities Planning Code.

**Fracture Trace:** Natural, linear-drainage, soil-tonal and topographic alignments, usually visible on aerial photographs, which are commonly the surface manifestations of corresponding zones of fracture concentration within underlying bedrock. Particularly in soluble rocks (e.g., limestone and dolomite), fracture zones cause increased bedrock porosity and permeability, resulting in rates of groundwater movement that are greater than the surrounding bedrock.

**Freight and Trucking Terminal:** A facility for the receipt, transfer, short-term storage and dispatching of freight and goods transported by truck.

**Hazardous Material:** Materials which are classified by the U.S. Environmental Protection Agency and the Pennsylvania Department of Environmental Protection as having the potential to damage health, impair safety, or pose a significant actual or potential hazard to water supplies if such material were discharged into land or water of the Township. Hazardous materials include but are not limited to: inorganic mineral acids or sulfur, fluorine, chlorine, nitrogen, chromium, phosphorous, selenium, arsenic and their common salts, lead, coal tar acids (such as phenols and cresols) and their salts, petroleum products, pesticides, herbicides, solvents, thinners, fertilizers, and radioactive material.

**Impermeable:** Impervious, impenetrable to moisture.

**Incinerator:** An apparatus for burning waste material at high temperatures until it is reduced to ash. For the purposes of this ordinance, the term "incinerator" shall apply to industrial use only and shall not apply to incinerators which are used as an accessory to agricultural operations.

**Integrated Pest Management Plan:** A plan which provides for the use of multiple pest management tactics which minimize the risk of undesirable environmental and health effects.

**Intermittent or Vernal Pond:** Transient surface water bodies formed in closed depressions after heavy precipitation due to poor internal drainage. This poor drainage may be due to residual clay.

**Karst:** A type of topography that is formed over limestone, dolomite, or gypsum by bedrock solution, and that is characterized by closed depressions, sinkholes, caves, and underground conduit drainage.

**Land Development:** (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving: (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or (ii) the division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features. (2) A subdivision of land. (3) Development in accordance with § 503 (1.1) of the PA Municipalities Planning Code.

**Limestone:** A rock that by chemical precipitation or the accumulation of organic remains consists mainly of calcium carbonate.

**Multifamily Dwelling:** Three or more dwelling units, with the units stacked one above another.

**Nutrient Management Act:** The PA Nutrient Management Act of 1993, which is applicable to agricultural operations with over 2,000 pounds of animal weight per acre that generate or utilize manure. The act requires the development of a plan demonstrating that nutrients which are land applied do not exceed crop uptake.

**Nutrient/Manure Management Plan:** A plan prepared by a qualified professional establishing application rates for manure/fertilizer on agricultural lands to achieve a proper balance of nutrients and minimize nutrient contamination of groundwater.

**Open-Loop Geothermal System:** A type of geothermal heating and/or cooling system that utilizes a water-supply well and a water pump to deliver ground water to a water-source heat pump. The discharge water from the water-source heat pump may be returned to the subsurface through a recharge well or infiltration bed, or may be discharged into a pond, lake, or stream. A spring may also be the source of the ground water supply.

**Preparedness, Prevention, and Contingency (PPC) Plan:** A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, housekeeping program, security and external factors, which is developed and implemented to control potential discharges of pollutants other than sediment into waters of this Commonwealth. (See Section 12).

**Regulated Substance:** A product or waste, or combination of substances that, because of the quantity, concentration, physical, chemical, or infectious characteristics which if not properly treated, stored, transported, used or disposed of, or otherwise managed, would create a substantial present or potential threat to public health through direct or indirect introduction into groundwater resources and the subsurface environment. Such hazardous materials include, but are not limited to, substances regulated under Federal or State environmental, pollution control, hazardous materials, and drinking water laws and regulations.

**Release:** The spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of one or more Regulated Substances upon or into any land or water within the Source Water Protection Overlay District. Release includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site sewage disposal system, dry-well, catch basin, swale, drainage way.

**Retention Basin:** An impoundment in which stormwater is stored and not released during the storm event. Stored water may be released from the basin at some time after the end of the storm.

**Secondary Containment Area:** An additional layer of impervious material creating a space in which a release of a regulated substance from a storage tank may be detected before it enters the environment. This space permits a monitoring zone for leak detection methods.

**Sinkhole:** A localized, gradual, or rapid sinking of the land surface to a variable depth, occurring in areas of carbonate bedrock; generally characterized by a roughly circular outline, a distinct breaking of the ground surface, and downward movement of soil into bedrock voids.

**Source Water Protection Area:** The surface and subsurface area surrounding a water well, well field, spring, or infiltration gallery supplying a public water system, through which contaminants are reasonably

likely to move toward and reach the water source. The Source Water Protection Area shall consist of the following zones:

- A. **Zone I:** The protective zone immediately surrounding a well, spring, or infiltration gallery which shall be a one-hundred (100') to four-hundred (400') foot radius, depending on site-specific source and aquifer characteristics.
- B. **Zone II:** The zone encompassing the portion of the aquifer through which water is diverted to a well or flows to a spring or infiltration gallery. Zone II shall be one-half (1/2) mile radius around the source unless a more detailed delineation is approved.
- C. **Zone III:** The zone beyond Zone II that contributes surface water and groundwater to Zones I and II.
- D. For the purpose of this Ordinance, the **Ferguson Township-Wide Source Water Protection Zone II Overlay District** encompasses the entire area of Ferguson Township.

**Source Water Protection Overlay District:** Wellhead protection areas surrounding public water supply wells, including Zones I, II, and the Township-Wide Source Water Protection Zone II.

**Storage Tank:** Any Aboveground (AST) or Underground (UST) storage tank which is used for the storage of any regulated substance.

**Storage Tank – Aboveground (AST):** One or a combination of stationary tanks with a total capacity in excess of 250 gallons, including underground pipes and dispensing systems connected thereto within the emergency containment area, which is or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes tanks which can be visually inspected, from the exterior, in an underground area. The term does not include the following, or pipes connected thereto:

- A. A tank of 1,100 gallons or less capacity used for storing motor fuel or motor oil for noncommercial purposes.
- B. A tank used for storing heating oil for consumptive use on the premises where stored.
- C. A pipeline facility, including gathering lines, regulated under:
  - (i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. App. §§1671 – 1687).
  - (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A. §§ 2001 – 2015).
  - (iii) An interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (A) or (B).
- D. A surface impoundment, pit, pond, or lagoon.
- E. A stormwater or wastewater collection system.
- F. A flow-through process tank including, but not limited to, a pressure vessel and oil and water separators.
- G. A nonstationary tank liquid trap or associated gathering lines directly related to oil and gas production or gathering operations.
- H. Tanks which are used to store brines, crude oil, drilling, or frac fluids and similar substances or materials which are directly related to the exploration, development, or production of crude oil or natural gas regulated under the Oil and Gas Act (58 P.S. §§601.101 – 601.605).
- I. Tanks regulated under the Surface Mining Conservation and Reclamation Act (52 P.S. §§1396.1 – 1396.31).
- J. Tanks used for the storage of products which are regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§6018.101 – 6018.1003).

- K. Tanks regulated under the Solid Waste Management Act (35 P.S. §§ 6018.101 – 6018.1003) including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.
- L. A tank of 1,100 gallons or less in capacity located on a farm used solely to store or contain substances that are used to facilitate the production of crops, livestock, and livestock products on the farm.
- M. Tanks which are used to store propane gas.
- N. Tanks containing radioactive materials or coolants that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. §§2011-2297).
- O. Tanks regulated under the act of May 2, 1929 (P.L. 1513, No. 451), known as the Boiler Regulation Law (35 P.S. §§1301 – 1500).
- P. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
- Q. A tank that contains a de minimis concentration of regulated substances.
- R. An emergency spill or overflow containment tank that is expeditiously emptied after use.
- S. Other tanks excluded by regulations promulgated under the Storage Tank and Spill Prevention Act.

**Storage Tank - Exempted:** Any tank or container which contains hazardous or petroleum substances, either above or underground, which is otherwise unregulated by the Storage Tank and Spill Prevention Act (STSPA), as amended. For the purpose of this ordinance, exempted tanks are limited to the following: on-premise heating fuel tanks, farm or residential motor fuel tanks with a capacity of 1,100 gallons or less, and tanks, drums, or containers with a capacity of less than 110 gallons which contain hazardous materials.

**Storage Tank Facility:** One or more stationary tanks, including any associated intrafacility pipelines, fixtures, monitoring devices, and other equipment. A facility may include aboveground tanks, underground tanks, or a combination of both. The associated intrafacility pipelines, fixtures, monitoring devices, and other equipment for an aboveground storage tank shall be that which lies within the secondary containment area.

**Storage Tank – Underground (UST):** Any one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term shall not include:

- A. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
- B. Tanks used for storing heating oil for consumptive use on the premises where stored unless they are specifically required to be regulated by Federal law.
- C. A septic or other subsurface sewage treatment tank.
- D. A pipeline facility (including gathering lines) regulated under:
  - (i) The Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671 et seq.).
  - (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989, 49 U.S.C. § 2001 et seq.).
- E. An interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law in paragraph (4).

- F. Surface impoundments, pits, ponds, or lagoons.
- G. Storm water or wastewater collection systems.
- H. Flow-through process tanks.
- I. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- J. Storage tanks situated in an underground area (such as a basement, cellar, working mine, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.
- K. Except for tanks subject to the requirements of 40 CFR 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST), tanks regulated pursuant to the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.
- L. Any underground storage tank system whose capacity is 110 gallons or less.
- M. Any other tank excluded by policy or regulations promulgated pursuant to this act. (Def. amended May 10, 1996, P.L.171, No.34)
- N. Fire Suppression Tanks

**Underground Injection Well:** A bored, drilled, driven, or dug well for the emplacement of fluids into the ground (except open loop geothermal heat pump systems).

**Vertical Closed-Loop Borehole:** A borehole which is constructed to receive heat exchanger loop pipes and grout material. Fill material may be used below a minimum depth of 20 feet below grade as the subsurface conditions warrant.

**Water-Source Heat Pump:** A heat pump that uses a water-to-refrigerant heat exchanger to extract heat from the heat source.

**Water Table:** Upper surface of the zone of saturation in soil or rock.

**Wetland:** Those areas that are inundated or saturated by surface or ground water at frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, fens, and similar areas.

## SECTION 4. APPLICABILITY

- A. This ordinance applies to land uses located or proposed within the area delineated as the Source Water Protection Overlay District, and to those land uses on parcels located within a Source Water Protection Overlay District.
- B. To the extent otherwise permitted or regulated by Federal, state and/or county statutes and regulations, the owners and/or occupiers of lots and tracts of land which are primarily utilized for the purpose of single or multi-family residential dwellings are permitted to utilize and store fuels, hazardous chemicals, pesticides, fertilizers, inflammable liquids and gases, and toxic and regulated substances listed as part of this ordinance in such quantities and in such manner as is

associated with normal and responsible household use, and such limited authorization shall not be deemed a Regulated Land Use and Activity for the purposes of this Ordinance.

- i. For commercial and retail establishments that sell pre-packaged fuels, hazardous chemicals, pesticides, fertilizers, inflammable liquids and gases, and toxic and regulated substances packaged for home uses, these packaged materials shall be exempt from the requirements of this Ordinance.
- C. Both existing and proposed Agricultural Operations and/or Service Businesses defined under Section 3 shall be exempt from this ordinance, provided that individual farmers coordinate and implement best management practices through Conservation, Manure Management, Agricultural Erosion & Sedimentation, and Nutrient Management Plans and any other applicable county, state or federal regulations.
- D. On-site sewage disposal systems, both existing and proposed, must participate and fulfill requirements outlined in the regional Act 537 Plan, and comply with the Ferguson Township Chapter 18, Sewers and Sewage Disposal, Part 5, Sewage Management Program.
- E. Silvicultural and timber harvesting operations and activities shall comply with the Commonwealth's Chapter 102 regulations for Erosion & Sedimentation control and Chapter 105 permits for wetlands and streams through the Centre County Conservation District.

## **SECTION 5. ESTABLISHMENT AND DELINEATION OF SOURCE WATER PROTECTION OVERLAY DISTRICT AND WELLHEAD PROTECTION ZONES**

The "Source Water Protection Overlay District" shall be defined as the entire area within the boundaries of Ferguson Township as set forth on the map marked as **Appendix A**, and incorporated herein by reference thereto. Source Water Protection zones have been established by the State College Borough Water Authority under the "*Source Water Protection Report, January 2007 (Revised in May 2017)*" for **Zones I and II**, and the Pennsylvania State University for **Zone II**. The Rock Springs Water Company retains established well locations within western Ferguson Township, as the Overlay Map includes a prescribed **Zone I** delineation around the well site.

- A. **Zone I:** A protective area immediately surrounding a public water supply with a radius defined by the most recently adopted State College Borough Water Authority "Source Water Protection Report", as amended:
  - 1. **DeArmit Well Field:** Wells 1, 2 & 3 = 400'
  - 2. **Wellfield #4 (Nixon):** Wells 41, 43 & 53 = 400'
  - 3. **Wellfield #5 (Chestnut Ridge):** Well 55 = 135' and Well 57 = 140'
  - 4. **Wellfield #7 (Kocher):** Wells 71, 73 & 78 = 400' and Well 79 = 140'
  - 5. **Wellfields #1 and #3 (Thomas/Harter):** No wells located within township boundary
  - 6. **Penn State University Wellfields:** Well 28A = 400' and Well 37 = No Radius
  - 7. **Rock Springs Water Company:** 400' radius around existing wells

- i. Upon a well decommissioning, the prescribed radius shall no longer be in effect upon notice of the water purveyor to Ferguson Township.
- B. **Zone II:** The area encompassing the portion of the aquifer through which water is diverted into a well and typically defined by DEP as a ½ mile radius around a well unless a more detailed delineation is conducted. Detailed delineation was conducted as part of the State College Borough Water Authority under the “*Source Water Protection Report, January 2007 (Revised in May 2017)*” and outlined as the Source Water Protection Overlay District in **Appendix A**.
- C. Consistent with the Safe Drinking Water Act, for all construction permit applications accepted by the Department of Environmental Protection after October 9, 1995, a water supplier who is developing a community water system well, spring, or infiltration gallery that is installed for a new system or as an expansion of an existing system shall:
- 1. Own or substantially control through a deed restriction, or other methods acceptable to the Department, the Zone I wellhead protection area in order to prohibit activities within Zone I that may have a potential adverse impact on source water quality or quantity.
  - 2. Discontinue the storage, use, or disposal of a potential contaminant within the Zone I wellhead protection area unless the chemical or material is used in the production or treatment, or both, of drinking water.
  - 3. Eliminate the storage of liquid fossil fuel within the Zone I wellhead protection area except for providing auxiliary power to the public water system to ensure the uninterrupted of essential services during power failures or as a primary heating source only when the use of natural gas or propane gas is not a viable option.
  - 4. Construct any new and replacement liquid fossil fuel tanks that are within the Zone I wellhead protection area aboveground within the pump house or an enclosed, locked structure using an impermeable secondary containment structure of greater capacity than the fuel storage tank.

## **SECTION 6. BOUNDARY INTERPRETATION**

Each application for a subdivision, land development, or zoning permit required for a Regulated Land Use and Activity (Table 1) containing land within the Source Water Protection Overlay District shall be submitted in accordance with such other applicable provisions of Ferguson Township ordinances. Any area of the Source Water Protection Overlay District that falls within the subject lot or lots shall be shown on the site plan through shading of such area or areas and identification of the impacted wellfield.

Any applicant seeking subdivision, land development or zoning permit approval for a Regulated Land Use and Activity (Table 1) in a Source Water Protection Zone shall have the burden to present evidence of the boundaries of the District in the area in question. This evidence must include applicable geographic data with respect to the property and any other pertinent documentation for consideration. The Township’s qualified design professional and Planning & Zoning staff shall evaluate the information and shall make determination regarding the boundaries of lands within a particular Source Water Protection Zone. This information shall include:

1. All plans shall be on sheet sizes consistent with (the Township subdivision and land development ordinance).
2. Proposed name or identifying title of project.
3. Name and address of the landowner and developer of the project site.
4. Plan date and date of the latest revision to the plan, north point, graphic scale and written scale. All plans shall be at a scale of one hundred (100') feet to the inch.
5. Total acreage and boundary lines of the project site and the tract of land on which the project site is located.
6. A location map, for the purpose of locating the project site to be developed, at a minimum scale of two thousand (2,000') feet to the inch, showing the relation of the tract to adjoining property and to all highways, streets, Township boundaries, and other identifiable landmarks existing within one thousand (1,000) feet of any part of the tract of land on which the project site is proposed to be developed. Map should also include Source Water Protection Zones along with the most recent aerial photography.

## **SECTION 7. PUBLIC WATER SUPPLIER REVIEW**

- A. Prior to the commencement of any subdivision, land development or new Regulated Land Uses and Activities, as outlined in Table 1. below, the Ferguson Township Department of Planning and Zoning shall furnish a copy of plans or proposed permit application information to public water suppliers such as the State College Borough Water Authority, the Pennsylvania State University, Borough of Bellefonte, or the Rock Springs Water Company under the following requirements:
  1. The owner/applicant shall submit all pertinent information to demonstrate to the Public Water Supplier the following:
    - a. The owner/applicant meets the provisions for Regulated Land Uses and Activities in Table 1.
  2. Ferguson Township shall offer public water suppliers an opportunity to review and comment on proposed land development plans of Regulated Land Uses and Activities. Upon land development application submission, Ferguson Township Planning & Zoning staff shall forward copies of the plans and request public water supplier to review and comment within 45-days of receipt. Extraordinary development proposals may necessitate an extension of public water supplier review time, which may prompt a public water supplier request to extend the 45-day review time. All costs associated with public water supplier review shall be borne by the land development applicant. The public water supplier may waive further review of the proposed development plan, depending upon the physical location of the proposed project, and must notify Ferguson Township Planning staff, in writing, that the public water supplier opts to waive land development plan review.

## **SECTION 8. REGULATED LAND USES AND ACTIVITIES**

The Regulated Land Uses and Activities, under Table 1. contained in this section, sets forth various Regulated Land Uses and Activities to the extent of regulation permitted in each of the zones in the Source

Water Protection Overlay District. In the event of judicial decision affecting any of the Land Uses and Activities or regulations set forth herein, it is the intent of this Ordinance that any provision found to be illegal shall be stricken, and the remaining provisions shall remain in full force and effect.

Full authority for the administration/application of all criteria, terms, and conditions of this section shall be with the Zoning Administrator. Land uses and activities shall be regulated as follows:

**TABLE 1.  
REGULATED LAND USES AND ACTIVITIES**

	<u>LAND USE AND ACTIVITIES</u>	<u>ZONE I</u>	<u>TOWNSHIP-WIDE SOURCE WATER PROTECTION ZONE II</u>
1.	Kennels	NOT PERMITTED	<p><b>A.</b> Proof of a manure management plan and manure storage areas shall be designed in a manner to contain any accidental releases and provide optimal protection of groundwater resources.</p> <p><b>B.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.</p> <p><b>C.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p> <p><b>D.</b> Site map location of where hazardous materials are stored, handled and used.</p>
2.	Pet Care/Daycare Facilities	NOT PERMITTED	
3.	Veterinary Office/Clinic	NOT PERMITTED	
4.	Mining and Quarrying <i>[Special Exception]</i>	NOT PERMITTED	<p><b>A.</b> Location map and site plan, drawn to scale not less than 1" = 100', showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, erosion and sedimentation control all applicable private drinking water supplies or public drinking water sources and all existing or proposed solid waste disposal areas.</p> <p><b>B.</b> A detailed report by a Certified Geologist with experience in hydrogeology attesting to the depth of the seasonal water table, and plan showing benchmarked elevations for depth of excavation.</p>
5.	Regional Civic- or Faith-Based Place of Assembly	NOT PERMITTED	<p><b>A.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.</p> <p><b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p> <p><b>C.</b> Site map location of where hazardous materials are stored, handled and used.</p>
6.	Regional Business-Based Place of Assembly	NOT PERMITTED	
7.	Bed and Breakfast having four to ten rooms as an accessory use to an owner-occupied single-family dwelling unit	NOT PERMITTED	
8.	Farm Café	NOT PERMITTED	
9.	Commercial Cemeteries <i>[Special Exception]</i>	NOT PERMITTED	<p><b>A.</b> All caskets shall be encased in concrete grave liners as defined by the Federal Trade Commission in regulations at part 453, as amended.</p>
10.	Mortuaries <i>[Special Exception]</i>	NOT PERMITTED	<p><b>A.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.</p> <p><b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p>
11.	Convenience Food Stores	NOT PERMITTED	
12.	All Retail Establishments for the sale, service, and rental of goods	NOT PERMITTED	
13.	Barbers and beauticians, caterers, health clubs, photographic equipment and	NOT PERMITTED	

	processing, reading rooms, shoe repair, tailors and laundromats		C. Site map location of where hazardous materials are stored, handled and used.
14.	Eating and Drinking Establishments	NOT PERMITTED	
15.	Automobile Service Stations and Garages	NOT PERMITTED	
16.	Hotels and Motels	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.
17.	Public and Private Garages for the storage and maintenance of motor vehicles	NOT PERMITTED	B. A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.
18.	Storage and display of motor vehicles, motorcycles, mobile homes, passenger vehicles and light trucks, recreational vehicles, boats and marine craft held for sale or rental	NOT PERMITTED	C. Site map location of where hazardous materials are stored, handled and used.
19.	Archery, pistol, shotgun and skeet ranges <b>[Special Exception]</b>	NOT PERMITTED	A. Mitigation plan for the abatement of lead contamination within range lanes and trap access.
20.	Printing Establishments	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage. B. A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. C. Site map location of where hazardous materials are stored, handled and used.
21.	Incinerators <b>[Conditional Use]</b>	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage. B. A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. C. Site map location of where hazardous materials are stored, handled and used.
22.	The manufacture, processing or bulk storage of natural gas, petroleum, gasoline and other petroleum derivatives and explosives <b>[Conditional Use]</b>	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage. B. A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. C. Site map location of where hazardous materials are stored, handled and used.
23.	Wholesale Distribution and Warehouses	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage. B. A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. C. Site map location of where hazardous materials are stored, handled and used.
24.	Auto Wrecking, Junk, and Scrap Establishments <b>[Conditional Use]</b>	NOT PERMITTED	A. Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.
25.	Commercial or Industrial production, manufacturing, assembly, processing,		

	cleaning, repair, storage or distribution of goods, equipment materials, foodstuffs and other products not involving a retail activity except as an accessory use	NOT PERMITTED	<p><b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p> <p><b>C.</b> Site map location of where hazardous materials are stored, handled and used.</p>
26.	Light manufacturing, assembly, processing, fabrication and packaging of components into finished or remanufactured products, where all work occurs inside the building and all raw products and finished products are stored within the building	NOT PERMITTED	
27.	Research engineering or testing laboratories and fabrication of models or test equipment used in research <b>[Conditional Use]</b>	NOT PERMITTED	
28.	Manufacture, use and storage of Hazardous materials as a Principal Activity <b>[Conditional Use]</b>	NOT PERMITTED	
29.	Commercial Slaughtering Facilities	NOT PERMITTED	<p><b>A.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.</p> <p><b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p> <p><b>C.</b> Site map location of where hazardous material are stored, handled and used.</p>
30.	Taxidermy Shop	NOT PERMITTED	<p><b>A.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage.</p> <p><b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used.</p> <p><b>C.</b> Site map location of where hazardous material are stored, handled and used.</p>
31.	Land Application of Bio-Solids	UNDER PA DEP PERMIT CONDITIONS OF APPROVAL	
32.	Underground Injection Wells, Natural Gas Well Extraction Pads for Horizontal Drilling and Hydraulic Fracturing, Compressor Stations	NOT PERMITTED	NOT PERMITTED
33.	Liquid Petroleum Transmission Lines	NOT PERMITTED	NOT PERMITTED
34.	Commercial or Municipal Composting Facilities	NOT PERMITTED	<b>A.</b> Storage facilities shall be designed to have an impervious storage and loading surface, prevent infiltration of rain and surface water into storage areas and provide diking to prevent runoff from storage & loading areas.
35.	Golf Course	NOT PERMITTED	<p><b>A.</b> All herbicides and pesticides shall be applied in accordance with label directions, and must be applied in accordance with an approved Nutrient Management Plan.</p> <p><b>B.</b> Irrigation schedules shall be coordinated with pesticide and nutrient application to minimize the possibility of leaching/runoff.</p> <p><b>C.</b> Coordination with the Penn State Cooperative Extension Service to develop and implement an Integrated Pest Management Plan.</p>
36.	Geothermal Exchange Systems (Open and Closed Loop)	NOT PERMITTED	<b>A.</b> Placement of such systems shall comply with the standards set forth in Chapter 10 – Well

			Drilling of the Centre Region Building Safety & Property Maintenance Code.
37.	Storage Tanks-Aboveground (AST)	NOT PERMITTED	<b>A.</b> Submittal of an approved registration form indicating compliance with Permit Requirements of the Storage Tank and Spill Prevention Act (STSPA, Act of 1989, P.L. 169, No. 32) standards. <b>B.</b> Above-ground Storage Tanks shall not be located within 200' of a Zone I Boundary.
38.	Storage Tanks-Underground (UST)	NOT PERMITTED	<b>A.</b> Submittal of an approved registration form indicating compliance with Permit Requirements of the Storage Tank and Spill Prevention Act (STSPA, Act of 1989, P.L. 169, No. 32) standards. <b>B.</b> Underground Storage Tanks shall not be located within 200' of a Zone I Boundary.
39.	Storage of Road Salt and De-Icing Materials	NOT PERMITTED	<b>A.</b> All salt and associated sand mix piles must be stored on an impermeable surface and covered with a waterproof material. Stockpiles shall not be located near surface waters, in flood plains, or areas with steep slopes, and shall be designed to prevent surface water runoff. Snow containing road salt shall not be brought to sites within (200') of Zone 1 for disposal. Environmentally friendly snow and ice removal products and procedures are encouraged.
40.	Application of Road Salt and De-Icing Materials	<b>A.</b> Ferguson Township shall monitor and record amounts of salts or de-icing materials applied to township roads during each storm event.	
41.	Withdrawal or diversion of 10,000 gpd for any consecutive 30-day period from ground or surface water sources	<b>A.</b> Registration of the amount of the water withdrawal is required by the Susquehanna River Basin Commission.	
42.	Abandonment of Wells	<b>A.</b> Abandonment of Wells shall comply with the standards set forth in Chapter 10 – Well Drilling of the Centre Region Building Safety & Property Maintenance Code.	
43.	Well Building/Water Production Facilities	<b>A.</b> Provide a detailed description of the storage, handling, use of regulated substances and description of the containment structures for hazardous material storage. <b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. <b>C.</b> Site map location of where hazardous materials are stored, handled and used.	
44.	Freight or Truck Terminals	NOT PERMITTED	<b>A.</b> Provide a detailed description of the storage, handling, use of Regulated Substances and description of the containment structures for hazardous material storage. <b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. <b>C.</b> Site map location of where hazardous materials are stored, handled and used.
45.	Medical Marijuana Growing and Processing Facility	NOT PERMITTED	<b>A.</b> Provide a detailed description of the storage, handling, use of regulated substances and description of the containment structures for hazardous material storage. <b>B.</b> A detailed description of disposal procedures for Regulated Substances and wastes and name, address and telephone number of any waste haulers used. <b>C.</b> Site map location of where hazardous materials are stored, handled and used.

## SECTION 9. ADMINISTRATION

- A. The Zoning Administrator is hereby designated as the Township official responsible for the administration and enforcement of this Ordinance. The Ferguson Township Zoning Hearing Board shall hear variances and/or appeals from the written determinations and orders of the Zoning Administrator regarding applications, enforcement notices, cease and desist orders, and other matters, and shall also hear substantive and procedural challenges to the validity of this Ordinance.
  
- B. Uses of lots or tracts of land in existence on the date of enactment of this Ordinance which are Regulated Land Uses and Activities shall be deemed to be "Nonconforming Uses" of land under the terms of this Ordinance. Such Nonconforming Uses of land may be continued by the present or any subsequent owner as long as:
  - 1. Such use is and remains otherwise lawful and in compliance with all federal, state and county environmental, pollution control, hazardous material, and drinking water laws and regulations;
  - 2. Such Non-Conforming use has not been and is not discontinued for a period of twelve (12) consecutive months;
  - 3. Such Nonconforming Use is not, after the date of enactment of this Ordinance, materially altered, changed or expanded;
  - 4. Such Nonconforming Use is not an actual known source of groundwater contamination as a result of a specific violation notice from the PA Department of Environmental Protection, the United States Environmental Protection Agency, or any other pertinent county, state or federal regulatory agency;
  - 5. Such use shall upgrade its technology on a regular basis, as the technology required by applicable law is changed, or upon request of the Township, in order to minimize the risks associated with such use to the community water resources. Such upgrades shall be a necessity to support the right to continue with the Nonconforming Use.
  
- C. A Regulated Land Use and Activity under Table 1 shall be deemed to be new or materially altered, changed or expanded if:
  - 1. The land use which constitutes the Regulated Land Use and Activity was not previously present and conducted upon the lot or tract of land in question;
  - 2. The production and/or storage capacity of the Regulated Land Use and Activity is increased except for fluctuations resulting from the delivery of supplies to replenish stocks up to previously reported levels and the decrease attributable to proper use of the substances;
  - 3. The types of any substances which give rise to the Regulated Land Use and Activity is changed;

4. The number of types of substances which give rise to the Regulated Land Use and Activity is changed;
  5. The quantity of any substances which give rise to the Regulated Land Use and Activity is materially increased; or
  6. The land area subject to the Regulated Land Use and Activity is enlarged in any respect.
- D. Application for a Special Exception shall be made to the Ferguson Township Zoning Hearing Board in writing on such form as may be prescribed by the Zoning Administrator, and such application shall include, at a minimum, a detailed description of each of the activities to be conducted upon the lot or tract of land in question which constitute a Regulated Land Use and Activity, including a listing of all substances which are to be stored, handled, used, or produced in connection with each Regulated Land Use and Activity being proposed, and which substances are subject to regulation by federal, state, and/or county governmental authorities.
- E. The Ferguson Township Zoning Hearing Board shall issue a written determination approving or disapproving the application for a Special Exception, or conditioning the granting of the Special Exception upon adherence to any or all of the following requirements by the applicant for the Special Exception, where the Zoning Hearing Board has found that such adherence is reasonably necessary to fulfill the groundwater protection purposes of this Ordinance:
1. The installation of containment facilities and systems so as to prevent the contamination of groundwater by substances regulated by federal, state, and/or county governmental authorities;
  2. The preparation and filing (with the Zoning Administrator) of a Spill Contingency Plan addressing the means by which any potential contamination of groundwater will be controlled, collected, and remediated, including emergency contacts and identification of potential contaminants;
  3. Regular inspection and/or monitoring by the owner, occupant, the Zoning Administrator, and/or third parties of the Regulated Land Use and Activity area;
  4. Compliance by the applicant with the provisions of the Ferguson Township Subdivision and Land Development Ordinance pertaining to sanitary sewage disposal, water supply, storm water management, and easements.
- F. Other items that may be required to characterize environmental or physical conditions of the subject property.

## **SECTION 10. LAND DEVELOPMENT DESIGN STANDARDS**

- A. General Requirements

1. The subdivision of land within Zone I for any purpose other than for the specific protection of the groundwater within this area shall be prohibited.
  - i. All Land Development Plans shall contain a note acknowledging the proposed project location in relation to Appendix A "Source Water Protection Overlay Map" zones. In addition, all land development plans shall note the applicant's compliance with all state and federal laws regarding chemical storage and use.
2. In Zone II, land development plans for Regulated Land Uses and Activity shall comply with the following requirements, in addition to Plan Review Procedures and Requirements within the Ferguson Township Subdivision and Land Development Ordinance:

A qualified design professional shall review aerial photos, soils, geologic, and other available related data including any Source Water Protection Study or Report, as the data relates to the subject property. The qualified design professional shall also conduct a site inspection of the property. Based on the above information, the professional shall prepare a map of the site showing the following:

- a. Closed depressions
  - b. Open sinkholes
  - c. Seasonal high ponds and streams
  - d. Intermittent streams
  - e. Bodies of water or streams
  - f. Surface drainage patterns
  - g. Intermittent or vernal ponds
  - h. Lineaments, faults and fracture traces
  - i. Excavations and quarries
  - j. Outcrops of bedrock
3. Based on the map prepared pursuant to Section 10, paragraph A.2. above, and in conjunction with other mapping and information submitted for compliance with the requirements of the Subdivision and Land Development Ordinance, the registered design professional shall prepare a report demonstrating compliance with the requirements of this section, including any recommended mitigating measures designed to ensure compliance.
  4. The Ferguson Township qualified design professional, or other appointed agent, shall review the information and recommendations made by the applicant's qualified design professional and shall then report to the Ferguson Township Planning Commission and the Board of Supervisors whether the proposal meets the design requirements of this section.
  5. During construction activity, all excavations shall be protected against storm water ponding.
  6. All buildings, structures, impervious surfaces, and utilities shall be situated, designed, and constructed so as to minimize the risk of new sinkhole formation and of the accelerated introduction of contaminants and pollution into the Source Water protection area through existing or future sinkholes.
  7. Buildings, structures, impervious surfaces, utilities, and swimming pools shall not be located within fifty (50) feet of any features identified in Section 10, paragraph A.2.b.

8. All commercial, industrial and non-residential salt or de-icing storage areas, gasoline, or other chemical storage areas shall not be located within one hundred (100') feet of any features identified in Section 10, paragraph A.2.b. and A.2.e.
9. Detention, retention and infiltration facilities shall be in compliance with Chapter 26, Part 1, Stormwater Management.
10. Storm water retention facilities, French drains, and other areas of concentrated infiltration of storm water shall be in compliance with Chapter 26, Part 1, Stormwater.
11. Blasting activity permitting is required by the PA DEP Bureau of Mining Programs in accordance with provisions of the Administrative Code of 1929, Section 1917-A and 25 PA Code Chapter 211. For the purpose of the Source Water Protection Overlay District and Map, blasting activity shall be permitted by Special Exception within any delineated Zone I radius. Blasting must be done per PA DEP's standards and regulations. PA DEP Limits the number and size of blasts that can go off in a sequence to limit ground motion.

## **SECTION 11. ENVIRONMENTAL EMERGENCY RESPONSE PLANS**

Ferguson Township contains a variety of land uses and activities with the potential for additional development throughout the township. Some activities can pose moderate to high risk of causing environmental degradation or the endangerment of public safety through active releases of toxic, hazardous, or other pollutant materials. It is the intent of this ordinance to require such activities to follow the PA Department of Environmental Protection "***Guidelines for the Development and Implementation of Environmental Emergency Response Plans***" that encourages the consolidation of State and Federal pollution incident prevention and emergency response programs into a single plan. The Guideline has been made part of this Ordinance as **Appendix B**.

## **SECTION 12. SEVERABILITY**

- A. The provisions of this Ordinance are severable, and should any article, section, subsection, paragraph, clause, phrase or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid.
- B. Approvals issued pursuant to this Ordinance do not relieve the applicant of the responsibility to secure the required permits or approvals for activities regulated by other applicable code, rule or ordinance.

## **SECTION 13. REPEALER**

Any ordinance of the Township which is inconsistent with any of the provisions of this ordinance is hereby repealed to the extent of the inconsistency only.

**SECTION 14. EFFECTIVE DATE**

This Ordinance, and all of its terms and provisions, shall become effective immediately after its adoption.

**The Board of Supervisors of the Township of Ferguson hereby ordains:**

**ORDAINED AND ENACTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**FERGUSON TOWNSHIP BOARD OF SUPERVISORS**

\_\_\_\_\_  
Peter Buckland, Chairperson

ATTEST:

\_\_\_\_\_  
David G. Pribulka, Secretary



**"APPENDIX B"**



**COMMONWEALTH OF PENNSYLVANIA  
Department of Environmental Protection**

**Guidelines for the Development and Implementation  
of Environmental Emergency Response Plans**

**400-2200-001**

**PA Department of Environmental Protection  
PO Box 2063  
Harrisburg, PA 17105-2063**

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**DOCUMENT ID:** 400-2200-001

**TITLE:** Guidelines for the Development and Implementation of Environmental Emergency Response Plans

**EFFECTIVE DATE:** April 2001  
Minor changes were made throughout the document on September 7, 2004  
Minor changes were made throughout the document on August 6, 2005

**AUTHORITY** The Federal Clean Water Act, the Pennsylvania Clean Streams Law (35 P.S. §§691.1-691.1001), the Pennsylvania Solid Waste Management Act, the Pennsylvania Storage Tank Act, the Oil Pollution Act and regulations promulgated thereunder.

**POLICY:** To plan and provide effective and efficient response to emergencies and accidents for any situation dealing with the public health, safety and the environment.

**PURPOSE:** To improve and preserve the purity of the Waters of the Commonwealth by prompt adequate response to all emergencies and accidental spills of polluting substances for the protection of public health, animal and aquatic life and for recreation.

**BACKGROUND:** This document is being revised to add regulatory references in Table 1 and Procedures, Item A. Revisions were made to Procedures, Items A, C, D and F. Some telephone contact names, telephone contact numbers and bureau names have been updated in Appendices IV and V. Bureau and division names have been changed on the cover page of the Addendum.

**APPLICABILITY:** This document provides a one stop requirement to comply with the state and federal laws and regulations dealing with emergency planning and response and pollution prevention and contingency planning requirements (plans such as PIP, SPCC, SWPPP, etc.) for all activities to be carried out in the Commonwealth.

**DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 48 Pages

**LOCATION:** Vol. 33, Tab 56

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Guidelines for the Development and Implementation of  
Environmental Emergency Response Plans**

This document (400-2200-001) provides a one stop requirement to comply with the state and federal laws and regulations dealing with emergency planning and response and pollution prevention and contingency planning requirements (i.e., PIP, SPCC, SWPPP, etc) for all activities to be carried out in the Commonwealth.

The use of the document and compliance with it are required as part of applying for any permit or requesting approval of any action that has a potential to cause pollution of the Commonwealth's air, water and land resources. The manual is also available to download from the DEP website at: [www.dep.state.pa.us](http://www.dep.state.pa.us).

The document may be revised from time to time or as the need arises due to changes in state/federal laws and regulations. If you have suggestions for improvement to this document or desire that future revisions be sent to you, please provide the following information to the Department.

Date this request made: \_\_\_\_\_

Name \_\_\_\_\_

Street or Route \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ E-mail \_\_\_\_\_

This manual could be improved by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Yes, send me future revisions to the manual
- Yes, please notify me of any revisions for downloading from DEP web site.

Send to: Director, Environmental Emergency Response  
Pennsylvania Department of Environmental Protection  
Field Operations Deputate, RCSOB 16th Floor  
P.O. Box 2063  
Harrisburg, PA 17105-2063

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# Guidelines for the Development and Implementation of Environmental Emergency Response Plans

## INTRODUCTION

A wide variety of industrial activities, both manufacturing and commercial, exist in Pennsylvania. Many of these activities have the potential for causing environmental degradation or endangerment of public health and safety through accidental releases of toxic, hazardous, or other polluttional materials.

In recognition of this fact, several State and Federal regulatory programs have been developed to encourage the use of preventive approaches to deal with unwarranted releases of toxic, hazardous, or other pollutants to the environment.

Table 1 lists these programs and defines the statutory and regulatory basis for each. A more detailed summary of each program is shown in Table 2 which illustrates the similarities among them. A review of the regulations and guidelines pertaining to each program more clearly illustrates these similarities. The main differences between the programs are the types of industrial activities and the nature of the polluting materials addressed.

The Department's objective is to consolidate the similarities of the State and Federal pollution incident prevention and emergency response programs into one overall program. Industrial and commercial installations which have the potential for causing accidental pollution of air, land or water, or the endangerment of public health and safety are required to develop and implement **Preparedness, Prevention and Contingency (PPC) Plans** which encompass the other Departmental program requirements.

A PPC Plan is required for any NPDES Application for Storm Water Discharge General Permits or Water Management Permits. A special addendum has been added to the document for NPDES Stormwater discharge applicants.

In the case of regulated storage tank facilities, with an aggregate aboveground storage capacity > 21,000 gallons, a **Spill Prevention Response (SPR)** plan is required. This SPR plan, in **addition to the contents** of a PPC plan, requires a specific downstream notification requirement. Those storage tank facilities that already have a PPC plan need only update the PPC plan and include the downstream notification requirement.

The Department strongly recommends that regulated facilities consolidate all required plans into one single document. For those facilities required to develop plans under SARA Title III, the Department will support deviation from the format suggested in this guidance document to ensure consistency with the SARA Title III plans provided that all required information is included in the one plan.

**TABLE 1**  
**STATE AND FEDERAL POLLUTION INCIDENT**  
**PREVENTION AND EMERGENCY RESPONSE PROGRAMS**

<b>Plan</b>	<b>Implemented By</b>	<b>State and Federal Laws Which Apply</b>	<b>State and Implementing Regulations</b>	<b>Effective Date of Regulations</b>
Spill Prevention Control and Countermeasure (SPCC)	U.S. EPA*	Federal Clean Water Act	40 CFR 112	1973
Preparedness, Prevention, and Contingency (PPC), or Contingency Planning	Pa. DEP as part of the Hazardous Waste Program	Pa. Solid Waste Management Act	25 Pa. Code Ch. 262a, 264a, 265a, 266a	5/01/99
	Pa. DEP as part of the Residual Waste Program	Pa. Solid Waste Management Act	25 Pa. Code Ch. 287, 288, 289, 293, 295 and 297	7/4/92
	Pa. DEP as part of the Municipal Waste Program	Pa. Solid Waste Management Act	25 Pa. Code Ch. 273, 277, 279, 281, 283 and 284	4/9/88
	Pa. DEP as part of the Oil and Gas Program <sup>1</sup>	Pa. Clean Streams Law, Pa Solid Waste Management Act	25 Pa. Code Ch. 91.34, 25 Pa. Code Ch. 78	1971
	Pa. DEP as part of the Water Quality Program.	PA Clean Streams Law	25 PA Code Chapter 91.34	1971
	Pa. DEP and US EPA as part of the NPDES Program	Federal Clean Water Act.	40 CFR 125 Subpart K	5/19/80
Spill Prevention Response (SPR) Plan	Pa. DEP as part of the Storage Tank Program	Pa. Storage Tank and Spill Prevention Act	Act 32-1989	8/89
Facility Response Plan (FRP)	US EPA* US Coast Guard	Oil Pollution Act	40 CFR 112	1990

(1) Complete information on PPC Plans required under the Oil and Gas Program can be found in the *Oil & Gas Operators Manual* available from the Bureau of Oil and Gas Management.

\* Additional information is available from US EPA Region III, Philadelphia, PA, (215) 814-3292.

**TABLE 2  
COMPARISON OF STATE AND FEDERAL POLLUTION  
INCIDENT PREVENTION AND EMERGENCY RESPONSE PROGRAMS**

<b>Aspect</b>	<b>Preparedness, Prevention, and Contingency (PPC) (Water)</b>	<b>Preparedness, Prevention, and Contingency (PPC) (Waste)</b>	<b>Spill Prevention Response (SPR) Plan</b>	<b>Spill Prevention Control, and Countermeasures (SPCC)</b>
<b>Purpose</b>	Prevention/Control of accidental discharge of polluting materials to surface waste or groundwater	To minimize and abate hazards to human health and the environment from fires, explosions, or release of solid wastes to air, soil, or surface water	Prevention/Control of accidental discharge of regulated substances and downstream notification requirements	Prevention of accidental discharges of oils and hazardous substances into the waters of the United States
<b>Types of Industrial Activities Affected</b>	All industrial activities having potential for accidental pollution	Activities which generate, store, recycle, treat, transport, or dispose of solid wastes, activities associated with drilling and operating oil and gas wells	Activities pertaining to above ground storage facilities with >21,000 gallons of regulated substances	Non-transportation related activities with potential for discharge of oil and hazardous substances
<b>Activities Covered?</b>	Transportation, storage, processing of raw materials, intermediates, products, fuels, wastes	Generation, storage, transport, recycle, treatment, disposal of hazardous wastes; processing and disposal of residual or municipal wastes; road spreading operations, brine disposal	Storage and handling of regulated substances	Production, storage, processing, refining, handling, transferring, distributing
<b>What Pollution Materials are Addressed?</b>	All polluting materials	Any hazardous, residual, municipal, or medical wastes	Hazardous Substances and Petroleum	Oil and hazardous substances defined pursuant to Sec. 311 of the Clean Water Act

**TABLE 2 (Cont.)  
COMPARISON OF STATE AND FEDERAL POLLUTION  
INCIDENT PREVENTION AND EMERGENCY RESPONSE PROGRAMS**

<b>Aspect</b>	<b>Preparedness, Prevention, and Contingency (PPC) (Water)</b>	<b>Preparedness, Prevention, and Contingency (PPC) (Waste)</b>	<b>Spill Prevention Response (SPR) Plan</b>	<b>Spill Prevention Control, and Countermeasures (SPCC)</b>
<b>Hazards Addressed</b>	Container leaks, ruptures, spills, floods, power failures, mechanical failure, human error, strikes, vandalism	Same plus fires and explosions	Same	Same
<b>Plan Includes</b>	Study of past incidents, training, preventive maintenance, housekeeping, security, backup equipment, internal, external communicator, spill containment, drainage controls, inspections	Same plus additional local notification, emergency coordination, and evacuation requirements	Same, plus downstream notification requirement	Same
<b>Amendments to Plan Required for Significant Facility or Operational Changes?</b>	Yes	Yes	Yes	Yes
<b>Emergency Incident Report Required?</b>	Yes	Yes	Yes	Yes
<b>Annual Notification/Updated</b>	No	No	Yes	No

# **I. PROCEDURES FOR DEVELOPMENT AND REVIEW OF ENVIRONMENTAL EMERGENCY RESPONSE PLANS**

## **A. Who Must Develop These Plans?**

### **PPC**

In general, any manufacturing or commercial installation which has the potential for causing accidental pollution of air, land, or water or for causing endangerment of public health and safety through accidental release of toxic, hazardous, or other polluting materials must develop, maintain, and implement a PPC Plan.\*

Manufacturing or commercial waste water dischargers, which are required to obtain NPDES permits, must develop PPC plans in order to satisfy the requirements of Chapter 101 of the Department's Rules and Regulations. In addition to NPDES discharges there are a variety of other non-NPDES manufacturing or commercial installations which may be directed by the Department to develop PPC plans on a case-by-case basis.

Manufacturing or commercial installations which generate hazardous waste, or which involve treatment, recycling, storage, or disposal of hazardous waste must develop PPC plans in conformance with Chapter 262a, 264a, and 265a of the Department's regulations. Generators, of between 100 and 1,000 kilograms of hazardous waste per month, may not be required to have a PPC plan if they comply with the Preparedness and Prevention requirements in the regulations. (Note: hazardous waste transporters must also develop PPC plans under Chapter 263a. A separate PPC guidance document has been developed for transporters.)

A person who owns or operates a residual waste disposal or processing facility must develop a PPC plan under Chapters 287, 288, 289, 293, 295, and 297 of the residual waste regulations.

A person who owns or operates a municipal waste disposal or processing facility must develop a PPC plan under Chapters 273, 277, 279, 281, 283, and 284 of the municipal waste regulations.

In regards to the Oil and Gas Program, PPC Plans are required under the Clean Streams Law for approval of road spreading operations, drilling and operating oil and gas wells, and brine disposal wells. These plans are required under 25 Pa. Code Chapters 91.34 and 78.55. In addition, PPC Plans are required for NPDES and Part II Water Quality Management Permits. The Plan requirements are contained in the Oil and Gas Operators Manual

### **SPR**

Facility owners with aboveground storage tank aggregate capacity > 21,000 gallons of a regulated substance.

\*Note: PPC plans developed by hazardous waste generators and/or treatment, recycling, storage or disposal facilities, which would not otherwise be required to obtain NPDES or Water Quality Protection Part II permits, generally need only to address the PPC planning requirements as they pertain to their hazardous waste activity (unless otherwise directed by the Department).

**B. How Do Existing Emergency Response Plans Fit in With Newer Program Requirements?**

It should be noted that oil-related Spill Prevention, Control, and Countermeasure (SPCC) plans, which are or have been developed pursuant to EPA's oil-related SPCC regulations, should also be considered as part of an installation's overall PPC plan. Some installations may elect to integrate their oil-related SPCC plan with the PPC or SPR plan elements, or may elect to keep it as a separate chapter, or appendix, to the PPC or SPR plan.

Likewise, the additional downstream notification requirement of an SPR plan can be added to an existing plan to satisfy the "Storage Tank and Spill Prevention Act," providing all required elements of a SPR plan are completed for the existing plan.

Other types of existing emergency response plans should be handled in a similar manner.

**C. Development and Submission of Plans for Review and Approval.**

The plan must be developed in accordance with good engineering practice by someone who is familiar with the day-to-day operations at the site. If an outside consultant is employed for this purpose, he must be authorized to conduct a thorough study of the material storage, handling, usage, disposal, and waste management practices conducted at the installation.

Section II outlines the general content and format of PPC and SPR plans.

In general, plans should be submitted for review and approval by the Department in conjunction with applications for NPDES Water Quality Management, Storage Tank, Residual Waste Management, Municipal Water Management, or Hazardous Waste Management permits, as follows:

1. NPDES dischargers should submit (2) copies of the PPC plan for review, along with the NPDES application materials. All Stormwater General Permit applicants must complete and implement the Plans before or at the same time as application submission.

Facilities which are not required to obtain NPDES permits, but which must obtain Water Quality Protection Part II permits, should submit (2) copies of the PPC plan for review, along with the Part II permit application.

2. Residual waste disposal/processing/transfer/composting facilities are required to develop and submit a PPC Plan as part of the residual waste permit application. Facilities permitted under permit-by-rule are required to develop PPC Plans and maintain them on site.
3. Municipal waste disposal/processing, transfer/composting facilities are required to develop and submit a PPC plan as part of the municipal waste permit application. Facilities permitted under permit-by-rule are required to develop PPC plans and maintain them on site.

Other facilities which are not normally required to obtain NPDES or WQM Part II permits may also be required to develop and submit a PPC Plan, should conditions warrant, pursuant to Chapter 92 of the Department's regulations.

4. Hazardous waste generators are required to develop PPC plans and to maintain them on site. They are required to submit PPC plans to the Department for review upon request by the Department.
5. Hazardous waste treatment, recycling, storage, or disposal facilities should submit one copy of the PPC plan for each copy of the Hazardous Waste Part B permit application being submitted. In these situations the PPC plan is considered as part of the overall Hazardous Waste Part B permit application. Final PPC plan approval will accompany the issuance of a Hazardous Waste Management permit.
6. Aboveground storage tank facilities (with aggregate capacity >21,000 gallons) are required to submit one copy of the SPR plan to the appropriate regional DEP office for review. This plan must be developed in consultation with county and municipal emergency management agencies. Facilities that already have a PPC plan can update the PPC plan with the downstream notification requirement to satisfy this obligation.
7. Oil and gas well operators must prepare and implement a plan describing the measures to prevent pollution of the surface water and groundwater and for the control and disposal of polluttional substances and waste. A copy of the plan must be provided to the Department upon request.

**D. Distribution of the Plan**

A copy of the plan and any subsequent revisions must be maintained on-site. All members of the installation's organization for developing, implementing, and maintaining the plan and all emergency coordinators must review the plan and be thoroughly familiar with provisions.

In addition to the site copy and the copy submitted to the Department, other facility plans should be made available to the following agencies, to the extent which they may become involved in an actual emergency (see Description of PPC Plan Elements, Part E.1.):

Submission of copies to all of these entities is a legal requirement for hazardous waste facilities. Bulk aboveground storage tank facilities are required to submit copies to emergency management agencies, as noted below.

1. County and local Emergency Management Agencies. (This is a legal requirement for storage tank facilities with >21,000 gallons of above ground storage.)
2. Local Fire Service Agencies and/or Hazmat Team
3. Local Emergency Medical Service Agencies
4. Local Police

**E. Implementation of the Plan**

The provisions of the plan must be carried out whenever emergency situations arise which endanger public health and safety, or the environment.

**F. Revisions of the Plan**

The PPC Plan must be periodically reviewed and updated, if necessary. At minimum, this must occur when:

1. Applicable Department regulations are revised;

2. The plan fails in an emergency;
3. The installation changes in its design, construction, operation, maintenance, or other circumstances, in a manner that materially increases the potential for fires, explosions or releases of toxic or hazardous constituents; or which changes the response necessary in an emergency;
4. The list of emergency coordinators changes;
5. The list of emergency equipment changes; or
6. As otherwise required by the Department.

In addition to the above, the SPR or PPC plans must also be revised upon the removal or addition of a storage tank(s).

## **II. PLAN CONTENT AND FORMAT**

### **General Instructions**

- A. Table 3 outlines the basic elements of a PPC and SPR Plan. Each of these elements is further described in this guidance document. Certain plan elements may not be entirely applicable or appropriate for a specific manufacturing or commercial installation. In these cases the person preparing the plan should act accordingly and should provide a brief explanation as to why the plan element(s) in question is not applicable or appropriate.
- B. The most important thing to remember in developing your plan is that the actual effectiveness of the plan will depend upon its simplicity and readability.

Plans which are composed of several volumes of overly detailed narrative discussions and specifications tend to discourage the reader or user. Diagrams, charts, tables, maps, and plans must be easily readable and understandable, particularly in times of an actual emergency.

The plan should additionally be indexed or tabbed in such a way that the key portions which pertain to emergency response can be quickly referred to.

**TABLE 3**  
**ELEMENTS AND FORMAT OF A PPC AND SPR PLAN**

- A. Description of Facility**
  - 1. Description of the Industrial or Commercial Activity
  - 2. Description of Existing Emergency Response Plans
  - 3. Material and Waste Inventory
  - 4. Pollution Incident History
  - 5. Implementation Schedule for Plan Elements Not Currently in Place
  
- B. Description of How Plan is Implemented by Organization**
  - 1. Organizational Structure of Facility for Implementation
  - 2. List of Emergency Coordinators
  - 3. Duties and Responsibilities of the Coordinator
  - 4. Chain of Command
  
- C. Spill Leak Prevention and Response**
  - 1. Pre release Planning
  - 2. Material Compatibility
  - 3. Inspection and Monitoring Program
  - 4. Preventive Maintenance
  - 5. Housekeeping Program
  - 6. Security
  - 7. External Factor Planning
  - 8. Employee Training Program
  
- D. Countermeasures**
  - 1. Countermeasures to be Undertaken by Facility
  - 2. Countermeasures to be Undertaken by Contractors
  - 3. Internal and External Communications and Alarm Systems
  - 4. Evacuation Plan for Installation Personnel
  - 5. Emergency Equipment Available for Response
  
- E. Emergency Spill Control Network**
  - 1. Arrangements with Local Emergency Response Agencies
  - 2. Notification Lists
  - 3. Downstream Notification Requirement for Storage Tanks

## **DESCRIPTION OF PLAN ELEMENTS**

### **A. Description of Facility**

#### **1. Description of the Industrial or Commercial Activity**

- Briefly describe the nature of the industrial or commercial activity which occurs at the site. Include a general discussion of products manufactured, manufacturing processes used, wastes generated, etc.
- On a copy of a 7 1/2 minute USES map show the following:
  - Facility location
  - Facility name
  - Facility ID #
  - Name of 7 1/2 minute USES quadrangle
  - County
  - Location of facility site and site boundaries
  - Location of each storage tank
  - Location of surface drainage courses leading away from the site, and major surface streams and tributaries near the site
  - Location of any known public and private surface water intakes downstream from the site
- Include a drawing which shows the following:
  - General layout of the site
  - Property boundaries
  - Areas occupied by manufacturing or commercial activities
  - Raw materials and product storage
  - Loading and unloading operations
  - High risk areas where spills and leaks most likely would occur
  - Waste handling, storage, and treatment facilities
  - Drains, pipes, and channels which lead away from potential leak or spill areas
  - Outfall pipes which discharge to surface streams or drainage channels
  - Secure and open-access areas
  - Entrance and exit routes to the site

#### **2. Description of Existing Emergency Response Plans**

- Briefly describe any existing plan, which has been previously developed by the installation, for the purpose of pollution incident prevention or emergency response preparedness. If the plan has previously been

approved by the Department, this should also be noted, along with the date of approval.

- Provide a brief discussion as to how the existing plan relates to the overall PPC or SPR Plan being developed. The degree to which the existing plan encompasses some, or all, of the PPC/SPR Plan elements should also be noted. When the PPC has been developed and an SPR plan is needed, the downstream notification requirement information can be added as an addendum.

Similar plans which have been prepared for agencies other than DEP should also be described and cross-referenced to the maximum extent possible to the PPC Plan elements so as to minimize rewriting. For example, an oil related Spill Prevention Control and Countermeasure (SPCC) Plan which has been developed to comply with EPA's regulations 40 CFR 112, may be treated as an appendix, or as a separate chapter, to the overall PPC/SPR Plan for an installation.

### **3. Material and Waste Inventory**

- Identify and list by common chemical name and trade name, the locations, sources and quantities of raw chemical materials, commercial chemical products, manufacturing chemical intermediates, and process wastes managed at the installation which have the potential for causing environmental degradation or endangerment of public health and safety through accidental releases. Requests for confidentiality of this information will be handled in accordance with Department regulations.

Detailed descriptions must be available for materials that have a high potential for spills, discharges, explosions, or fires (such as those stored in bulk storage). Materials that have a low potential for spills, discharges, explosions, or fires (such as those used and stored in small quantities in a laboratory) should be minimally detailed.

This information should be used to evaluate the prevention, containment, mitigation, cleanup, and disposal measures which would be used in the event of a spill, discharge, explosion, or fire. As new materials are added to the list, their pollution potential should be evaluated.

- Attach to this plan the Material Safety Data Sheet (MSDS) for each material in storage (the MSDS must be completed to the extent it meets the requirements of 29 CFR 1910.1200(9) Hazardous Communications Standard Requirements).

### **4. Pollution Incident History**

- List the previous pollution incidents, the date, the material or waste spilled, approximate amount spilled, environmental damage, and action taken to prevent a recurrence.

An important criteria in determining the effectiveness of the plan and its implementation is the history of incidents at the installation. A history of no incidents suggest that the practices and procedures at the site are effective. For a site with a history of incidents, it is important to

investigate the reasons for the spills and the response of the company in minimizing the potential for their recurrence.

## **5. Implementation Schedule for Plan Elements Not Currently in Place**

- Provide a list of any missing or incomplete aspects of the plan and a time schedule when they will be implemented.

An implementation schedule, or any elements of the plan not currently in place, must be developed. Each missing or incomplete aspect of the plan should be addressed and discussed within the applicable elements of the plan. Missing or incomplete aspects must be implemented as soon as possible and in conformance with all Department regulations and requirements.

## **B. Description of How Plan is Implemented by Organization**

### **1. Organizational Structure of Facility for Implementation**

- Describe the organizational structure for implementation of the plan.
- Describe the duties and responsibilities of the individuals within the organization that will implement the plan.

Each installation must develop a permanent organizational structure for developing, implementing, and maintaining the plan. The exact nature and make-up of this structure will vary considerably, depending upon the size and complexity of the installation.

For example, a large manufacturing company may either establish a formal preparedness-response committee, or it may assign this responsibility to an existing organization within the company, such as a safety committee or a preventive maintenance group. A small manufacturing or commercial facility may only have one or two individuals responsible for developing and implementing the plan. However, the preparedness-response organization, regardless of its size, must be given both the responsibility and authority by management for developing, implementing, and maintaining the plan.

The main duties and responsibilities of the preparedness-response organizational structure should include identification of materials and wastes handled (materials inventory), identification of potential spill sources (risk assessment), establishment of spill-reporting procedures, visual inspection programs review of past incidents and spills, and countermeasures utilized. In addition, the preparedness-response organizational structure should be responsible for coordination needed to implement the goals of the plan, coordination of the activities for spill cleanup, notification of authorities and establishment of training and educational programs for installation personnel.

The preparedness response organizational structure should have the overall responsibility for periodically reviewing and evaluating the plan and instituting appropriate changes at regular intervals. The organizational structure should also be responsible for the review of new construction and process changes at an installation relative to the plan.

The organizational structure should also evaluate the effectiveness of the overall plan and make recommendations to management on related matters.

## **2. List of Emergency Coordinators**

- Provide an up-to-date list of names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator. Where more than one is listed, one must be named as the primary coordinator, and others shall be listed in the order in which they will assume responsibility as alternates.

At all times there must be at least one employee either on the installation's premises or on-call with the responsibility for coordinating all emergency response measures. The emergency coordinator must be thoroughly familiar with all aspects of the plan, all operations and activities, the location and characteristics of all materials handled, the location of all records and the lay out of the installation. In addition, this individual should have the authority to commit the resources necessary to carry out the plan.

## **3. Duties and Responsibilities of the Coordinator**

- Describe the duties and responsibilities of the emergency coordinator specific to your installation or activity in the event of an imminent or actual emergency.

During an emergency, the emergency coordinator should activate alarm systems, notify emergency response agencies, identify the problem, assess the health or environmental hazards, and take all reasonable measures to stabilize the situation. The emergency coordinator should also be responsible for follow-up activities after the incident such as treating, storing, or disposing of residues and contaminated soil, decontamination and maintenance of emergency equipment, and submission of any reports. Appendix I describes some example duties and responsibilities of the emergency coordinator.

## **4. Chain of Command**

- Provide an internal list, by position, of key employees that must be contacted in the event of an emergency or spill.

List the positions, office telephone extensions, and home phone numbers (if applicable) of key employees, in the order of responsibility that would be contacted in the event of an emergency or spill.

This list, along with the notification procedure, should be posted on bulletin boards or other conspicuous locations around the installation.

## **C. Spill Leak Prevention and Response**

### **1. Pre-release Planning**

- Describe the sources and areas where potential spills and leaks may occur, the direction of flow of spilled materials, and the pollution incident prevention practices (see Appendix II) specific to the source or area.

- Provide separate drawings, plot plans (or include in the general layout drawings), showing sources and quantities of materials and wastes. Sources and areas where potential spills may occur, and pollution incident prevention practices (see Appendix II).

The plan should include a prediction of the direction of the flow of materials spilled as a result of equipment failure, accident, or human error. Particular care and attention should be paid to evaluating the following: raw materials storage, in plant transfer, process and materials handling, intermediary and product storage (if applicable), truck and rail car loading and unloading, and waste handling and storage. Describe and identify valving for the storage tank and system to be used to partition off each storage tank in case of a release.

Liquid storage areas must have containment capacity sufficient to hold the volume of the largest single container or tank, plus a reasonable allowance for precipitation based on local weather conditions and plant operations. Containment systems must be sufficiently impervious to contain spilled material or waste until it can be removed or treated. Tank or container materials must be compatible with the material or waste stored.

Pollution incident prevention practices to eliminate contaminated runoff, leaching, or windblowing must be implemented in non liquid storage areas. Provisions must be made to contain or manage contaminated run-off or leachate from these areas.

Piping, processing, and materials handling equipment at in-plant transfer, process, and materials handling areas must be designed and operated so as to prevent spills. Containment practices should be instituted at processing and handling areas including floor drains, storm sewers, or drainage swales to prevent an accidental discharge. Protection such as covers or shields to prevent windblowing, spraying, and releases from pressure relief valves from causing a discharge should be provided as appropriate.

Truck and rail car loading and unloading areas must have sufficient containment capacity to hold the volume of the largest tank truck or rail car loaded or unloaded at the installation, plus a reasonable allowance for precipitation. Any overhead piping must have adequate clearance over roadways. Containment systems must be sufficiently impervious to contain spilled material or waste until it can be removed or treated.

## **2. Material Compatibility**

- Summarize the engineering practices followed with regard to material compatibility such as materials of construction, corrosion, etc.

Engineering practices with regard to material compatibility normally consist of an appraisal of the compatibility of construction materials of tanks, pipelines, etc., with their contents; the reaction of materials or wastes when intentionally or inadvertently mixed or combined; and, the compatibility of a container such as a storage tank or pipeline with its environment.

Specific consideration should be given to the procedures and practices delineating the mixing of materials and prohibiting mixing of incompatible materials which may result in fire, explosion, or unusual corrosion. Thorough cleaning of storage vessels and equipment before reuse should be standard practice to ensure that there is no residual incompatible with the next or later materials used. Coatings or cathodic protection should be considered for protecting buried pipelines or storage tanks from corrosion.

### **3. Inspection and Monitoring Program**

- Describe the type and frequency of inspections and monitoring for leaks or other conditions that could lead to spills or emergency situations.

Typical inspections include the following: pipes, pumps, valves, and fittings for leaks; tanks for corrosion; tanks supports and foundations for deterioration; chemical material piles for windblowing; evidence of spilled materials along drainage ditches; effectiveness of housekeeping practices; damage to shipping containers; leaks, seeps, or overflows at waste treatment, storage, or disposal sites; etc. Areas that should be inspected include the following: storage, loading and unloading, transfer pipelines, waste treatment facilities, and disposal sites. The use of an inspection checklist may be useful in an inspection and monitoring program.

Routine monitoring should be performed to determine the physical conditions and liquid levels in tanks, the quality of plant site runoff in diked areas, etc., either by manual testing or in-situ instrumentation. Monitoring should be used to initiate a warning of the need for immediate corrective action to prevent a spill or other emergency condition. Monitoring systems should be used in conjunction with a communications or alarm system to immediately notify personnel of abnormal conditions.

An inventory system should also be considered for keeping track of those materials having the greatest potential for causing problems due to leaks, spills, or mishandling.

As a minimum, the frequency of inspection and monitoring must be in accordance with the applicable Department regulations and permits. Appendix II includes some additional inspection and monitoring examples.

### **4. Preventive Maintenance**

- Describe the aspects of the preventive maintenance program for equipment and systems relating to conditions that could cause environmental degradation or endangerment of public health and safety.

Describe the procedures for the correction of those conditions by adjustment, repair, or replacement before the equipment or system fails.

A good preventive maintenance program includes the following:  
(1) identification of equipment and systems to which the program should apply; (2) periodic inspections of identified equipment and systems; (3) periodic testing of equipment and systems, (such as routine calibration

of environmental monitoring equipment); (4) appropriate adjustment, repair, or replacement of parts; and (5) complete recordkeeping of the preventive maintenance activities, inspection and test results, calibration dates, repairs, replacement, and adjustments to the applicable equipment and systems.

## **5. Housekeeping Program**

- Identify the areas and the type of housekeeping practices that should apply to reduce the possibility of accidental spills and safety hazards to plant personnel.

Examples of good housekeeping include the following: neat and orderly storage of chemicals; prompt removal of small spillage; regular refuse pickup and disposal; maintenance of dry, clean floors by use of brooms, vacuum cleaners, or cleaning machines; and, provisions for the storage of containers or drums to keep them from protruding into open walkways, pathways, or roads.

Dry chemicals should be swept or cleaned up to prevent possible washdown to drains and drainage ditches or windblowing of the material to other areas of the plant. Small liquid accumulations on the ground or on a floor in a building should be cleaned up to prevent discharge or transport to other areas. See Appendix I for additional examples.

## **6. Security**

- Describe the security procedures employed at the installation to prevent accidental or intentional entry that could result in a violation of Departmental regulations, or injury to persons or livestock.

Security systems described in the plan should address, as necessary: fencing; lighting; vehicular traffic control; access control; visitors passes; locked entrances; vandalism; locks on drain valves and television monitoring. Security procedures must be in accordance with applicable Department regulations.

## **7. External Factor Planning**

- Describe the possible effects of power outages, strikes, floods, snowstorms, etc., and the action to be taken to alleviate any resulting effects to public health and safety or the environment.

## **8. Employee Training Program**

- Summarize the training program given to employees which will enable them to understand the processes and materials with which they are working, the safety and health hazards, the practices for preventing, and the procedures for responding properly and rapidly to spills.

At a minimum, the training program must be designed to ensure that personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment systems including, where applicable: procedures for using, inspecting, repairing, and replacing emergency and monitoring equipment; key parameters for

automatic cut-off systems; communications and alarm systems; response to fires and explosions; site evacuation procedures; and shut down of operations.

In addition the employee training program should address other aspects of the preparedness-response program such as preventive maintenance, inspection and monitoring, housekeeping practices, etc. The training program must be designed and conducted in accordance with applicable Department regulations. Records of the employees' attendance in the training program should be included in personnel files.

## **D. Countermeasures**

### **1. Countermeasures to be Undertaken by Facility**

- Provide specific countermeasures which will be undertaken by facility personnel in the event of a release. Include valve activations, equipment isolations, flow diversions, boom deployment, and any other activities which will be undertaken to halt the migration of the contaminant off site and to mitigate the consequence of the release.

### **2. Countermeasures to be Undertaken by Contractors**

- Provide a list of emergency response contractors, phone numbers, and the services they will provide.

The services of nearby contractors should be investigated and arrangements made for the prompt performance of contractual services on short notice. Equipment suppliers should be contacted to determine the availability and means of delivery of equipment needed for removing pollution or hazards to the public health and safety. Describe arrangements with these contractors and the time frame in which they can respond with required equipment.

### **3. Internal and External Communications and Alarm Systems**

- Describe the internal communications or alarm used to provide immediate emergency instruction (voice or signal) to installation personnel.
- Describe the external communications or alarm system used to summon emergency assistance from local police or fire departments.

Examples of communications or alarm systems are: hand held two way radios; CB radios; telephones; fire or police alarms; PA systems; beeper or voice pagers, etc.

### **4. Evacuation Plan for Installation Personnel**

- Describe the evacuation plan for facility personnel where there is a possibility that evacuation could be necessary.

The plan must describe signals to be used to begin evacuation, primary evacuation route, and alternate evacuation routes (in cases where primary routes could be blocked by releases of hazardous materials, wastes, gases, or fires). Periodic drills should be conducted to evaluate the effectiveness of the plan.

## **5. Emergency Equipment Available for Response**

- Provide an up-to-date list of available emergency equipment. The list must include the location, a physical description, and a brief description of the intended use and capabilities of each item on the list.
- Describe the procedures for maintenance and decontamination of emergency equipment.

All installations should have equipment available to allow personnel to respond safely and quickly to emergency situations. Some examples of emergency equipment are portable fire extinguishers, fire control equipment (including special extinguishing equipment such as that using foam, inert gas, or dry chemicals), spill control equipment, decontamination equipment, self contained breathing apparatus, gas masks, and emergency tool and patching kits. See Appendix III for more examples.

All equipment must be tested and maintained as necessary to assure its proper operation in time of emergency. After an emergency, all equipment must be decontaminated, cleaned, and fit for its intended use before normal operations resume.

## **E. Emergency Spill Control Network**

### **1. Arrangements with Local Emergency Response Agencies and Hospitals**

- Provide a list of local emergency response agencies and hospitals. Include the phone numbers and describe arrangements concerning the emergency services they will provide.

Arrangements must be made, as appropriate, to inform local emergency response agencies, and hospitals concerning the type of materials or wastes handled at the installation and the potential need for services. Arrangements should be made which will designate who will be the primary emergency response agency and who will provide support services during emergencies.

Efforts should be made to familiarize police, fire departments, emergency response teams, and the County Emergency Management Coordinator with the layout of the installation, the properties and dangers associated with the hazardous materials handled, places where personnel would normally be working, entrances to roads inside the facility, and the possible evacuation routes. At a minimum, this requirement must be in accordance with applicable Department regulations.

### **2. Notification Lists**

- Provide a list of agencies and phone numbers that must be contacted in the event of an emergency or spill.

A list must be developed for notifying State, local, and Federal regulatory agencies of all spills. Such a list should include, as applicable: PA DEP (see Appendix IV); PA Emergency Management Agency; County Health Department; County EMA; PA Fish Commission; the National Response

Center (U.S. EPA and U.S. Coast Guard); local police and fire departments; the local sewage treatment plant (for discharges to sewer system); and downstream public water supplies, industrial water users, and recreation areas.

### 3. **Downstream Notification Requirement for Storage Tanks**

- This is an additional requirement of storage tank facilities with aggregate aboveground storage >21,000 gallons of regulated substances. It can be added to an updated PPC plan so as to meet the SPR plan requirement.

The requirement includes a 20-mile downstream Notification List, an annual notification requirement, and an annual Notification List update. Lists of downstream users may be developed from information provided by your county Emergency Management Agency.

**Downstream Notification List** shall include all municipalities and surface water users within 20 downstream miles of the tank facility. Surface water users include drinking water companies, and industries that utilize surface water intakes; and municipalities include each county, township, city and borough located within this downstream corridor. This list is to be developed via assistance from the local emergency management agency. (Refer to Appendix V for an example.)

**Annual Written Notification** must be given to downstream water users and municipalities on the Notification List. This written notification at a minimum must include a detailed inventory of the type and quantity of material in storage at the facility.

**Annual Update** must be developed each year in cooperation with the local Emergency Management Agency. This Notification List update will show any changes in contacts, users, telephone #'s needed for emergency downstream notification and the annual written notification. Also, any changes in the emergency response organization (such as telephone numbers) should be updated.

**APPENDIX I**  
**EXAMPLES OF AN EMERGENCY COORDINATOR'S DUTIES**  
**AND RESPONSIBILITIES**

Whenever there is an imminent or actual emergency situation, the emergency coordinator must immediately:

1. Activate facility alarms or communications systems, where applicable, to notify facility personnel; and
2. Notify local emergency response agencies including the Department.

Whenever there is an emission or discharge, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of emitted or discharged materials. He may do this by observation or review of records and, if necessary, by chemical analysis.

Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the emission or discharge, fire, or explosion. This assessment must consider both direct and indirect effects of the emission, discharge, fire, or explosion.

If the emergency coordinator determines that the installation has had an emission, discharge, fire, or explosion which would threaten human health or the environment, he must immediately notify the applicable local authorities including the county emergency management agency and indicate if evacuation of local areas may be advisable; and immediately notify the Department in accordance with Appendix IV; the National Response Center; and the Pennsylvania Emergency Management Agency; and report the following:

- a. Name of the person reporting the incident
- b. Name and location of the installation
- c. Phone number where the person reporting the spill can be reached
- d. Date, time, and location of the incident
- e. A brief description of the incident, nature of the materials or wastes involved, extent of any injuries, and possible hazards to human health or the environment
- f. The estimated quantity of the materials or wastes spilled, and
- g. The extent of contamination of land, water, or air, if known.

When there is a release from an aboveground storage tank which threatens the water supply of downstream users, these downstream users (on the Downstream Notification List) must be notified within 2 hours of the release. Priority for notification is by closest proximity to the release site.

During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fire, explosion, emission, or discharge do not occur, reoccur, or spread to other materials or wastes at the installation. These measures shall include where applicable, stopping manufacturing processes and operations, collecting and containing released materials or wastes, and removing or isolating containers.

If the installation stops operations in response to a fire, explosion, emission, or discharge, the emergency coordinator must ensure that adequate monitoring is conducted for leaks, pressure

buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

Immediately after an emergency, the emergency coordinator, with Departmental approval, must provide for treating, storing, or disposing of residues, contaminated soil, etc., from an emission, discharge, fire, or explosion at the installation.

The emergency coordinator must insure that in the affected areas of the installation, no material or waste incompatible with the emitted or discharged residues is processed, stored, treated, or disposed of until cleanup procedures are completed; and, all emergency equipment listed in the plan is cleaned and fit for its intended use before operations are resumed.

Within 15 days after the incident, the installation must submit a written report on the incident to the Department. The report must include the following:

- a. Name, address, and telephone number of the individual filing the report
- b. Name, address, and telephone number of the installation
- c. Date, time, and location of the incident
- d. A brief description of the circumstances causing the incident
- e. Description and estimated quantity by weight or volume of materials or wastes involved
- f. An assessment of any contamination of land, water, or air that has occurred due to the incident
- g. Estimated quantity and disposition of recovered materials or wastes that resulted from the incident, and
- h. A description of what actions the installation intends to take to prevent a similar occurrence in the future.

## **APPENDIX II**

### **POLLUTION INCIDENT PREVENTION PRACTICES**

Pollution incident prevention practices can be divided into the following four categories: prevention, containment, mitigation and ultimate disposition. The listings below provide specific examples of each category.

#### **1. PREVENTION**

##### *Visual Observations of:*

- Storage facilities
- Transfer pipelines
- Loading and unloading areas
- Waste handling and storage areas

##### *Detailed Inspections of:*

- Pipes, pumps, valves, and fittings for leaks
- Tanks for corrosion (internal and external)
- Dry material or waste stockpiles for windblowing
- Tanks supports or foundations for deterioration
- Walls for stains
- Drainage ditches and areas around old tanks for evidence of spilled materials
- Primary or secondary containment for deterioration
- Housekeeping practices
- Shipping containers for damage
- Material or waste conveyance systems for leaks, spills, or overflows
- Integrity of stormwater collection systems
- Waste storage, treatment, or disposal sites for leaks, seeps, and overflows

##### *Monitoring*

- Liquid-level detectors
- Alarm systems
- Pressure and temperature gauges
- Analytical testing instrumentation
- Pressure drop shut-off devices
- Flow meters
- Valve positioning indicators
- Equipment operational lights
- Excess-flow valves
- Automatic runoff diversion devices
- Routine sample collection (including groundwater and monitoring wells)
- Redundant instrumentation
- Records (all monitoring results/findings)

##### *Nondestructive Testing*

- Hydrostatic pressure tests
- Acoustical emission tests
- Radiographic tests
- Magnetic particle tests
- Liquid Penetration
- Records of tank wall thicknesses and results of all testing

## 2. CONTAINMENT

### *Secondary Containment*

- Dikes
- Curbs
- Depressed areas
- Storage basins
- Sumps
- Drip pans
- Liners
- Double piping
- Sewer collection systems

### *Flow Diversion*

- Trenches
- Drains
- Graded pavement
- Grating
- Overflow structures
- Sewers
- Culverts

### *Vapor Control*

- Water spray
- Vapor space
- Vacuum exhaust

### *Dust Control*

- Hoods
- Cyclone collectors
- Bag-type collectors
- Filters
- Negative-pressure systems
- Water spraying

### *Sealing*

- Foamed plastic compounds used for plugging leaks in tanks

## 3. MITIGATION

### *Physical Clean-up*

- Brooms
- Shovels
- Plows

### *Labeling*

- U.S. DOT or National Fire Protection Association's (NFPA) designation on tanks and pipelines
- Color coding of tanks and pipelines
- Warning signs

### *Vehicle Positioning*

- Physical barriers (e.g., wheel chocks)
- Underlying drains
- Designated loading and unloading areas

### *Covering*

- Tarpaulins over outdoor dry waste or material stockpiles
- Buildings or roofs over outside processes or stockpiles
- Vegetation, rock, or synthetic covering on surface impoundments

### *Pneumatic and Vacuum Conveying*

- Loading and unloading by air pressure or vacuum
- Safety relief valves
- Dust collectors
- Air slide trucks and rail cars

### *Preventive Maintenance*

- Periodic inspections
- Periodic testing to determine soundness of system
- Identification of equipment and systems that need to be upgraded, repaired, or replaced
- Appropriate adjustment, repair, or replacement of parts
- Complete recordkeeping of all repairs, upgrading, replacements, and adjustments; and all testing findings/results after system modifications were made

### *Good Housekeeping*

- Neat and orderly storage of chemicals
- Prompt removal of small spillage
- Regular garbage pickup and disposal
- Maintenance of dry, clean floors by use of brooms, vacuum cleaners, etc.
- Maintenance of proper spacing for pathways and walkways between containers and drums
- Stimulation of employee interest in good housekeeping

### *Employee Training Programs*

- Materials Inventory Systems
- Material Safety Data Sheets

### *Mechanical Clean up*

- Vacuum systems
- Pumps
- Pump/bag system

### *Chemical Clean up*

#### *Sorbents*

- activated carbon
- polyurethane and polyolefin spheres, beads, and foam belts
- amorphous silicate glass foam
- clay
- sawdust

*Gelling agents*

polyelectrolytes  
polyacrylamide  
butylstyrene copolymers  
polyacrylonitrile  
polyethylene oxide

*Foams*

rockwood alcohol  
protein  
fluoroprotein  
aqueous film-forming foam  
polar liquid foam  
surfactant-based foam

*Volatilization*

distillation  
stripping  
evaporation

Carbon absorption  
Coagulation/precipitation  
Neutralization  
Ion exchange  
Chemical oxidation  
Biological treatment

**4. ULTIMATE DISPOSITION**

Thermal oxidation  
Land disposal  
Recycle  
Recover  
Reuse  
Detoxification

### **APPENDIX III EXAMPLES OF EMERGENCY EQUIPMENT**

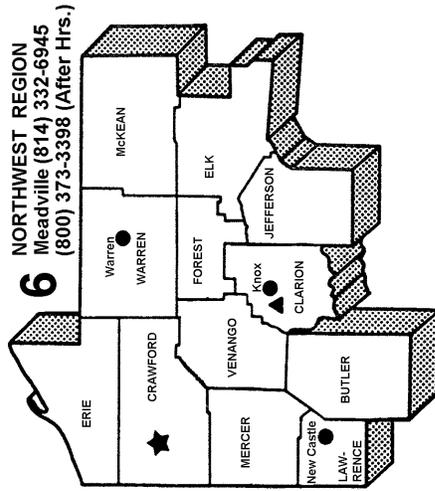
Special equipment is often required and may be needed quickly in an emergency. Examples include the following:

Aerial ladder	Forklift
Absorbant materials	Fuel Supply
Accident investigation kit	Geiger counter
Air compressor	Generator trailer
Air supply, for breathing equipment	Heaters, portable
Backhoe	Helicopter
Basket stretchers	Hydraulic spreader jacks
Bulldozer	Inhalator
Bullhorn	Jack hammer
Camera/photo equipment	Jacks
Cellar pump	Ladder Truck
Chain hoist	Lighting equipment, portable
Chain saw	Medical supplies
Chemical neutralizers	Metal saw (power)
Crane	Public address system
Cutters (power)	Radio
Decontamination equipment with a clean Resuscitator water supply (70-80°F)	Resuscitator
Ejector - smoke	Sand supply
Elevated platform truck	Self-contained breathing apparatus (SCBA)
Explosimeters	Self-contained underwater breathing apparatus (SCUBA)
Fans	Submersible pump
Firefighting equipment	Tank truck
First aid supplies	Tool box
Foam concentrate supply	Welding/cutting equipment
Foam generators	Water pump

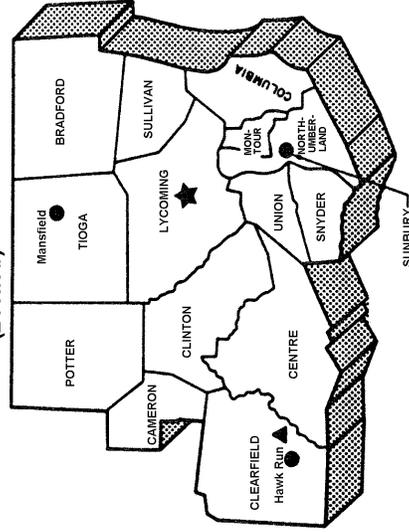
**APPENDIX IV  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
EMERGENCY NOTIFICATION NUMBERS**

**STATEWIDE EMERGENCY NOTIFICATION NUMBER (800) 541-2050 (PA ONLY)  
OR (717) 787-4343**

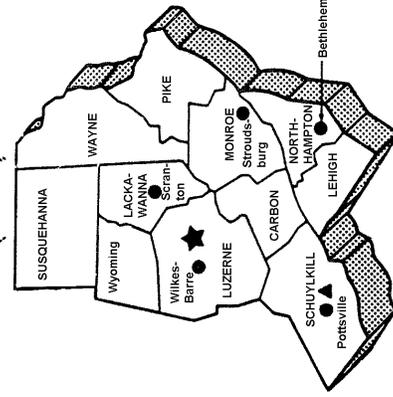
**(To Be Used If There Is A Problem In Contacting The Region)**



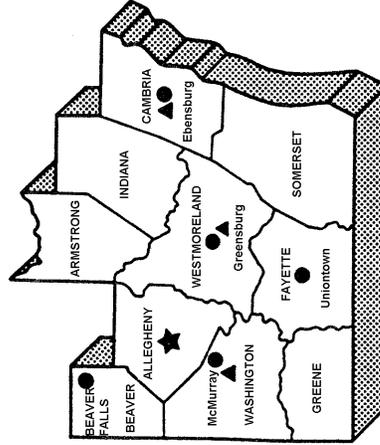
**6 NORTHWEST REGION**  
Meadville (814) 332-6945  
(800) 373-3398 (After Hrs.)



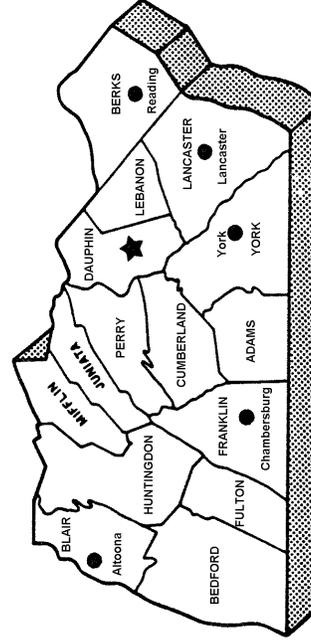
**4 NORTHCENTRAL REGION**  
Williamsport (570) 327-3636  
(24 Hr. #)



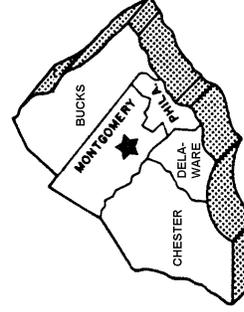
**2 NORTHEAST REGION**  
Wilkes-Barre (570) 826-2511  
(24 Hr. #)



**5 SOUTHWEST REGION**  
Pittsburgh (412) 442-4000  
(24 Hr. #)



**3 SOUTHCENTRAL REGION**  
Harrisburg (717) 705-4700  
(877) 333-1904



**1 SOUTHEAST REGION**  
Norristown (484) 250-5900  
(24 Hr. #)

**LEGEND:** ★ REGIONAL OFFICES ● DISTRICT OFFICES ▲ MINING OFFICES

**APPENDIX V**  
**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Field Operations--Environmental Cleanup Program**  
**Regional Storage Tank List**

<b>Region</b>	<b>Contact</b>
Southeast Regional Office 2 East Main Street Norristown, PA 19401-4915 Telephone: (484) 250-5900	Kathy Nagle
Northeast Regional Office 2 Public Square Wilkes-Barre, PA 18711-0790 Telephone: (570) 826-2511	Ron Brezinski
Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110-8200 Telephone: (717) 705-4700	Gregory Bowman
Northcentral Regional Office 208 W. Third Street Williamsport, PA 17701 Telephone: (570) 327-3636	Steve Webster
Southwest Regional Office 400 Waterfront Drive Pittsburgh, PA 15222 Telephone: (412) 442-4000	Gale Campbell
Northwest Regional Office 230 Chestnut Street Meadville, PA 16335 Telephone: (814) 332-6945	Daniel F. Peterson

In the event no contact with the Regional Office is made, the Department Emergency number (717) 787-4343 shall receive calls during and after business hours, 24 hours daily and holidays and weekends.

**Oil and Gas Management Program**

South Regional Office 400 Waterfront Drive Pittsburgh, Pa 15222-4745 (412) 442-4000	David F. Janco
Northwest Regional Office 230 Chestnut Street Meadville, PA 16335 (814) 332-6945	Craig Lobins

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Field Operations--Water Management**

<b>Region</b>	<b>Contact</b>
Southeast Regional Office 2 East Main Street Norristown, PA 19401-4915 Telephone: (484) 250-5900	James Newbold
Northeast Regional Office 2 Public Square Wilkes-Barre, PA 18711-0790 Telephone: (570) 826-2511	Kate Crowley
Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110-8200 Telephone: (717) 705-4700	Jim Spontak
Northcentral Regional Office 208 W. Third Street Williamsport, PA 17701 Telephone: (570) 327-3636	Daniel Alters
Southwest Regional Office 400 Waterfront Drive Pittsburgh, PA 15222 Telephone: (412) 442-4000	Steve Balta
Northwest Regional Office 230 Chestnut Street Meadville, PA 16335 Telephone: (814) 332-6945	Dave Milhous

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Field Operations--Waste Management**  
**Regional Contact**

<b>Region</b>	<b>Contact</b>
Southeast Regional Office 2 East Main Street Norristown, PA 19401-4915 Telephone: (484) 250-5900	Facilities Manager
Northeast Regional Office 2 Public Square Wilkes-Barre, PA 18711-0790 Telephone: (570) 826-2511	Facilities Manager
Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110-8200 Telephone: (717) 705-4700	Facilities Manager
Northcentral Regional Office 208 W. Third Street Williamsport, PA 17701 Telephone: (570) 327-3636	Facilities Manager
Southwest Regional Office 400 Waterfront Drive Pittsburgh, PA 15222 Telephone: (412) 442-4000	Facilities Manager
Northwest Regional Office 230 Chestnut Street Meadville, PA 16335 Telephone: (814) 332-6945	Facilities Manager

**APPENDIX VI**  
**IGMARS STORAGE FACILITY**  
**Harrisonberg, PA**  
**Example**  
**DOWNSTREAM NOTIFICATION LIST FOR YEAR 1992**

<b>Facility</b>	<b>Address</b>	<b>Mile Mark</b>	<b>Contact</b>	<b>Telephone</b>
Harrison County	PO Box 15 Harrison Co. Courthouse Harrisonberg, PA	-	Ronald Swoyer Co. Emergency Mgt. Coordinator	Office: (717) 674-1212 Emergency: (717) 674-3434
Greenly Township	PO Box 498, RD 1 Harrisonberg, PA 19865	0	Donald Trump	Office: (717) 765-3468 Emergency: (717) 765-4579
Harrisonberg City	PO Box 21, City Hall Harrisonberg, PA 19869	3	Jay Miller	Office: (717) 674-2185 Emergency: (717) 674-2194
Harrisonberg Water	Harrisonberg, PA	6	Richard Miles	Office: (717) 254-8904 Emergency: (717) 254-8910
Harrison Township	Harrison Township Building Krissville, PA 19872	10	Charles Davis Township Manager	Office: (717) 760-3120 Emergency: (717) 760-3123
Harrison Township Auth.	PO Box 234 Krissville, PA 19870	12	Kemp Olsen Auth. Manager	Office: (717) 760-2334 Emergency: (717) 760-2333
Villa Assoc.	Box 29 Krissville, PA 19880	14	George Kay	Office: (717) 675-8960 Emergency: (717) 675-8961
Harrison Water Auth.	Box 28 Krissville, PA 19879	16	Justine Keener	Office: (717) 675-9004 Emergency: (717) 675-9005

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Igmars Emergency Coor.

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Date

NOTE: This Downstream Notification List when annually updated should be dated for the year updated and signed by the storage tank facility's emergency coordinator.

**ADDENDUM**

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SUPPLEMENTAL GUIDANCE  
FOR THE DEVELOPMENT AND IMPLEMENTATION OF  
PREPAREDNESS, PREVENTION AND CONTINGENCY (PPC) PLANS  
UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
STORM WATER PERMITTING PROGRAM**

**September 2001**

**BUREAU OF WATER STANDARDS AND FACILITY REGULATION  
DIVISION OF PLANNING AND PERMITS**

## **FORWARD**

The “Supplemental Guidance for the Development and Implementation of Preparedness, Prevention and Contingency (PPC) Plans under the National Pollutant Discharge Elimination System (NPDES) Storm Water Permitting Program” has been prepared to provide those owners, operators, and municipalities who must prepare Preparedness, Prevention and Contingency (PPC) Plans (in accordance with the General Permit for Discharges of Storm Water from Industrial Activities and the Department’s Chapter 91 regulations) with guidance on what storm water issues must be addressed. This supplemental guidance, when used with the existing guidance entitled “Guidelines for the Development and Implementation of Environmental Emergency Response Plans”, hereafter called the PPC guidance or guidelines, will provide complete information on incorporating the new storm water requirements into existing or new PPC Plans for facilities seeking coverage under the general permit to discharge storm water associated with industrial activity.

Section 1 provides an introduction to the regulatory requirements for storm water discharges, the General Permit for Discharges of Storm Water From Industrial Activities and the special condition within the permit to develop and implement a Preparedness, Prevention and Contingency Plan.

Section 2 follows the format of the original guidelines. Where changes must be incorporated to address the new storm water requirements, the necessary modifications or addendums are explicitly presented.

It is emphasized that the original guidance pertains to emergency response plans that include potential releases, their controls, and management practices that are applicable to facilities regardless of whether they discharge storm water associated with industrial activity. The supplemental guidance’s requirements, on the other hand, have specific requirements that focus exclusively on managing storm water discharges associated with industrial activity.

## SECTION 1

### INTRODUCTION

The Department of Environmental Protection is authorized by law to protect the quality of both surface and underground waters of the Commonwealth through the prevention and abatement of water pollution. Specifically, the federal Clean Water Act and the Pennsylvania Clean Streams Law require that all point source discharges of pollutants be authorized and regulated under a National Pollutant Discharge Elimination System (NPDES) permit. Point source discharges that are not regulated under a NPDES permit are in violation of the federal Clean Water Act and the Pennsylvania Clean Streams Law, and may be subject to applicable penalties and fines.

Recent revisions to the federal NPDES regulations (55 FR 47990; November 16, 1990) require that permit applications be submitted and NPDES permits be issued for storm water discharges associated with industrial activity (see the Bureau of Water Quality Management's "Notice of Intent Requirements for Coverage Under the General Permit for Discharges of Storm Water From Industrial Activities" for definition of industries covered). In accordance with the Department's regulations at 25 Pa. §§92.81 - 92.83, the Department of Environmental Protection has developed and issued a general NPDES permit that sets forth the requirements and conditions to control storm water discharges from industrial activities.

#### **Special Permit Condition for the Development and Implementation of a PPC Plan**

The General Permit for Discharges of Storm Water from Industrial Activities requires operators of facilities covered under the permit to develop and implement a Preparedness, Prevention and Contingency (PPC) Plan in accordance with 25 Pa. Code §91.34 and the PPC guidelines contained in this document prior to authorization to discharge under this general permit.<sup>1</sup> The PPC Plan, once implemented, will provide best management practices (BMPs) to control the discharges of pollutants to receiving waters. In general, the PPC Plan is required to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the PPC Plan is required to describe the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility.

This supplemental guidance provides the additional elements and requirements needed to address storm water issues in the PPC Plan required under the general permit. When used in conjunction with this document, the terms and conditions of the permit should be satisfied and the appropriate "spill prevention control" and "storm water control" - requirements should be addressed.

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<sup>1</sup> See Part C.3.a. of the General permit.

## SECTION 2

### MODIFICATIONS TO EXISTING ELEMENTS AND FORMAT OF THE PPC PLAN

Modify or add to Section II of the PPC guidance, the elements beginning with A (Description of Facility). Each modification or addendum is identified explicitly in the following pages using the format contained in this document. In cases where no modifications to the original guidelines are necessary, the element heading is presented and the user is referred to the requirements in the PPC guidance. Again, users or developers of PPC Plans that meet the requirements of a general permit to discharge storm water associated with industrial activity must fulfill all of the requirements of the PPC guidance and the additional requirements and addendums of this supplemental guidance.

#### A. Description of Facility

##### 1. Description of the Industrial or Commercial Activity

Add the following to the requirements in the original guidance for this section.

- Provide a narrative description of significant materials<sup>2</sup> that have been treated, stored or disposed in a manner to allow exposure to storm water within the three years prior to the issuance of the general permit and the present; the method of on-site storage or disposal; materials management practices that were employed to minimize contact of these materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; materials loading and access areas; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.
- On the 7 1/2-minute USGS map show the following:
  - Provide an outline of the drainage area for each storm water outfall.
- On the drawings required in the original guidance show the following:
  - Indicate existing structural control measures to reduce pollutants in storm water runoff.
  - Identify commercial and industrial activities that are exposed to precipitation to include fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for treatment, storage or disposal of wastes, liquid storage tanks, and processing areas.

##### 2. Description of Existing Emergency Response Plans

Refer to the requirements in the original guidance.

##### 3. Material and Waste Inventory

Refer to the requirements in the original guidance.

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<sup>2</sup> Significant materials includes, but is not limited to: raw materials; fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

#### **4. Pollution Incident History**

Add the following to the requirements in the original guidance for this section.

- Provide a list of significant leaks and spills<sup>3</sup> of toxic and hazardous pollutants that occurred in areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of the permit. This list shall be updated as appropriate during the permit.

#### **5. Implementation for Plan Elements Not Currently in Place**

Refer to the requirements in the original guidance.

### **B. Description of How Plan is Implemented by Organization**

#### **1. Organizational Structure of Facility for Implementation**

Refer to the requirements in the original guidance.

#### **2. List of Emergency Coordinators**

Refer to the requirements in the original guidance.

#### **3. Duties and Responsibilities of the Coordinator**

Refer to the requirements in the original guidance.

#### **4. Chain of Command**

Refer to the requirements in the original guidance.

### **C. Spill Leak Prevention and Response**

#### **1. Pre-release Planning**

Add the following to the requirements in the PPC guidance for this section.

- Assess the potential of various sources at the plant to contribute pollutants to storm water discharges. Each of the following shall be evaluated for the reasonable potential for contributing pollutants to runoff: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. Consider the toxicity of chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter of concern (e.g., biochemical oxygen demand).
- Describe pollution incident prevention practices in storage areas used for the storage of salts for deicing or other commercial or industrial purposes. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a waters of the United States

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<sup>3</sup> Significant spills includes, but is not limited to: releases of oil and hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1995. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

**2. Material Compatibility**

Refer to the requirements in the PPC guidance.

**3. Inspection and Monitoring Program**

Add the following to the requirements in the PPC guidance for this section.

- Identify qualified personnel to conduct site compliance evaluations for storm water discharges associated with industrial activities, but in no case, less than once per year. Such evaluations will provide the following:

Visually inspect areas contributing to storm water discharges associated with industrial activity for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings should be evaluated to determine whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan should be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, should be made.

Based on the results of these inspections, potential pollutant sources identified (Section C) and control measures (i.e., good housekeeping, preventive maintenance, spill prevention and response), should be revised as necessary within 15 days of the inspection. The revision will provide for the implementation of any changes to the PPC plan in a timely manner, but in no case later than 90 days after the inspection.

A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the PPC plan, and any actions taken as a result, should be retained for a period of at least one year after coverage under this permit terminates. This report will identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report should contain a certification that the facility is in compliance with the PPC plan and the permit. This report shall be signed in accordance to the signatory requirements stipulated in the general permit.

Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part should be conducted at appropriate intervals specified in the plan, but, in no case less than once in three years.

**4. Preventive Maintenance**

Add the following to the requirements in the PPC guidance for this section.

- Describe the aspects of the preventive maintenance program. This program should involve the timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins, etc.) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. Records of these maintenance procedures should be maintained.

**5. Housekeeping Program**

Add the following to the requirements in the PPC guidance for this section.

- Establish housekeeping protocols to ensure the proper handling of materials and the maintenance of a clean, orderly facility to prevent pollutants from entering separate storm water sewers and/or to prevent contact with storm water runoff.

**6. Security**

Refer to the requirements in the PPC guidance.

**7. External Factor Planning**

Refer to the requirements in the PPC guidance.

**8. Employee Training Program**

Add the following to the requirements in the PPC guidance for this section.

- Employee training should inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

**D. Countermeasures**

**1. Countermeasures to be Undertaken by Facility**

Refer to the requirements in the PPC guidance.

**2. Countermeasures to be Undertaken by Contractors**

Refer to the requirements in the PPC guidance.

**3. Internal and External Communications and Alarm Systems**

Refer to the requirements in the PPC guidance.

**4. Evacuation Plan for Installation Personnel**

Refer to the requirements in the PPC guidance.

**5. Emergency Equipment Available for Response**

Refer to the requirements in the PPC guidance.

## **E. Emergency Spill Control Network**

### **1. Arrangements with Local Emergency Response Agencies and Hospitals**

Refer to the requirements in the PPC guidance.

### **2. Notification Lists**

Refer to the requirements in the PPC guidance.

### **3. Downstream Notification Requirements for Storage Tanks**

Refer to the requirements in the PPC guidance.

## **THE ELEMENTS F THROUGH J ARE ADDENDUMS TO THE ORIGINAL GUIDANCE.**

The PPC plan should also meet the requirements stipulated in these addendums to the PPC guidance. All of the management practices required for facilities (including EPCRA Section 313 facilities) are to be implemented and described in the plan.

## **F. Storm Water Management Practices**

- Provide a narrative considering the appropriateness of traditional storm water management practices (practices other than source control) and the use of BMPs to control storm water runoff and prevent storm water pollution. Based on an assessment of the potential of various sources at the plant to contribute pollutants to storm water, provide that measures determined to be reasonable and appropriate, be implemented and maintained.

Traditional storm water management practices are measures which reduce pollutant discharges by reducing the volume of storm water discharges, such as swales, or preventing storm water to run-on to areas of the site which conduct industrial activities. Low cost measures may include diverting rooftop or other drainage across grass swales, cleaning catch basins, and installing and maintaining oil and grit separators. Other measures may include infiltration devices and unlined retention and detention basins. Traditional storm water management practices can also include water reuse activities and snow removal activities.

- The PPC plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant source of non-storm water at the site. A description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test.

## **G. Sediment and Erosion Prevention**

- In the PPC plan, identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

Sediment and erosion prevention and control measures should be developed and implemented in accordance with Chapter 102 of the Department's rules and regulations and the Bureau of Soil and Water Conservation's "Erosion and Sediment Pollution Control Program Manual."

## H. Additional Requirements for EPCRA, Section 313 Facilities<sup>4</sup>

- Describe the types of storm water controls (containment, drainage control and/or diversionary structures) that will be used in areas where Section 313 water priority chemicals are stored,<sup>5</sup> processed or otherwise handled.

Storm water controls should provide for the following preventive systems or its equivalent: Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind blowing.
- In addition to the minimum standards for EPCRA Section 313 facilities, the storm water pollution prevention plan will meet the following requirements for liquid storage areas, material storage areas other than liquids, truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals:
  - Liquid storage areas where storm water comes into contact with any equipment, tank container, or other vessel used for Section 313 water priority chemicals.
- No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.
- Secondary containment must be provided to contain the entire capacity of largest single container or tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures. If the secondary containment and its upstream drainage system are subject to precipitation, an allowance for drainage for a 25-year, 24-hour storm event shall be provided over and above. Secondary containment shall be sufficiently impervious. Plant's treatment system may be substituted for secondary containment if it has sufficient excess holding capacity always available.
  - Material storage areas for Section 313 water priority chemicals other than liquids.
- Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals.

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<sup>4</sup> An "EPCRA, Section 313 Facility" means a facility that manufactures, imports, processes, or otherwise uses listed toxic chemicals and who, pursuant to Section 313 of Title III of SARA, are required to report annually their releases of those chemicals to any environmental media.

<sup>5</sup> Section 313 water priority chemical means a chemical or chemical categories which: 1) Are listed at 40 CFR 372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986; 2) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and 3) that meet at least one of the following criteria: (i) Are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria.

- Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals.
- These areas shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans where spillage may occur such as hose connections); a strong spill contingency and integrity testing plan; and/or other equivalent measures.
- Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled.
- Processing equipment and materials handling equipment shall be operated so as to minimize the discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying, or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.
- For drainage originating from the above described areas, valves or other positive means should be used to prevent discharges or excessive leaks of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

Flapper-type drain valves must not be used to drain containment areas. Valves used for the drainage of containment areas should not be used to drain non-containment areas. Valves used should be of the open-and-closed design.

If plant drainage is not engineered as above, the final discharge of all in-plant storm sewers should be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of a Section 313 water priority chemical, return the spilled material to the facility. Records shall be kept of the frequency and estimated volume (in gallons) of discharges from the containment areas.

- Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.
- Other areas (other than those described above) of the facility from which runoff which may contain a Section 313 water priority chemical, or spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

- All areas of the facility shall be inspected at specific intervals for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, plant piping, pumps storage tanks and bins, pressure vessels, process and materials handling equipment, and material bulk storage area shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to the drainage system, corrective action shall be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with this PPC Plan.
- Facility employees and contractor personnel using the facility shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws, and regulations and in the PPC Plan, and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan should designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of plant operation and design features in order to prevent discharges or spills from occurring.

If the installment of secondary containment structures or equipment listed above are not economically achievable at a facility, the PPC Plan should provide a spill contingency and integrity testing plan which provides a description of measures that ensure spills or other releases of toxic amounts of Section 313 water priority chemicals do not occur. The testing plan should contain the following:

- Detailed descriptions which demonstrate that secondary containment is not economically achievable;
- Description of response plans, personnel needs, and methods of mechanical containment such as the use of sorbents, booms collection devices, etc.); steps to be taken for removal of spilled Section 313 water priority chemicals; and access and availability of sorbents and other equipment;
- The testing component of the alternative plan must provide for conducting integrity testing of storage tanks at least once every five years, and

conducting integrity and leak testing of valves and piping a minimum every year; and

- A written and actual commitment of manpower, equipment and materials required to comply with this permit and to expeditiously control and remove quantity of Section 313 water priority chemicals that may result in a toxic discharge.
- Provide a certification by a Registered Professional Engineer. The Professional Engineer shall certify that he or she has examined the facility and is familiar with the provisions in the PPC Plan and can attest that the PPC Plan has been prepared in accordance with good engineering practices. The Professional Engineer must recertify the PPC Plan once a year.

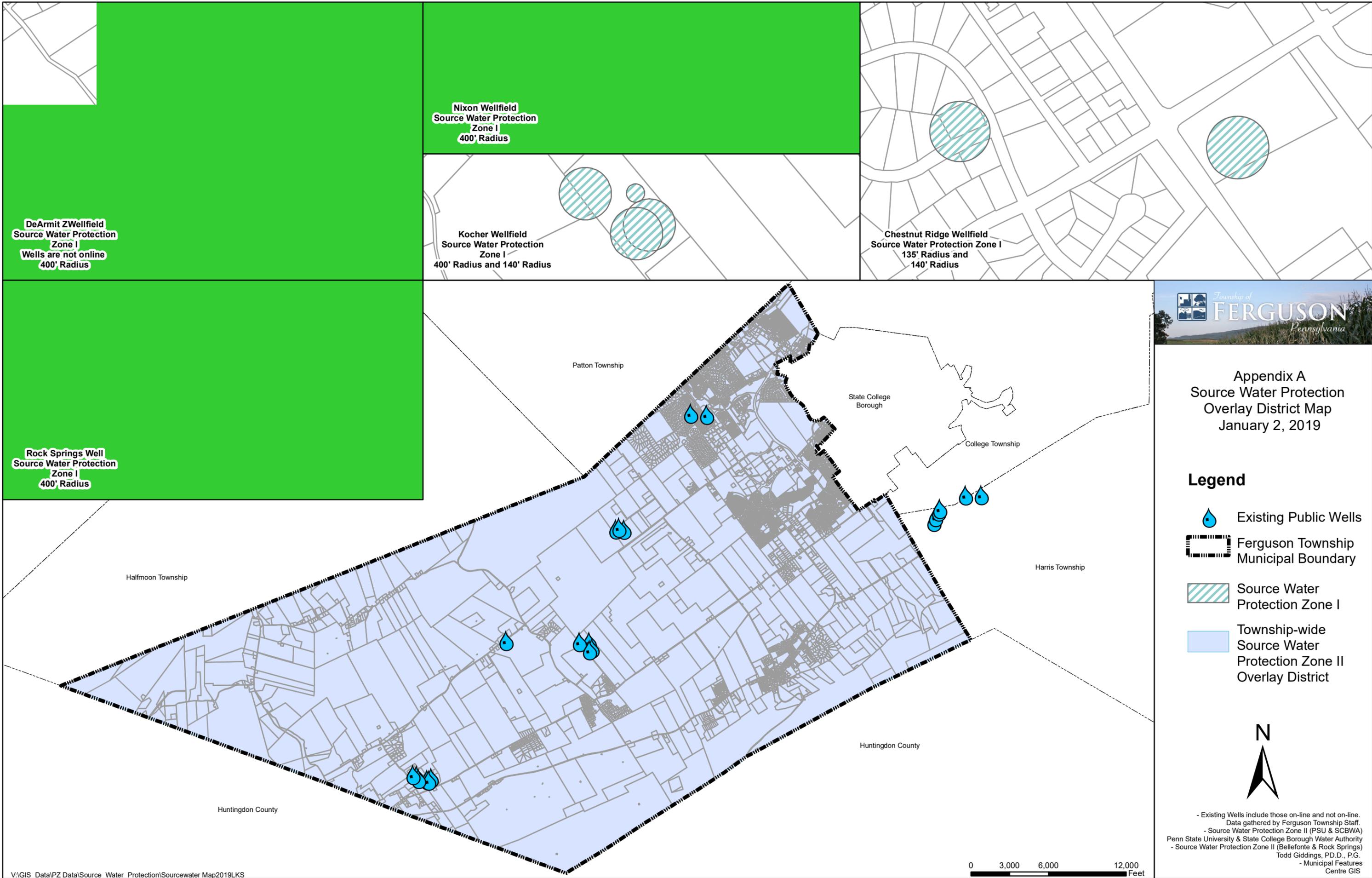
**I. Certification Requirements for Non-Storm Water Discharges**

- Provide a certification meeting the requirements of Part C, Section 3(a) of the industrial activities stormwater general permit (PAG #3) relating to the presence of non-stormwater discharges in the system.

If a facility does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge, this section of the plan shall indicate why the certification was not feasible. A discharge that is unable to provide the certification required by this paragraph must also then notify the Department within 180 days of the effective date of the general permit in accordance with Section A.3. of the permit.

**J. Signatory Requirements**

The PPC plan must be signed in accordance with the signatory requirements stipulated in the general permit.



**DeArmit Z Wellfield**  
 Source Water Protection  
 Zone I  
 Wells are not online  
 400' Radius

**Nixon Wellfield**  
 Source Water Protection  
 Zone I  
 400' Radius

**Kocher Wellfield**  
 Source Water Protection  
 Zone I  
 400' Radius and 140' Radius

**Chestnut Ridge Wellfield**  
 Source Water Protection Zone I  
 135' Radius and  
 140' Radius

**Rock Springs Well**  
 Source Water Protection  
 Zone I  
 400' Radius



**Appendix A**  
 Source Water Protection  
 Overlay District Map  
 January 2, 2019

**Legend**

-  Existing Public Wells
-  Ferguson Township Municipal Boundary
-  Source Water Protection Zone I
-  Township-wide Source Water Protection Zone II Overlay District



- Existing Wells include those on-line and not on-line.  
 - Data gathered by Ferguson Township Staff.  
 - Source Water Protection Zone II (PSU & SCBWA)  
 Penn State University & State College Borough Water Authority  
 - Source Water Protection Zone II (Bellefonte & Rock Springs)  
 Todd Giddings, P.D., P.G.  
 - Municipal Features  
 Centre GIS





**Western Region**

**INVOICE**

Ferguson Township Board of Supervisors  
 3147 Research Drive  
 State College, PA 16801-2798

Contract - 2018-C17  
 Work Performed: 10/9/18 - 12/18/18

12/14/2018

**Silvi Baseball Complex Improvements - Invoice No. 1395463**

ITEM NO.	DESCRIPTION	QUANTITY	UoM	UNIT COST	TOTAL COST	QUANTITY THIS ESTIMATE	DOLLAR VALUE THIS ESTIMATE	RETAINAGE - 0%	QUANTITY TO DATE	RETAINAGE HELD TO DATE	DOLLAR VALUE TO DATE
0203-0001	Class 1 Excavation	10.00	CY	\$275.00	\$2,750.00	0.00	\$0.00	\$0.00	0.00	\$ -	\$0.00
0204-0150	Class 4 Excavation (water line)	7.00	CY	\$125.00	\$875.00	6.70	\$837.50	\$0.00	0.00	\$ -	\$0.00
0350-0121	Subbase (No. 2A)	84.00	TN	\$55.00	\$4,620.00	154.55	\$8,500.25	\$0.00	0.00	\$ -	\$0.00
0411-0385	Superpave Asphalt Mixture Design, WMA Wearing Course, PG 64-22, <0.3 Million ESALS, 9.5 mm Mix 1.5" Depth, SRL-L	523.00	SY	\$15.00	\$7,845.00	497.60	\$7,464.00	\$0.00	0.00	\$ -	\$0.00
0411-6360	Superpave Asphalt Mixture Design, WMA Binder Course, PG 64-22, <0.3 Million ESALS, 19.0mm Mix, 2.5" Depth	523.00	SY	\$20.00	\$10,460.00	497.60	\$9,952.00	\$0.00	0.00	\$ -	\$0.00
4605-2401	Manhole Frame and Cover (26" Dia.) (Modified)	3.00	EA	\$1,150.00	\$3,450.00	3.00	\$3,450.00	\$0.00	0.00	\$ -	\$0.00
0608-0001	Mobilization	1.00	LS	\$10,000.00	\$10,000.00	1.00	\$10,000.00	\$0.00	0.00	\$ -	\$0.00
0460-0001	Bituminous Tack Coat	523.00	SY	\$0.25	\$130.75	0.00	\$0.00	\$0.00	0.00	\$ -	\$0.00
4676-0001	4" Plain Cement Concrete (Modified)	282.00	SY	\$75.00	\$21,150.00	292.06	\$21,904.50	\$0.00	0.00	\$ -	\$0.00
4676-0002	6" Plain Cement Concrete (Modified)	32.00	SY	\$225.00	\$7,200.00	36.14	\$8,131.50	\$0.00	0.00	\$ -	\$0.00
4931-0003	Post Mounted Signs, Type B, Steel Square Post (Modified)	7.00	EA	\$100.00	\$700.00	7.00	\$700.00	\$0.00	0.00	\$ -	\$0.00
0954-0012	2 Inch Conduit	31.00	LF	\$2.00	\$62.00	31.00	\$62.00	\$0.00	0.00	\$ -	\$0.00
0954-0151	Trench and Backfill, Type 1 (Modified)	31.00	LF	\$65.00	\$2,015.00	31.00	\$2,015.00	\$0.00	0.00	\$ -	\$0.00
4954-0302	Junction Box, JB-27	1.00	EA	\$2,500.00	\$2,500.00	1.00	\$2,500.00	\$0.00	0.00	\$ -	\$0.00
0962-1000	4" White Waterborne Pavement Marking	93.00	LF	\$2.25	\$209.25	0.00	\$0.00	\$0.00	0.00	\$ -	\$0.00
0962-1030	White Waterborne Pavement Legend, "Handicap Symbol", 3'-3"x2'-11"	2.00	EA	\$100.00	\$200.00	0.00	\$0.00	\$0.00	0.00	\$ -	\$0.00
9000-0001	Cleanout Covers (8")	3.00	EA	\$600.00	\$1,800.00	3.00	\$1,800.00	\$0.00	0.00	\$ -	\$0.00
9000-0002	Furnish and Install 15'x5' Bleacher	1.00	EA	\$2,400.00	\$2,400.00	1.00	\$2,400.00	\$0.00	0.00	\$ -	\$0.00
9000-0003	Furnish and Install 21'x5' Bleacher	1.00	EA	\$3,200.00	\$3,200.00	1.00	\$3,200.00	\$0.00	0.00	\$ -	\$0.00
9000-0004	8' ADA Accessible Picnic Table	2.00	EA	\$1,250.00	\$2,500.00	2.00	\$2,500.00	\$0.00	0.00	\$ -	\$0.00
9000-0005	6' Picnic Table	5.00	EA	\$1,000.00	\$5,000.00	5.00	\$5,000.00	\$0.00	0.00	\$ -	\$0.00
9000-0006	Demolish Existing Masonary Structure (Shed)	1.00	EA	\$500.00	\$500.00	0.00	\$0.00	\$0.00	0.00	\$ -	\$0.00
9000-0007	Relocate Existing Wood Structure (Shed)	1.00	EA	\$1,500.00	\$1,500.00	1.00	\$1,500.00	\$0.00	0.00	\$ -	\$0.00
9000-0008	Furnish and Install MDF Fountain Model 440SMFA	1.00	EA	\$8,000.00	\$8,000.00	1.00	\$8,000.00	\$0.00	0.00	\$ -	\$0.00
9000-0009	Furnish and Install Bollards (Black, 6 5/8")	4.00	EA	\$425.00	\$1,700.00	4.00	\$1,700.00	\$0.00	0.00	\$ -	\$0.00
9000-0010	Furnish and Install Trash Receptical	4.00	EA	\$1,400.00	\$5,600.00	4.00	\$5,600.00	\$0.00	0.00	\$ -	\$0.00



Western Region

INVOICE

Ferguson Township Board of Supervisors  
3147 Research Drive  
State College, PA 16801-2798  
**Silvi Baseball Complex Improvements - Invoice No. 1395463**

Contract - 2018-C17  
Work Performed: 10/9/18 - 12/18/18

12/14/2018

ITEM NO.	DESCRIPTION	QUANTITY	UoM	UNIT COST	TOTAL COST	QUANTITY THIS ESTIMATE	DOLLAR VALUE THIS ESTIMATE	RETAINAGE - 0%	QUANTITY TO DATE	RETAINAGE HELD TO DATE	DOLLAR VALUE TO DATE
9000-0011	1" Dia. Polyethylene Water Line (Modified)	42.00	LF	\$75.00	\$3,150.00	44.75	\$3,356.25	\$0.00	0.00	\$ -	\$0.00
					<b>SUBTOTAL</b>		<b>\$110,573.00</b>	<b>\$0.00</b>		<b>\$ -</b>	<b>\$0.00</b>

Payment Amount This Invoice → **\$110,573.00**

*PAY PTS*

Remit To:  
HRI, Inc.  
488 Airport Road  
Johnstown, PA 15904

*FINAL*

*2017-C17*

*ACCT: 30,452.750*

*PAY: \$110,573.00*

*Ryan T. Sale*

Silvi Baseball Complex Improvements  
2017-C17  
Actual Field Quantities

ITEM No. UNIT	DESCRIPTION	UNIT PRICE	INITIAL QTY.	FIELD MEASURED QTY.	COST
0203 0001 CY	CLASS 1 EXCAVATION	\$275.00	10	0	\$0.00
0204 0150 CY	CLASS 4 EXCAVATION (WATER LINE)	\$125.00	7	6.70	\$837.50
0350 0121 TON	SUBBASE (No. 2A)	\$55.00	84	154.55	\$8,500.25
0411 0385 SY	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA WEARING COURSE, PG 64-22, < 0.3 MILLION ESALS, 9.5 MM MIX, 1.5" DEPTH, SRL-L	\$15.00	523	497.6	\$7,464.00
0411 6360 SY	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA BINDER COURSE, PG 64-22, < 0.3 MILLION ESALS, 19.0 MM MIX, 2.5" DEPTH	\$20.00	523	497.6	\$9,952.00
4605 2401 EA	MANHOLE FRAME AND COVER (26" DIA.) (MODIFIED)	\$1,150.00	3	3	\$3,450.00
0608 0001 LS	MOBILIZATION	\$10,000.00	1	1	\$10,000.00
0460 0001 SY	BITUMINOUS TACK COAT	\$0.25	523	0	\$0.00
4676 0001 SY	4" PLAIN CEMENT CONCRETE (MODIFIED)	\$75.00	282	292.06	\$21,904.50
4676 0002 SY	6" PLAIN CEMENT CONCRETE (MODIFIED)	\$225.00	32	36.14	\$8,131.50
4931 0003 SF	POST MOUNTED SIGNS, TYPE B, STEEL SQUARE POST (MODIFIED)	\$100.00	7.0	7	\$700.00
0954 0012 LF	2 INCH CONDUIT	\$2.00	31	31	\$62.00
0954 0151 LF	TRENCH AND BACKFILL, TYPE 1 (MODIFIED)	\$65.00	31	31	\$2,015.00
4954 0302 EA	JUNCTION BOX, JB-27	\$2,500.00	1.0	1	\$2,500.00
0962 1000 LF	4" WHITE WATERBORNE PAVEMENT MARKING	\$2.25	93	0	\$0.00
0962 1030 EA	WHITE WATERBORNE PAVEMENT LEGEND, "HANDICAP SYMBOL", 3'-3" X 2'-11"	\$100.00	2	0	\$0.00
9000 0001 EA	CLEANOUT COVERS (8")	\$600.00	3	3	\$1,800.00
9000 0002 EA	FURNISH AND INSTALL 15'x5' BLEACHER	\$2,400.00	1	1	\$2,400.00
9000 0003 EA	FURNISH AND INSTALL 21'x5' BLEACHER	\$3,200.00	1	1	\$3,200.00
9000 0004 EA	8' ADA ACCESSIBLE PICNIC TABLE	\$1,250.00	2	2	\$2,500.00
9000 0005 EA	6' PICNIC TABLE	\$1,000.00	5	5	\$5,000.00
9000 0006 EA	DEMOLISH EXISTING MASONARY STRUCTURE (SHED)	\$500.00	1	0	\$0.00
9000 0007 EA	RELOCATE EXISTING WOOD STRUCTURE (SHED)	\$1,500.00	1	1	\$1,500.00
9000 0008 EA	FURNISH AND INSTALL MDF FOUNTAIN MODEL 440SMFA	\$8,000.00	1	1	\$8,000.00
9000 0009 EA	FURNISH AND INSTALL BOLLARDS (BLACK, 6 5/8")	\$425.00	4	4	\$1,700.00
9000 0010 EA	FURNISH AND INSTALL TRASH RECEPTICAL	\$1,400.00	4	4	\$5,600.00
9000 0011 LF	1" DIA. POLYETHYLENE WATER LINE (MODIFIED)	\$75.00	42	44.75	\$3,356.25
9000 0012 EA	RELOCATE EXISTING PROPANE TANK	\$1,500.00	1	0	\$0.00
		PAY APP SUB-TOTAL		\$110,573.00	

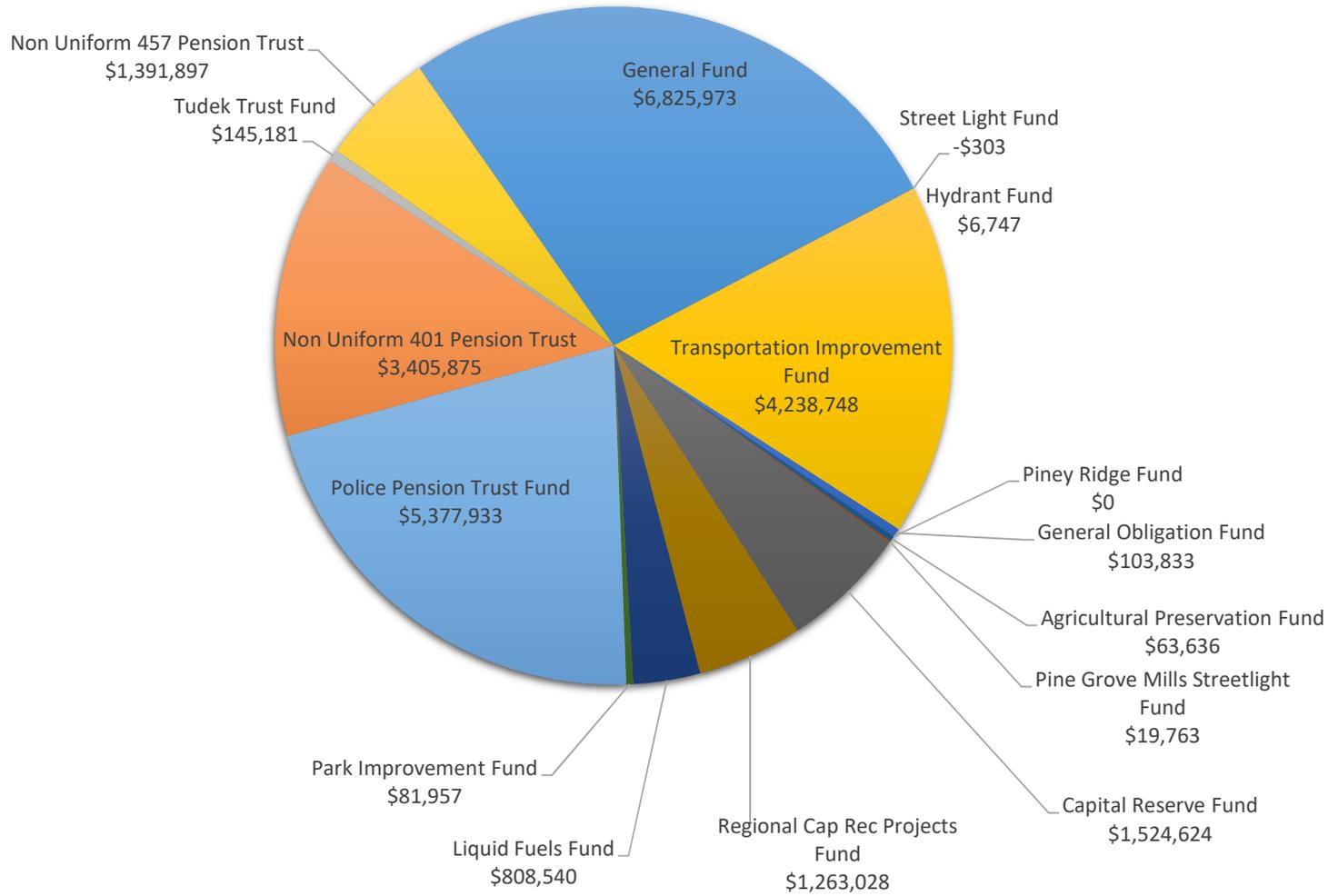
Pay App sub-Total	\$110,573.00
Retainage (%)	0%
Retainage (\$)	\$0.00
<b>Pay App Total</b>	<b>\$110,573.00</b>



# *MONTHLY TREASURERS REPORT*

NOVEMBER 2018

### CASH BALANCES BY FUND - NOVEMBER 30, 2018



# Ferguson Township Treasurer's Report

## November 30, 2018

### Statement of Cash Balances

#### General Fund

##### Checking

Jersey Shore State Bank Operating (3245)	4,592,736.91
JSSB Flex Plan Checking (8757)	20,670.04
Ameriserv Money Market 2602	257,935.14
Ameriserv CD (0152) (matured 11/24/18)	260,472.15
PLGIT General Fund (3017)	597,207.73
PLGIT General Fund CD (matures 4/2/19)	252,863.56

##### Investments

Morgan Stanley Brokerage Account (@ market)	844,087.93
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#### **TOTAL GENERAL FUND**

**6,825,973.46**

#### Other Funds

##### Fund 02 Street Lights

JSSB Checking (4836)	(302.78)
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##### Fund 03 Fire Hydrant

JSSB Checking (4844)	6,746.69
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##### Fund 16 General Obligation

JSSB Checking (4852)	103,832.80
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##### Fund 19 Agricultural Preservation

JSSB Checking (4879)	63,636.30
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##### Fund 30 Capital Reserve

Paypal Account	8,274.57
JSSB Checking (Employee Wellness Sinking Fund)(4909)	14,537.39
JSSB Capital Reserve Checking (3555)	71,295.54
JSSB Checking (Police Equipment Sinking Fund) (1711)	81,763.61
JSSB Checking (PW Equipment Sinking Fund)(4895)	1,081,278.91
JSSB Checking (Bldg Equipment Sinking Fund)(4887)	267,473.51

##### Fund 31 Regional Capital Recreation Projects

JSSB Checking (3547)	744,620.93
Ameriserv Money Market 2818	257,935.14
Ameriserv CD (0154) (matured 11/24/18)	260,472.15

##### Fund 32 Transportation Improvement

JSSB Checking (3539)	2,453,568.75
PLGIT Checking (3261) & Plus	2,806.67
PLGIT CDs (3)(mature 2/8/19, 6/3/19, 10/15/19)	1,263,964.98
Ameriserv Money Market 2693	257,935.14
Ameriserv CD (0153) (matured 11/24/18)	260,472.15

##### Fund 33 Pine Grove Mills Street Lights

JSSB Checking (4917)	19,762.93
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##### Fund 34 Park Improvement

JSSB Checking (4925)	81,956.64
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# Ferguson Township Treasurer's Report

## November 30, 2018

### Statement of Cash Balances

**Fund 35 Liquid Fuels**

JSSB Checking (4933)	89,543.72
PLGIT Checking (3020)	164,408.98
PLGIT CDs (3020) (mature 2/8/19 & 2/26/19)	554,587.77

**Fund 93 Tudek Memorial Trust**

JSSB Checking (4976)	12,374.05
FNB Investments (@market)	132,807.29

<b>TOTAL OTHER FUNDS</b>	<b>8,255,753.83</b>
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<b>TOTAL NON PENSION FUNDS</b>	<b>15,081,727.29</b>
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### Employer Pension Trust Funds

**Fund 60 Police Pension Trust**

JSSB Checking (4941)	134.56
PNC Enterprise Checking (9642)	26,918.79
PNC Investments (@market)(includes accrued interest)	5,350,880.01

**Fund 65 Non Uniformed 401a Pension Trust**

JSSB Checking (4968)	192,902.07
ICMA-RHS Employee Retirement Health Savings Trust (@ market)	68,284.34
ICMA-401 Employer Pension Investment Trust (@ market)	3,144,688.22

<b>TOTAL PENSION TRUST FUNDS</b>	<b>8,783,807.99</b>
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<b>GRAND TOTAL</b>	<b>23,865,535.28</b>
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### Employee Pension Trust Funds

**Fund 66 Non Uniformed 457 Pension Trust**

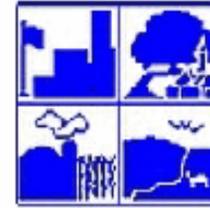
ICMA-457 Employee Pension Investment Trust (@ market)	1,366,348.39
ICMA-ROTH IRA Employee Pension Investment Trust (@ market)	25,548.40

	<b>1,391,896.79</b>
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# Bank Reconciliation

## Uncleared Checks by Fund

User: eendresen  
Printed: 12/17/2018 - 11:16AM  
Checks Before: 11/30/2018



Fund/Check No.	Check Date	Clear Date	System	Vendor/Employee No.	Vendor/Employee Name	Amount
01	GENERAL FUND					
0	11/29/2018	Uncleared	AP	10870	PNC INSTITUTIONAL INVESTMENTS	2,903.28
0	11/29/2018	Uncleared	AP	11216	VANTAGEPOINT TRANSFER AGENTS 401	7,676.07
0	11/29/2018	Uncleared	AP	11218	VANTAGEPOINT TRANSFER AGENTS 457	5,089.20
0	11/29/2018	Uncleared	AP	11381	VANTANGEPOINT TRANSFER AGENTS-706007 ROTH	226.19
6192	09/29/2017	Uncleared	AP	11577	CBICC	2,500.00
6255	10/13/2017	Uncleared	AP	11547	FOSTER DANIEL	250.00
6727	01/31/2018	Uncleared	AP	11597	WITHERS KARYN	15.00
7254	06/15/2018	Uncleared	AP	11738	GREENE HERBERT	25.00
7622	08/31/2018	Uncleared	AP	11756	TOMKEIL PAUL	40.00
7635	09/15/2018	Uncleared	AP	11702	BLUE KNOB AUTO	300.00
7731	09/28/2018	Uncleared	AP	11217	FERGUSON TOWNSHIP POLICE ASSOCIATION	380.00
7773	10/15/2018	Uncleared	AP	11702	BLUE KNOB AUTO	300.00
7793	10/15/2018	Uncleared	AP	11217	FERGUSON TOWNSHIP POLICE ASSOCIATION	380.00
7864	10/31/2018	Uncleared	AP	11217	FERGUSON TOWNSHIP POLICE ASSOCIATION	380.00
7900	11/15/2018	Uncleared	AP	10077	B PAD GROUP INC THE	450.00
7903	11/15/2018	Uncleared	AP	11702	BLUE KNOB AUTO	300.00
7907	11/15/2018	Uncleared	AP	11577	CBICC	25,000.00
7908	11/15/2018	Uncleared	AP	10185	CENTRE CONCRETE COMPANY	76.52
7917	11/15/2018	Uncleared	AP	10297	DAVIDHEISERS INC	346.00
7921	11/15/2018	Uncleared	AP	11217	FERGUSON TOWNSHIP POLICE ASSOCIATION	760.00
7923	11/15/2018	Uncleared	AP	11355	FINE LINE HOMES	2,037.79
7940	11/15/2018	Uncleared	AP	10773	OLD DOMINION BRUSH	54.46
7944	11/15/2018	Uncleared	AP	10819	PATTON TOWNSHIP SUPERVISORS	1,651.71
7947	11/15/2018	Uncleared	AP	11344	PETERSON INDUSTRIES INC.	684.53
7954	11/15/2018	Uncleared	AP	10090	ROBERT W. BEHRER LLC	768.00
7955	11/15/2018	Uncleared	AP	10958	S & A HOMES	12,943.14
7957	11/15/2018	Uncleared	AP	10997	SIGNAL CONTROL PRODUCTS INC	2,640.55
7959	11/15/2018	Uncleared	AP	11744	STARR UNIFORM	2,558.91
7973	11/15/2018	Uncleared	AP	11214	ZEIGLERS PACKING & CRATING	35.00
7974	11/29/2018	Uncleared	AP	10016	AFLAC	176.77

Fund/Check No.	Check Date	Clear Date	System	Vendor/Employee No.	Vendor/Employee Name	Amount
7975	11/29/2018	Uncleared	AP	10031	ALLIED MECHANICAL & ELECTRICAL	112.50
7976	11/29/2018	Uncleared	AP	10085	BASTIAN TIRE & AUTO CENTERS	257.20
7977	11/29/2018	Uncleared	AP	10126	BRADCO SUPPLY COMPANY	163.00
7978	11/29/2018	Uncleared	AP	10184	CENTRE COMMUNICATIONS INC	69.19
7979	11/29/2018	Uncleared	AP	11689	CENTRE COUNTY 9-1-1 / EMERGENCY COMMUNICATION	1,500.00
7980	11/29/2018	Uncleared	AP	10201	CENTRE COUNTY UNITED WAY	101.25
7981	11/29/2018	Uncleared	AP	10203	CENTRE DAILY TIMES	166.66
7982	11/29/2018	Uncleared	AP	10225	CINTAS CORPORATION # 536	89.00
7983	11/29/2018	Uncleared	AP	11240	CLEVELAND BROTHERS	340.69
7984	11/29/2018	Uncleared	AP	10241	COLONIAL PRESS	94.00
7985	11/29/2018	Uncleared	AP	10243	COLUMBIA GAS OF PA INC	1,719.51
7986	11/29/2018	Uncleared	AP	11760	COMCAST	12.66
7987	11/29/2018	Uncleared	AP	10244	COMCAST BUSINESS	1,050.00
7988	11/29/2018	Uncleared	AP	10324	DONS POWER EQUIPMENT	29.90
7989	11/29/2018	Uncleared	AP	10345	ECKS GARAGE INC	8.71
7990	11/29/2018	Uncleared	AP	10374	FEDERAL EXPRESS	43.86
7991	11/29/2018	Uncleared	AP	11217	FERGUSON TOWNSHIP POLICE ASSOCIATION	380.00
7992	11/29/2018	Uncleared	AP	11635	GREAT AMERICA FINANCIAL SERVICES	243.64
7993	11/29/2018	Uncleared	AP	10509	HRI INC	3,719.96
7994	11/29/2018	Uncleared	AP	10536	INTOXIMETERS	1,000.00
7995	11/29/2018	Uncleared	AP	10568	K & S DISTRIBUTION	4,451.30
7996	11/29/2018	Uncleared	AP	11579	LIFT, INC	707.33
7997	11/29/2018	Uncleared	AP	11704	MADISON NATIONAL LIFE	2,268.95
7998	11/29/2018	Uncleared	AP	10669	MAXWELL TRUCK & EQUIPMENT LLC	267.47
7999	11/29/2018	Uncleared	AP	10673	MCCARTNEYS INC	381.09
8000	11/29/2018	Uncleared	AP	10692	MIDSTATE TOOL & SUPPLY INC	32.47
8001	11/29/2018	Uncleared	AP	10720	MORRISON SHAWN	25.00
8002	11/29/2018	Uncleared	AP	10724	MOUNT NITTANY MEDICAL CENTER	262.50
8003	11/29/2018	Uncleared	AP	10749	NITTANY CHEM DRY	1,115.00
8004	11/29/2018	Uncleared	AP	10762	NORTH CENTRAL DIGITAL SYSTEMS	985.02
8005	11/29/2018	Uncleared	AP	11332	NTM ENGINEERING INC	1,406.65
8006	11/29/2018	Uncleared	AP	10773	OLD DOMINION BRUSH	223.36
8007	11/29/2018	Uncleared	AP	10819	PATTON TOWNSHIP SUPERVISORS	860.94
8008	11/29/2018	Uncleared	AP	10914	QUILL CORPORATION	91.98
8009	11/29/2018	Uncleared	AP	10973	SAMS CLUB DIRECT	461.69
8010	11/29/2018	Uncleared	AP	11017	SOSMETAL PRODUCTS INC	199.02
8011	11/29/2018	Uncleared	AP	11026	SPRING TOWNSHIP SUPERVISORS	1,451.00
8012	11/29/2018	Uncleared	AP	11744	STARR UNIFORM	185.76
8013	11/29/2018	Uncleared	AP	11049	STITZERS IMPRINTING & ENGRAVING SPEC	11.25
8014	11/29/2018	Uncleared	AP	11665	TERMINAL SUPPLY COMPANY	133.27
8015	11/29/2018	Uncleared	AP	11133	U COMP	93.14

Fund/Check No.	Check Date	Clear Date	System	Vendor/Employee No.	Vendor/Employee Name	Amount
8016	11/29/2018	Uncleared	AP	11136	U S MUNICIPAL SUPPLY INC	77.52
8017	11/29/2018	Uncleared	AP	11159	VERIZON WIRELESS	482.84
8018	11/29/2018	Uncleared	AP	11190	WESCO RECEIVABLES CORP	39.76
8019	11/29/2018	Uncleared	AP	11192	WEST PENN POWER	2,919.43
8020	11/29/2018	Uncleared	AP	11194	WEX BANK	70.02
8021	11/29/2018	Uncleared	AP	11687	YOUR PLUMBING SUPPLY LLC	32.32
Fund 01Total:						101,285.93
02	STREET LIGHT FUND					
81	03/15/2018	Uncleared	AP	11192	WEST PENN POWER	0.29
92	11/29/2018	Uncleared	AP	11192	WEST PENN POWER	1,349.02
Fund 02Total:						1,349.31
19	AG PRESERVATION FUND					
11	09/15/2018	Uncleared	AP	11757	ORE AS QI FOR LARRY HARPSTER & SUZANNE HARPSTE	4,507.50
12	09/28/2018	Uncleared	AP	11758	HARPSTER DAWN	2,253.75
13	09/28/2018	Uncleared	AP	11759	HARPSTER HAROLD	2,253.75
Fund 19Total:						9,015.00
30	CAPITAL RESERVE FUND					
5	11/29/2018	Uncleared	AP	11726	WATSON DIESEL	1,991.21
506	11/29/2018	Uncleared	AP	10122	BOROUGH OF STATE COLLEGE	553.23
507	11/29/2018	Uncleared	AP	10236	CMT LABORATORIES	80.00
508	11/29/2018	Uncleared	AP	11558	ENVIRONMENTAL PLANNING & DESIGN, LLC	527.71
Fund 30Total:						3,152.15
32	TRANSPORT IMPROVEMENT FUND					
2017036	10/15/2018	Uncleared	AP	10819	PATTON TOWNSHIP SUPERVISORS	9,898.12
2017038	11/15/2018	Uncleared	AP	10509	HRI INC	153,796.93
2017040	11/29/2018	Uncleared	AP	10509	HRI INC	177,292.55
2017041	11/29/2018	Uncleared	AP	10674	MCCORMICK TAYLOR INC	5,575.10
Fund 32Total:						346,562.70
35	LIQUID FUELS FUND					
261	11/15/2018	Uncleared	AP	10701	MILLER WELDING SERVICE	47.50
262	11/29/2018	Uncleared	AP	10436	GLENN O HAWBAKER INC	641.30
Fund 35Total:						688.80
93	TUDEK PARK TRUST FUND					

<b>Fund/Check No.</b>	<b>Check Date</b>	<b>Clear Date</b>	<b>System</b>	<b>Vendor/Employee No.</b>	<b>Vendor/Employee Name</b>	<b>Amount</b>
204	11/29/2018	Uncleared	AP	11703	FRUITTOWN LAND STEWARDSHIP SERVICES	465.00
205	11/29/2018	Uncleared	AP	11192	WEST PENN POWER	14.90
206	11/30/2018	Uncleared	AP	11781	ASSOCIATED REALTY PROPERTY MANAGEMENT	1,953.81
Fund 93Total:						2,433.71
Grand Total:						464,487.60

# Accounts Payable

## Checks by Date - Detail by Check Number

User: eendresen  
 Printed: 12/26/2018 2:45 PM



Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
ACH	10870	PNC INSTITUTIONAL INVESTMENTS	11/15/2018		
	110218	POLICE PENSION WITHHELD			3,154.15
	111618	POLICE PENSION WITHHELD			3,154.15
Total for this ACH Check for Vendor 10870:				0.00	6,308.30
ACH	11216	VANTAGEPOINT TRANSFER AGENTS	11/15/2018		
	110218	401			7,495.85
	111618	401			7,465.82
Total for this ACH Check for Vendor 11216:				0.00	14,961.67
ACH	11218	VANTAGEPOINT TRANSFER AGENTS	11/15/2018		
	110218	457			5,089.20
	111618	457			5,126.94
Total for this ACH Check for Vendor 11218:				0.00	10,216.14
ACH	11381	VANTAGEPOINT TRANSFER AGENTS	11/15/2018		
	110218	ROTH IRA			226.19
	111618	ROTH IRA			226.19
Total for this ACH Check for Vendor 11381:				0.00	452.38
ACH	10870	PNC INSTITUTIONAL INVESTMENTS	11/29/2018		
	112918	POLICE PENSION WITHHELD			2,903.28
Total for this ACH Check for Vendor 10870:				0.00	2,903.28
ACH	11216	VANTAGEPOINT TRANSFER AGENTS	11/29/2018		
	112918	401			7,676.07
Total for this ACH Check for Vendor 11216:				0.00	7,676.07
ACH	11218	VANTAGEPOINT TRANSFER AGENTS	11/29/2018		
	112918	457			5,089.20
Total for this ACH Check for Vendor 11218:				0.00	5,089.20
ACH	11381	VANTAGEPOINT TRANSFER AGENTS	11/29/2018		
	112918	ROTH IRA			226.19
Total for this ACH Check for Vendor 11381:				0.00	226.19
4	11727 V201000757	HUNTER TRUCK SALES 2019 PETERBILT MODEL 348 TANDEM AXLE	11/15/2018		107,333.00
Total for Check Number 4:				0.00	107,333.00
5	11726 17769	WATSON DIESEL UPFITTING OF PETERBILT TANDEM AXLE	11/29/2018		1,991.21

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 5:	0.00	1,991.21
21	10209 416	CENTRE REGION PARKS & RECREATI CRCOG-REG PARKS CAPITAL	11/15/2018		26,034.50
			Total for Check Number 21:	0.00	26,034.50
92	11192 1424-NOV18 3057-NOV18 3639-NOV18	WEST PENN POWER STREET LIGHTS STREET LIGHTS HAVERSHIRE BLVD LIGHTING	11/29/2018 01.433.036 01.433.036 01.433.036		345.22 786.25 217.55
			Total for Check Number 92:	0.00	1,349.02
202	10644 111518	LOWES COMPANIES INC SELF LVL/COMMERCIAL GRADE SAND FILL	11/15/2018		48.96
			Total for Check Number 202:	0.00	48.96
203	11781 112718	ASSOCIATED REALTY PROPERTY MA CARPET REPLACEMENT	11/29/2018 VOID		3,423.81
			Total for Check Number 203:	3,423.81	0.00
204	11703 112918	FRUITTOWN LAND STEWARDSHIP SE BUTTERFLY GARDEN TREATMENT	11/29/2018		465.00
			Total for Check Number 204:	0.00	465.00
205	11192 6563-NOV18	WEST PENN POWER 425 PARK CREST LANE	11/29/2018 93.454.249		14.90
			Total for Check Number 205:	0.00	14.90
206	11781 112718 112718	ASSOCIATED REALTY PROPERTY MA CARPET REPLACEMENT RENTAL INCOME	11/30/2018		3,423.81 -1,470.00
			Total for Check Number 206:	0.00	1,953.81
259	10436 715999	GLENN O HAWBAKER INC 25MM I 64-22 .3-.3	11/15/2018		755.48
			Total for Check Number 259:	0.00	755.48
260	10475 3422678	HANSON AGGREGATES PA INC PRODUCT 1	11/15/2018		103.52
			Total for Check Number 260:	0.00	103.52
261	10701 102318	MILLER WELDING SERVICE 50' OF #5 REBAR	11/15/2018		47.50
			Total for Check Number 261:	0.00	47.50
262	10436 716556	GLENN O HAWBAKER INC 9.5MM I 64-22 0-.3	11/29/2018		641.30
			Total for Check Number 262:	0.00	641.30
503	11242 11GM-QK7C-NQ9Q	AMAZON CAPITAL SERVICES INC 3 MONITOR REPLACEMENTS	11/15/2018		389.97

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 503:	0.00	389.97
504	11778 483	CMP ENERGY RELOCATING TANK AT SILVI BASEBALL C	11/15/2018		287.50
			Total for Check Number 504:	0.00	287.50
505	10837 42574	PENN TERRA ENGINEERING INC SUBURBAN PARK SURVEY-PERIMETER	11/15/2018		2,448.10
			Total for Check Number 505:	0.00	2,448.10
506	10122 6986	BOROUGH OF STATE COLLEGE REIMBURSE FOR THE OCT SERVICES INV	11/29/2018		553.23
			Total for Check Number 506:	0.00	553.23
507	10236 1810027	CMT LABORATORIES CONCRETE CYLINDERS	11/29/2018		80.00
			Total for Check Number 507:	0.00	80.00
508	11558 29	ENVIRONMENTAL PLANNING & DESI FERGUSON TWP UPDATE ZOINING ORDIN	11/29/2018		527.71
			Total for Check Number 508:	0.00	527.71
7896	10031 139321	ALLIED MECHANICAL & ELECTRICA REPLACED THE CONTRACTOR	11/15/2018		132.58
			Total for Check Number 7896:	0.00	132.58
7897	11242 1KD1-TKFF-3JDP 1WXJ-JG3X-LGJ4	AMAZON CAPITAL SERVICES INC RIBBON TRIMMER HEAD FOR STIHL AUTOCUT GO	11/15/2018		5.72 231.74
			Total for Check Number 7897:	0.00	237.46
7898	10048 38954	AMTEC LESS LETHAL SYSTEMS 24 BEAN BAG ROUNDS	11/15/2018		716.55
			Total for Check Number 7898:	0.00	716.55
7899	11239 80850 80857	ASAP HYDRAULICS STATE COLLEGE, PRESSURE WASHER HOSE PRESSURE WASHER PLUG	11/15/2018		200.80 6.30
			Total for Check Number 7899:	0.00	207.10
7900	10077 2845	B PAD GROUP INC THE 2019 BPAD FOR POLICE ANNUAL MAINTEN	11/15/2018		450.00
			Total for Check Number 7900:	0.00	450.00
7901	11649 1262472	BABST CALLAND CLEMENTS AND ZC EXTENTION ISSUE WITH THE COTTAGES/	11/15/2018		1,128.00
			Total for Check Number 7901:	0.00	1,128.00
7902	10085 134904	BASTIAN TIRE & AUTO CENTERS TIRES	11/15/2018		535.48

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7902:	0.00	535.48
7903	11702 110118	BLUE KNOB AUTO UNDERCOVER VEHICLE	11/15/2018		300.00
			Total for Check Number 7903:	0.00	300.00
7904	10122 3X	BOROUGH OF STATE COLLEGE DUI CHECKPOINT 3X	11/15/2018		276.75
			Total for Check Number 7904:	0.00	276.75
7905	10126 172348	BRADCO SUPPLY COMPANY FILTER	11/15/2018		56.00
			Total for Check Number 7905:	0.00	56.00
7906	11224 64598	CAMPBELL DURRANT BEATTY PALO REVIEW COLLECTIVE BARGAINING AGRE	11/15/2018		177.60
			Total for Check Number 7906:	0.00	177.60
7907	11577 128930 128930	CBICC CBICC ECONOMIC DVLP. PARTNERSHIP C CBICC ECONOMIC DVLP PARTNERSHIP CC	11/15/2018		12,500.00 12,500.00
			Total for Check Number 7907:	0.00	25,000.00
7908	10185 162932	CENTRE CONCRETE COMPANY EXPANSION JOINT	11/15/2018		76.52
			Total for Check Number 7908:	0.00	76.52
7909	10203 3911032 3914875 3915384	CENTRE DAILY TIMES BOS MTG ORD #1045 SEALED BIDS FOR PROJ 2018-C5 BOS MTG NOV 5	11/15/2018		106.49 195.13 138.18
			Total for Check Number 7909:	0.00	439.80
7910	10208 414 414 414 414 414 414 414 414 414	CENTRE REGION COUNCIL OF GOVEI CRCOG ADM CRCOG BUILDING CAPITAL CRCOG CR PLANNING AGENCY CRCOG METRO PLANNING ORG CRCOG FIRE CONTRIBUTION CRCOG FIRE CAPITAL CONT CRCOG FIRE CAPITAL CONT CRCOG EMS CONTRIBUTION CRCOG EMS CONTINGENCY	11/15/2018		26,441.50 2,095.25 19,038.50 7,241.50 78,688.25 20,284.25 2,513.00 8,462.75 77.75
			Total for Check Number 7910:	0.00	164,842.75
7911	10209 416 416 416 416 416 416	CENTRE REGION PARKS & RECREATI CRCOG-PARKS & REC CRCOG-PARKS/RECCAPITAL CONT CRCOG-REGION POOLS CAPITAL CRCOG-SENIOR CENTER CRCOG-NATURE CENTER CRCOG-NATURE CENTER CAPITAL	11/15/2018		38,219.10 4,310.70 33,743.00 3,754.60 2,202.20 696.90

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7911:	0.00	82,926.50
7912	10231 456402	CLEARFIELD WHOLESALE PAPER CO CLEANER/DEGREASER SPRAY NINE	11/15/2018		152.50
			Total for Check Number 7912:	0.00	152.50
7913	11376 10/31/18 10/31/18	COLONIAL AUTO SUPPLY FUEL FILTERS/BRAKE PADS/BRAKE ROTO HEADLIGHT BULBS/MOTOR MOUNT/OIL F	11/15/2018		1,642.38 361.16
			Total for Check Number 7913:	0.00	2,003.54
7914	10241 43537	COLONIAL PRESS 250 NOTICE OF CRASH REPORT FORM	11/15/2018		50.00
			Total for Check Number 7914:	0.00	50.00
7915	10247 111518	COMMONWEALTH OF PA 2019 PESICIDE LICENSE	11/15/2018		35.00
			Total for Check Number 7915:	0.00	35.00
7916	10282 2C258034	CUMBERLAND TRUCK EQUIPMENT C REMAN AD9 AIR DRYER PARTS	11/15/2018		205.77
			Total for Check Number 7916:	0.00	205.77
7917	10297 20859	DAVIDHEISERS INC STOP WATCH/VASCAR TESTED/SPEED CHI	11/15/2018		346.00
			Total for Check Number 7917:	0.00	346.00
7918	10345 94010	ECKS GARAGE INC SWITCH	11/15/2018		43.17
			Total for Check Number 7918:	0.00	43.17
7919	10346 27579	ECOLAWN 112 E CHESTNUT ST LAWN CUTTING	11/15/2018		135.00
			Total for Check Number 7919:	0.00	135.00
7920	10373 103118 103118	FAYETTE PARTS SERVICE INC SOLENOID/HOLDER KIT BELT	11/15/2018		90.09 23.78
			Total for Check Number 7920:	0.00	113.87
7921	11217 110218 111618	FERGUSON TOWNSHIP POLICE ASSOC UNION DUES UNION DUES	11/15/2018		380.00 380.00
			Total for Check Number 7921:	0.00	760.00
7922	10380 103018 103118	FERGUSON TOWNSHIP SUPERVISORS OCT 18 TIF TRANS TAX SEP 18 TIF TRANS TAX	11/15/2018		44,704.94 68,675.19
			Total for Check Number 7922:	0.00	113,380.13
7923	11355	FINE LINE HOMES	11/15/2018		

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
	24-4-22N-1754	CURB RELEASE 24-4-22N-1754			1,000.00
	24-4-22N-1754	CURB INTEREST 24-4-22N-1754			18.91
	24-4-22N-1758	CURB RELEASE 24-4-22N-1758			1,000.00
	24-4-22N-1758	CURB INTEREST 24-4-22N-1758			18.88
			Total for Check Number 7923:	0.00	2,037.79
7924	10396	FISHER AUTO PARTS	11/15/2018		
	110118	STARTER SOLENOID/IGNITION/LAMP/FIL			803.65
	110118	ANTIFREEZE/COOLANT			35.73
	110118	DOOR LOCK ACTUATOR MOTOR			139.01
	110118	TRU-FLATE			17.08
			Total for Check Number 7924:	0.00	995.47
7925	10432	GEORGE T BISEL CO INC	11/15/2018		
	670430-18	VOL1, NEW & REVISED CH 3 FOR PA ZONI			137.38
			Total for Check Number 7925:	0.00	137.38
7926	11264	GROFF TRACTOR & EQUIPMENT	11/15/2018		
	PSO211071-1	STEM/PEDA/BRAKET/PIN/RING/CABLE/BA			471.96
	PSO211801-1	BELT/CAP/TENSIONER			386.65
			Total for Check Number 7926:	0.00	858.61
7927	10488	CHARLES F HERR JR	11/15/2018		
	17/425-1	SEO FOR SAVORS			140.00
	18\116	SEO FOR WASSON			600.00
	18\421	SEO FOR KLAHOLD			360.00
	18\421-1	SEO FOR KLAHOLD			140.00
			Total for Check Number 7927:	0.00	1,240.00
7928	10568	K & S DISTRIBUTION	11/15/2018		
	130302	ENI 5W20 FULL SYNTHETIC			140.00
			Total for Check Number 7928:	0.00	140.00
7929	10592	KNISELY SHREDDING	11/15/2018		
	25571	ON-SITE SHREDDING			35.00
	25572	ON-SITE SHREDDING			35.00
			Total for Check Number 7929:	0.00	70.00
7930	11579	LIFT, INC	11/15/2018		
	06S6299350	ROUTINE MAINTENANCE			523.90
			Total for Check Number 7930:	0.00	523.90
7931	10644	LOWES COMPANIES INC	11/15/2018		
	111518	PIPE/SCR/EMERGENCY COMBO RD LETTE			118.75
	111518	SUPPLIES FOR DAY OF CARING			200.72
	111518	MRKG CAUTION BLU			30.09
	111518	CHM SPLSH LAT/SELF LVL			71.06
	111518	SAFETY RED MARK/TWSTLCK/WALLCLAY			37.94
	111518	20V MAX XR HD-IMPAC			320.14
			Total for Check Number 7931:	0.00	778.70
7932	10688	MID STATE BATTERY LLC	11/15/2018		
	3287	BATTERIES			290.16

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7932:	0.00	290.16
7933	10692 482117485	MIDSTATE TOOL & SUPPLY INC BOOSTER/STRUT COIL/HOSE REEL	11/15/2018		384.66
			Total for Check Number 7933:	0.00	384.66
7934	10712 103118 103118 103118 103118	MONARCH CLEANERS MATS CLN OCT18 CHIEF'S UNIF CLN OCT18 PW UNIF CLN OCT18 POLICE UNIF CLN OCT18	11/15/2018		17.50 38.20 463.94 229.00
			Total for Check Number 7934:	0.00	748.64
7935	10724 1X 2X 3X 4X 5X	MOUNT NITTANY MEDICAL CENTER DUI CHECKPOINT 1X DUI CHECKPOINT 2X DUI CHECKPOINT 3X DUI CHECKPOINT 4X DUI CHECKPOINT 5X	11/15/2018		297.50 291.67 297.50 262.50 262.50
			Total for Check Number 7935:	0.00	1,411.67
7936	10728 X202359616:01	MURRAY'S FORD INC HEADLIGHT	11/15/2018		129.77
			Total for Check Number 7936:	0.00	129.77
7937	10756 711028-0	NITTANY OFFICE EQUIPMENT TAPE	11/15/2018		22.19
			Total for Check Number 7937:	0.00	22.19
7938	10760 103118	NOERRS GARAGE AIR FILTERS/PLUG/VALVE	11/15/2018		365.40
			Total for Check Number 7938:	0.00	365.40
7939	10762 INV272985 INV280048	NORTH CENTRAL DIGITAL SYSTEMS COPIER LEASE KM3050 COPIER LEASE ECOSYSM3550IDN	11/15/2018		70.21 108.80
			Total for Check Number 7939:	0.00	179.01
7940	10773 6391698	OLD DOMINION BRUSH FUEL SENDER	11/15/2018		54.46
			Total for Check Number 7940:	0.00	54.46
7941	10798 790469	PA ONE CALL SYSTEM MONTHLY ACTIVITY FEE/SUPPLEMENTAL	11/15/2018		114.23
			Total for Check Number 7941:	0.00	114.23
7942	11522 D18-18	PAMELA R. WINTER, SEO SEO FOR WASSON/NICOLE	11/15/2018		400.00
			Total for Check Number 7942:	0.00	400.00
7943	10816 ALC17350	PATCTECH PATCTECH SERV OCT HOURS	11/15/2018		400.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7943:	0.00	400.00
7944	10819	PATTON TOWNSHIP SUPERVISORS	11/15/2018		
	1X	DUI CHECKPOINT 1X			453.15
	2X	DUI CHECKPOINT 2X			471.24
	4X	DUI CHECKPOINT 4X			419.16
	5X	DUI CHECKPOINT 5X			308.16
			Total for Check Number 7944:	0.00	1,651.71
7945	10837	PENN TERRA ENGINEERING INC	11/15/2018		
	110218	REFUND FROM SIGN PERMITS			125.00
	110218	CURB RELEASE FOR SIGNS			250.00
			Total for Check Number 7945:	0.00	375.00
7946	10845	PENNSYLVANIA MUNICIPAL HEALTH	11/15/2018		
	110118	HEALTHCARE INS DEC 18			84,230.54
	110118	EYECARE INS DEC 18			710.67
	110118	DENTAL INS DEC 18			3,697.40
			Total for Check Number 7946:	0.00	88,638.61
7947	11344	PETERSON INDUSTRIES INC.	11/15/2018		
	156627	HYRAULIC, SPOOL KIT GRESEN			84.84
	156755	HYDRAULIC O-RING			47.76
	156946	BRAKE PEDAL/BRAKE			551.93
			Total for Check Number 7947:	0.00	684.53
7948	10864	PITNEY BOWES GLOBAL FINANCIAL	11/15/2018		
	3307443885	POSTAGE RENTAL			122.01
			Total for Check Number 7948:	0.00	122.01
7949	11523	PITNEY BOWES INC	11/15/2018		
	1009984100	RED INK			393.45
			Total for Check Number 7949:	0.00	393.45
7950	11779	PORT MATILDA EMS	11/15/2018		
	111918	2018 CONTRIBUTION TO PORT MATILDA E			500.00
			Total for Check Number 7950:	0.00	500.00
7951	10893	PRINT O STAT INC	11/15/2018		
	DC015472	METER USAGE			4.96
			Total for Check Number 7951:	0.00	4.96
7952	10896	PROFORMANCE FUEL INJECTION SER	11/15/2018		
	7834	NEW INJECTORS FOR PW #14			2,064.59
			Total for Check Number 7952:	0.00	2,064.59
7953	10927	REDLINE SPEED SHINE	11/15/2018		
	1915	FLEET MEMBERSHIP			260.33
			Total for Check Number 7953:	0.00	260.33
7954	10090	ROBERT W. BEHRER LLC	11/15/2018		
	12118	INSTALL HACKBERRY TREE ON SHELLER			768.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7954:	0.00	768.00
7955	10958	S & A HOMES	11/15/2018		
	ES-387	ES-387			810.00
	ES-387	ES-387			10.60
	ES-388	ES-388			1,080.00
	ES-388	ES-388			14.14
	PERSONAL BOND	PERSONAL BOND RELEASE			11,015.33
	PERSONAL BOND	PERSONAL BOND RELEASE INTEREST			13.07
			Total for Check Number 7955:	0.00	12,943.14
7956	10978	SCHLOW CENTRE REGION LIBRARY	11/15/2018		
	415	LIBRARY OPERATING			106,454.25
	415	LIBRARY CAPITAL			5,758.00
			Total for Check Number 7956:	0.00	112,212.25
7957	10997	SIGNAL CONTROL PRODUCTS INC	11/15/2018		
	20182568	REPAIR 2 DBL-777-MX LED UPS PER EMAI			2,640.55
			Total for Check Number 7957:	0.00	2,640.55
7958	11026	SPRING TOWNSHIP SUPERVISORS	11/15/2018		
	1X	DUI CHECKPOINT 1X			449.50
	2X	DUI CHECKPOINT 2X			459.80
	3X	DUI CHECKPOINT 3X			472.45
	4X	DUI CHECKPOINT 4X			459.80
	5X	DUI CHECKPOINT 5X			472.45
			Total for Check Number 7958:	0.00	2,314.00
7959	11744	STARR UNIFORM	11/15/2018		
	126341	SHIRTS/PATCHES/CORDEDGE			223.59
	126591	PATCHES/STRIPS/CORDEDGE AROUND EP			1,654.20
	126663	HEMMING OF PANTS/STRIPE ON PANTS/OI			681.12
			Total for Check Number 7959:	0.00	2,558.91
7960	11037	STATE COLLEGE FORD LINCOLN INC	11/15/2018		
	102918	SPORRING/SPORLEVER/DRAWELEMENT/S			314.26
			Total for Check Number 7960:	0.00	314.26
7961	11050	STOCKER CHEVROLET INC	11/15/2018		
	103118	LINK/HOUSING			81.97
			Total for Check Number 7961:	0.00	81.97
7962	11058	STOVER MCGLAUGHLIN	11/15/2018		
	130813	ZHB MTG CHERRY LANE ZONING DECISIC			1,452.00
			Total for Check Number 7962:	0.00	1,452.00
7963	11298	SUSQUEHANNA VALLEY PROFESSION	11/15/2018		
	102418	EOB			20.00
			Total for Check Number 7963:	0.00	20.00
7964	11533	T-MOBILE USA INC	11/15/2018		
	9335634405	TOWER DUMP			50.00

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7964:	0.00	50.00
7965	11113 450806	TRACTOR SUPPLY CREDIT PLAN BLASTING GRIT FINE BLND	11/15/2018		242.88
			Total for Check Number 7965:	0.00	242.88
7966	11173 02-52163	WALKER & WALKER EQUIPMENT II I TIRES FOR MOWERS	11/15/2018		120.00
			Total for Check Number 7966:	0.00	120.00
7967	11551 68942837	WELLS FARGO COPIER LEASE 3010i	11/15/2018		131.33
			Total for Check Number 7967:	0.00	131.33
7968	11190 103118	WESCO RECEIVABLES CORP BULBS/LIGHTS	11/15/2018		407.62
			Total for Check Number 7968:	0.00	407.62
7969	11192 2239-NOV18 7407-NOV18 7852-NOV18	WEST PENN POWER S WATER ST PGM-BLINKER-WEST PGM-BLINKER-EAST	11/15/2018		22.50 8.39 8.39
			Total for Check Number 7969:	0.00	39.28
7970	11201 110518 110518 110518 110518 110518	WINDSTREAM LONG DIST OCT 18 LONG DIST OCT 18 LINE/BASIC SERV OCT 18 LINE/BASIC SERV OCT 18 LINE/BASIC SERV OCT 18	11/15/2018		54.31 26.75 140.34 280.70 280.70
			Total for Check Number 7970:	0.00	782.80
7971	11203 S1898252	WITMER PUBLIC SAFETY GROUP INC FEDERAL CARTRIDGE 9MM/RIFLE/PISTOL	11/15/2018		2,114.00
			Total for Check Number 7971:	0.00	2,114.00
7972	11262 8003	X-PERT COMMUNICATIONS T/M SERVICE CALL TO COMPLETE SERGE	11/15/2018		150.00
			Total for Check Number 7972:	0.00	150.00
7973	11214 234754	ZEIGLERS PACKING & CRATING 50 STAKES	11/15/2018		35.00
			Total for Check Number 7973:	0.00	35.00
7974	10016 113018	AFLAC INSURANCE WITHHELD	11/29/2018		176.77
			Total for Check Number 7974:	0.00	176.77
7975	10031 152274	ALLIED MECHANICAL & ELECTRICA VERIFIED HUMIDIFIER DRAIN & OPERATI	11/29/2018		112.50

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7975:	0.00	112.50
7976	10085 135350	BASTIAN TIRE & AUTO CENTERS TIRES	11/29/2018		257.20
			Total for Check Number 7976:	0.00	257.20
7977	10126 172772	BRADCO SUPPLY COMPANY FAB SHOE/CURB BUMPER	11/29/2018		163.00
			Total for Check Number 7977:	0.00	163.00
7978	10184 1187149	CENTRE COMMUNICATIONS INC RADIO INSTALLED & SUPPLIED CONNECT	11/29/2018		69.19
			Total for Check Number 7978:	0.00	69.19
7979	11689 03045	CENTRE COUNTY 9-1-1 / EMERGENCY 1 MCV CAD DESKTOP FOR PARTIAL REIMI	11/29/2018		1,500.00
			Total for Check Number 7979:	0.00	1,500.00
7980	10201 112918	CENTRE COUNTY UNITED WAY U-WAY	11/29/2018		101.25
			Total for Check Number 7980:	0.00	101.25
7981	10203 3930603 3944012	CENTRE DAILY TIMES BOS MTG NOV 5 BOS MTG NOV 13 & 15	11/29/2018		102.63 64.03
			Total for Check Number 7981:	0.00	166.66
7982	10225 1900329088	CINTAS CORPORATION # 536 GLOVES	11/29/2018		89.00
			Total for Check Number 7982:	0.00	89.00
7983	11240 INNPP2929131 INPP292130 INPP2924866 INPP2929132	CLEVELAND BROTHERS ELEMENT/FILTER CLAMP/PIPE ELEMENT BOLT/WASHER	11/29/2018		149.87 109.11 80.25 1.46
			Total for Check Number 7983:	0.00	340.69
7984	10241 43704	COLONIAL PRESS TAX OFFICE #10 REG ENV 500 EA	11/29/2018		94.00
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7985	10243 10006-NOV18 10007-NOV18	COLUMBIA GAS OF PA INC OFFICE GAS GARAGE GAS	11/29/2018		794.90 924.61
			Total for Check Number 7985:	0.00	1,719.51
7986	11760 112918	COMCAST BOX	11/29/2018		12.66
			Total for Check Number 7986:	0.00	12.66

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
7987	10244 72038760	COMCAST BUSINESS ETHERNET DEDICATED INTERNET	11/29/2018		1,050.00
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7988	10324 112118	DONS POWER EQUIPMENT CHAIN	11/29/2018		29.90
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7989	10345 94186	ECKS GARAGE INC SWITCH	11/29/2018		8.71
			Total for Check Number 7989:	0.00	8.71
7990	10374 6-380-23544	FEDERAL EXPRESS STNDRD OVRNGHT TO STREAMLIGHT	11/29/2018		43.86
			Total for Check Number 7990:	0.00	43.86
7991	11217 112918	FERGUSON TOWNSHIP POLICE ASSOC POLICE UNION DUES	11/29/2018		380.00
			Total for Check Number 7991:	0.00	380.00
7992	11635 23707226	GREAT AMERICA FINANCIAL SERVICE COPIER LEASE 5052CI	11/29/2018		243.64
			Total for Check Number 7992:	0.00	243.64
7993	10509 1373600	HRI INC WATER SERVICE ADJUSTMENT	11/29/2018		3,719.96
			Total for Check Number 7993:	0.00	3,719.96
7994	10536 604898	INTOXIMETERS MOUTHPIECES	11/29/2018		1,000.00
			Total for Check Number 7994:	0.00	1,000.00
7995	10568 130309 130309 130318	K & S DISTRIBUTION 15W30 5W30 0W20 FULL SYNTHETIC/5W20 FULL SYNTI	11/29/2018		2,773.50 1,537.80 140.00
			Total for Check Number 7995:	0.00	4,451.30
7996	11579 06P6393870	LIFT, INC COVER FIBERGLASS/CAPSCREW/BEARIN	11/29/2018		707.33
			Total for Check Number 7996:	0.00	707.33
7997	11704 120118 120118 120118 120118	MADISON NATIONAL LIFE LTD INS DEC 18 VOL LIFE INS DEC 18 LIFE AD&D INS DEC 18 STD INS DEC 18	11/29/2018		649.72 390.61 582.18 646.44
			Total for Check Number 7997:	0.00	2,268.95
7998	10669 S 11141	MAXWELL TRUCK & EQUIPMENT LL CONTROLLER-DUAL CON	11/29/2018		267.47

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 7998:	0.00	267.47
7999	10673	MCCARTNEYS INC	11/29/2018		
	D8T73A	TAPE/PAD/PROTECTOR SHEETS/RIBBON			59.35
	D8T73A	PENS			11.14
	D8W13A	RUBBERBANDS/TAPE			6.80
	D8W13A	RUBBERBANDS/TAPE			6.80
	D8X09A	TAPE			5.37
	D8Y64A	SHARPIE			36.13
	D8Z94A	ENV/INDEX/PAPER/PEN/CLIP			255.50
			Total for Check Number 7999:	0.00	381.09
8000	10692 482121497	MIDSTATE TOOL & SUPPLY INC VALVE KIT	11/29/2018		32.47
			Total for Check Number 8000:	0.00	32.47
8001	10720 111618	SHAWN MORRISON TAXI FARE	11/29/2018		25.00
			Total for Check Number 8001:	0.00	25.00
8002	10724 6X	MOUNT NITTANY MEDICAL CENTER DUI CHECKPOINT 6X	11/29/2018		262.50
			Total for Check Number 8002:	0.00	262.50
8003	10749 NOV1828	NITTANY CHEM DRY CLEAN ALL CARPETED AREAS/CLEAN CA	11/29/2018		1,115.00
			Total for Check Number 8003:	0.00	1,115.00
8004	10762 INV284429 INV286135 INV286135 INV286135 INV286135 INV286135	NORTH CENTRAL DIGITAL SYSTEMS COPIER LEASE KYOCERA/TASKALFA32521 ADMIN COPIER ALLOCATION ADMIN COPIER ALLOCATION ADMIN COPIER ALLOCATION ADMIN COPIER ALLOCATION ADMIN COPIER ALLOCATION	11/29/2018		385.67 23.97 131.86 71.92 167.82 203.78
			Total for Check Number 8004:	0.00	985.02
8005	11332 7850 7850 7850 7850 7850	NTM ENGINEERING INC ES-308 ES-1107 ES-356 ES-387 ES-390	11/29/2018		309.90 223.68 261.07 535.50 76.50
			Total for Check Number 8005:	0.00	1,406.65
8006	10773 6406056	OLD DOMINION BRUSH MOBIL GB W NUT	11/29/2018		223.36
			Total for Check Number 8006:	0.00	223.36
8007	10819 6X 7X	PATTON TOWNSHIP SUPERVISORS DUI CHECKPONT 6X DUI CHECKPONT 7X	11/29/2018		442.92 418.02

Check No	Vendor No Invoice No	Vendor Name Description	Check Date Reference	Void Checks	Check Amount
			Total for Check Number 8007:	0.00	860.94
8008	10914 2739054	QUILL CORPORATION WHITEBOARD/DRY-ERASE SET	11/29/2018		91.98
			Total for Check Number 8008:	0.00	91.98
8009	10973 120418 120418	SAMS CLUB DIRECT BREWER TOWELS/BATH TISSUE/MOP KIT/LYSOL/N	11/29/2018		199.97 261.72
			Total for Check Number 8009:	0.00	461.69
8010	11017 1355868	SOSMETAL PRODUCTS INC XTREME RECHARGEABLE WORKLIGHTS/	11/29/2018		199.02
			Total for Check Number 8010:	0.00	199.02
8011	11026 6X 7X 8X	SPRING TOWNSHIP SUPERVISORS DUI CHECKPOINT 6X DUI CHECKPOINT 7X DUI CHECKPOINT 8X	11/29/2018		459.80 518.75 472.45
			Total for Check Number 8011:	0.00	1,451.00
8012	11744 127112	STARR UNIFORM TROUSERS/PANTS	11/29/2018		185.76
			Total for Check Number 8012:	0.00	185.76
8013	11049 8062	STITZERS IMPRINTING & ENGRAVIN NAME PLATE ENDRESEN	11/29/2018		11.25
			Total for Check Number 8013:	0.00	11.25
8014	11665 50823-00	TERMINAL SUPPLY COMPANY WIRE MARKER DISPENSER	11/29/2018		133.27
			Total for Check Number 8014:	0.00	133.27
8015	11133 103118	U COMP 3RD QTR 2018 UCOMP	11/29/2018		93.14
			Total for Check Number 8015:	0.00	93.14
8016	11136 6142368	U S MUNICIPAL SUPPLY INC SIGN	11/29/2018		77.52
			Total for Check Number 8016:	0.00	77.52
8017	11159 9817547300 9817547300 9817547300 9817547300 9817547300	VERIZON WIRELESS AIRTIME CARD USE OCT 18 POLICER CELL USE OCT 18 CELL PHONE WITHHOLDING OCT 18 POLICE CELL PHONE WITHHOLDING OCT CELL PHONE WITHHOLDING OCT 18	11/29/2018		40.01 402.50 44.00 40.33 -44.00
			Total for Check Number 8017:	0.00	482.84
8018	11190 7728666 775188	WESCO RECEIVABLES CORP BALLAST BALLAST	11/29/2018		12.87 13.16

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	775940	BALLAST			13.73
			Total for Check Number 8018:	0.00	39.76
8019	11192	WEST PENN POWER	11/29/2018		
	0840-NOV18	WHITEHALL RD/RESEARCH DR	01.433.036		48.54
	0873-NOV18	WHITEHALL RD/W COLLEGE	01.433.036		49.35
	1054-NOV17	W COLLEGE AVE	01.433.036		49.97
	1966-NOV18	225 SCIENCE PARK RD	01.433.036		35.61
	2510-NOV18	W CHERRY LN MARTIN ST	01.433.036		51.34
	2691-NOV18	SCIENCE PARK ROAD	01.433.036		37.23
	2711-NOV18	SCIENCE PARK ROAD	01.433.036		70.42
	3377-NOV18	BRISTOL AVE	01.433.036		40.86
	5290-NOV18	1901 CIRCLEVILLE ROAD	01.433.036		41.70
	5727-NOV18	OFFICE COMPLEX	01.409.036		1,374.69
	5843-NOV18	1301 W COLLEGE AVE	01.433.036		14.99
	6113-NOV18	GARAGE/MAINT BLDG	01.409.036		440.42
	6150-NOV18	OLD GATESBURG ROAD	01.433.036		96.69
	6438-NOV18	1209 N ATHERTON ST	01.433.036		18.93
	6651-NOV18	BIKE TUNNEL	01.433.036		142.84
	6725-NOV18	BLDG #3	01.409.036		148.67
	6735-NOV18	N HILLS DR	01.433.036		18.61
	7595-NOV18	1282 N ATHERTON ST	01.433.036		41.40
	7920-NOV18	N ATHERTON ST	01.433.036		29.55
	8100-NOV18	2100 W COLLEGE AVE	01.433.036		57.49
	8136-NOV18	BLUE COURSE DR & HAVENSHIRE DR	01.433.036		40.27
	9110-NOV18	W COLLEGE AVE	01.433.036		40.93
	9975-NOV18	AARON DR MARTIN ST	01.433.036		28.93
			Total for Check Number 8019:	0.00	2,919.43
8020	11194	WEX BANK	11/29/2018		
	113018	FUEL			70.02
			Total for Check Number 8020:	0.00	70.02
8021	11687	YOUR PLUMBING SUPPLY LLC	11/29/2018		
	102890	URNAL REPAIR KIT			32.32
			Total for Check Number 8021:	0.00	32.32
2017037	10436	GLENN O HAWBAKER INC	11/15/2018		
	715999	9.5MM 1 64-22 0-.3			708.61
			Total for Check Number 2017037:	0.00	708.61
2017038	10509	HRI INC	11/15/2018		
	1345682	SYAMORE, E CHESTNUT, W. GATESBURG			153,796.93
			Total for Check Number 2017038:	0.00	153,796.93
2017039	11089	TEL POWER INC	11/15/2018		
	72528	GREEN LIGHT GO VEHICLE DETECTION U			112,804.60
			Total for Check Number 2017039:	0.00	112,804.60
2017040	10509	HRI INC	11/29/2018		
	1373600	SYCAMORE, E. CHESTNUT, W. GATESBUR			177,292.55
			Total for Check Number 2017040:	0.00	177,292.55
2017041	10674	MCCORMICK TAYLOR INC	11/29/2018		

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	3	TRANSPORTATION MOBILITY STUDY			5,575.10
Total for Check Number 2017041:				0.00	5,575.10
Report Total (158 checks):				3,423.81	1,313,633.60

## **Pribulka,David**

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**From:** Dininni,Laura  
**Sent:** Wednesday, December 19, 2018 10:47 AM  
**To:** Pribulka,David  
**Subject:** Agenda item for Jan consent agenda

That the BOS discuss steps to preservation of the Beaver Branch, a priority identified in the 2009 RPOS plan, and invite Deb Nardone to discuss Clearwaters efforts.

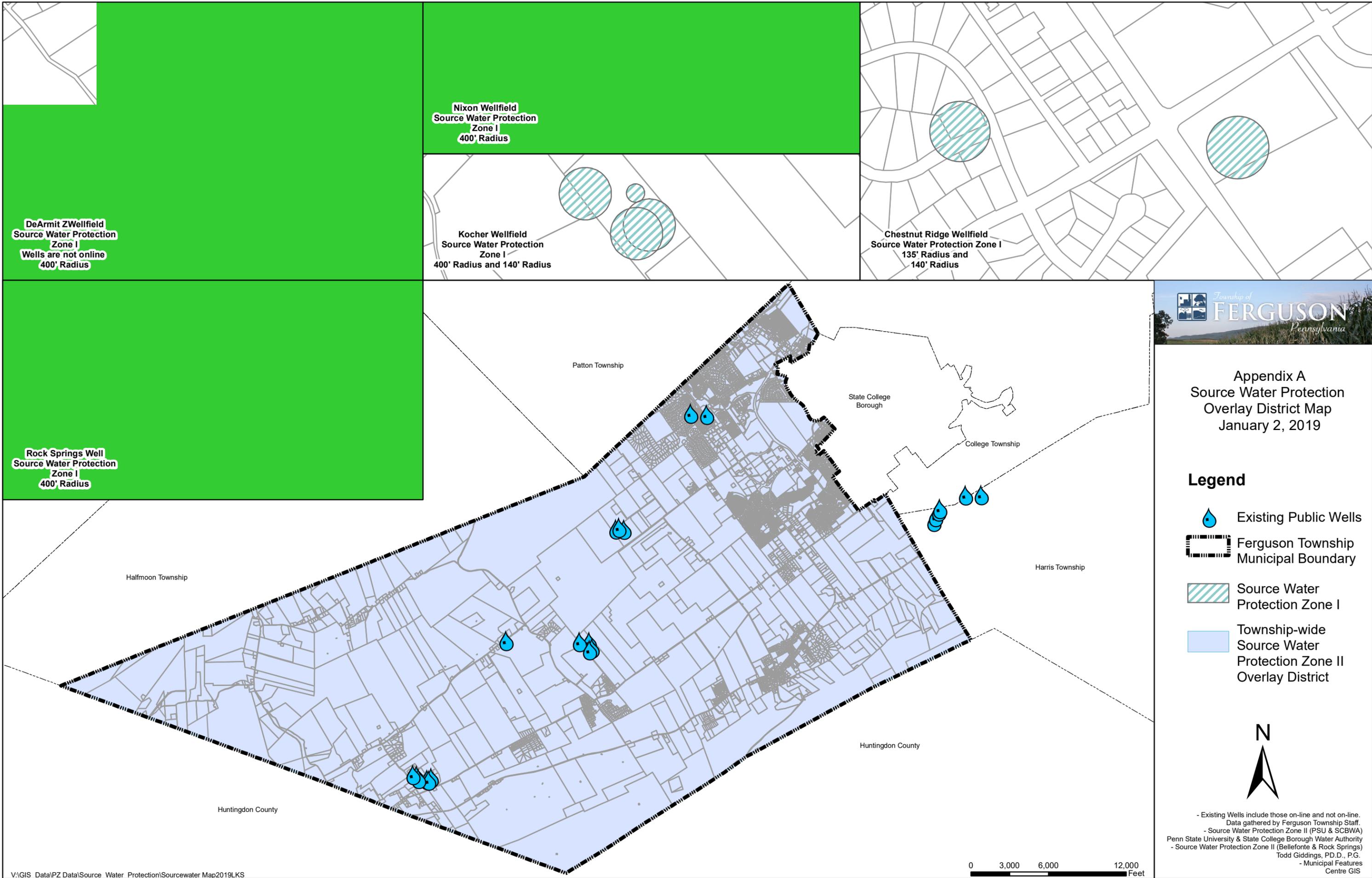
Attachments:

2009 RPOS plan

Map of Beaver Branch watershed

SWP draft map

IMPORTANT WARNING: The information in this message (and the documents attached to it, if any) is confidential and may be legally privileged. It is intended solely for the addressee. Access to this message by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken, or omitted to be taken, in reliance on it is prohibited and may be unlawful. If you have received this message in error, please delete all electronic copies of this message (and the documents attached to it, if any), destroy any hard copies you may have created and notify me immediately by replying to this email. Thank you.



**DeArmit Z Wellfield**  
**Source Water Protection**  
**Zone I**  
**Wells are not online**  
**400' Radius**

**Nixon Wellfield**  
**Source Water Protection**  
**Zone I**  
**400' Radius**

**Kocher Wellfield**  
**Source Water Protection**  
**Zone I**  
**400' Radius and 140' Radius**

**Chestnut Ridge Wellfield**  
**Source Water Protection Zone I**  
**135' Radius and**  
**140' Radius**

**Rock Springs Well**  
**Source Water Protection**  
**Zone I**  
**400' Radius**

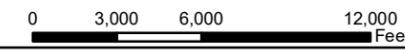


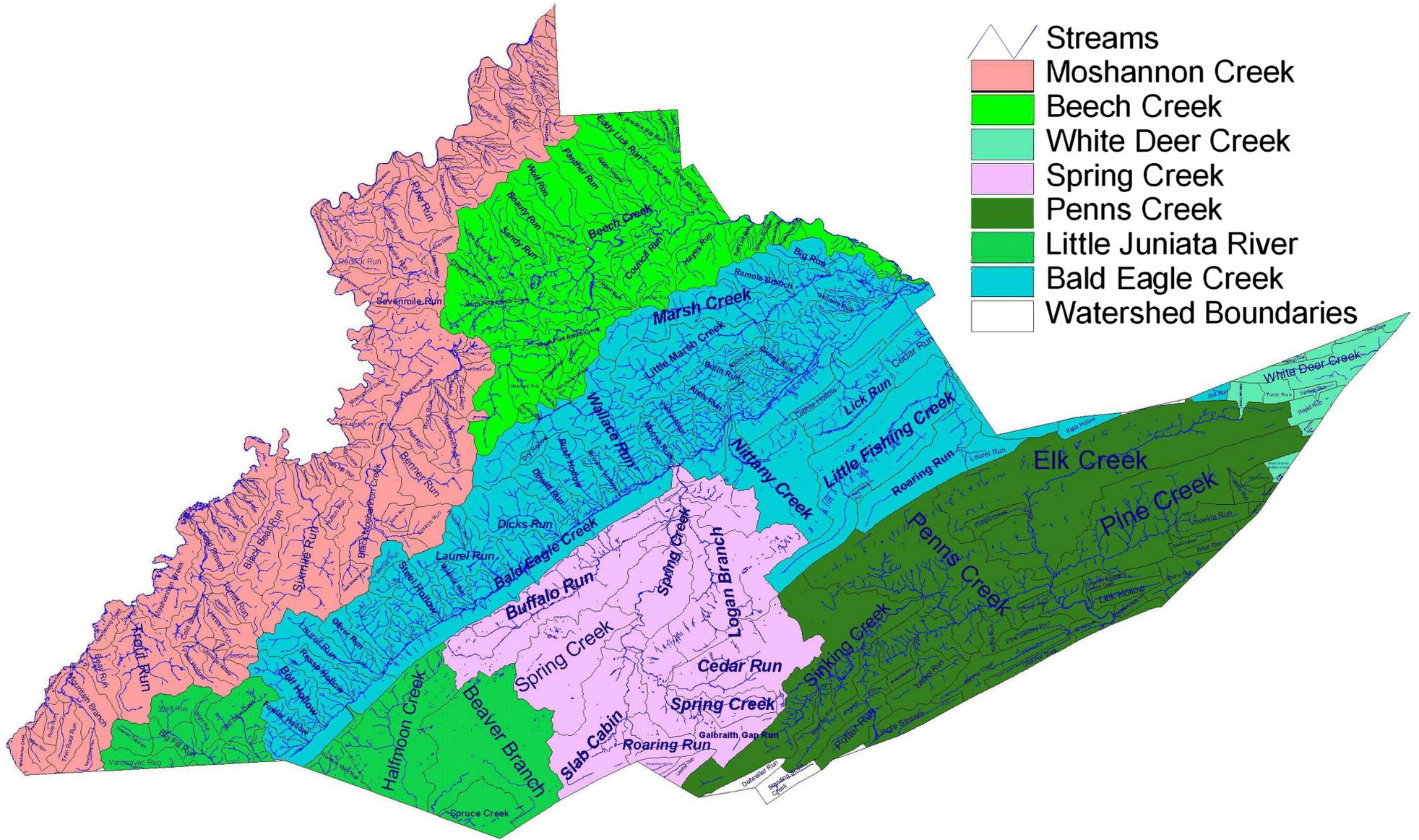
**Appendix A**  
**Source Water Protection**  
**Overlay District Map**  
**January 2, 2019**

- Legend**
-  Existing Public Wells
  -  Ferguson Township Municipal Boundary
  -  Source Water Protection Zone I
  -  Township-wide Source Water Protection Zone II Overlay District



- Existing Wells include those on-line and not on-line.  
 Data gathered by Ferguson Township Staff.  
 - Source Water Protection Zone II (PSU & SCBWA)  
 Penn State University & State College Borough Water Authority  
 - Source Water Protection Zone II (Bellefonte & Rock Springs)  
 Todd Giddings, PD.D., P.G.  
 - Municipal Features  
 Centre GIS





**FERGUSON TOWNSHIP  
RECREATION PARK AND OPEN SPACE  
PLAN UPDATE  
2009**

## PLAN PURPOSE AND GOALS

The Township's first Recreation, Parks, and Open Space Plan was adopted by the Ferguson Township Board of Supervisors in 1998. This Plan identified the importance of providing updates on a regular basis. This update of the Plan, begun in 2006, is intended to:

1. Identify the status of existing parks and other recreation resources and to subsequently determine the need for additional recreation, parks and open space opportunities in the Township.
2. Provide a document, for use at the local level, which will assist in determining consistency with the goals and objectives of the Regional Comprehensive Plan as well as provide guidance on the acquisition, conservation and preservation of park and open space resources in the community.

In February 2004, an Ad Hoc Recreation, Parks and Open Space (RPOS) Planning Committee was appointed by the Board of Supervisors to provide an update of this plan (Section 3.0 provides a listing of committee members). The RPOS Planning Committee followed a process that:

1. Identified the existing recreation, parks and open space facilities and programs in the Township.
2. Established goals for the RPOS Planning Committee and for the update of the Plan.
3. Utilized the format of the existing Plan
4. Identified the needs of the Township with regard to the acquisition of future parks, open space and trail facilities.
5. Provided a set of recommendations to the Board of Supervisors for implementation of the Plan.

The RPOS Planning Committee established the following goals to serve as guidelines for the Plan Update.

**Goal:** Develop a strategy that allows the Township to provide recreation, park, and open space facilities to current and future populations.

**Objective:** Determine the availability of recreational opportunities-within one-half mile of each Township resident

**Objective:** Establish a method for protecting and preserving community facilities and resources to serve future populations.

**Objective:** Identify funding alternatives for the acquisition, maintenance and development of existing and proposed parks, recreation, and open space

**Goal:** Evaluate how the services at the local level are impacted by the recently obtained regional park opportunities.

**Objective:** Identify what services are provided more efficiently and economically

on a regional basis.

**Objective:** Ensure the accessibility of regional parkland

**Objective:** Assure that the acquisition, design, and funding for regional facilities remains a regional responsibility that includes regional input

**Goal:** Provide safe and convenient access to park / open space for all residents of the Township

**Objective:** Provide the opportunity for the development of safe pedestrian / bicycle connections between existing and proposed parks and open space and for commuting purposes both within the Township and regionally

**Objective:** Coordinate infrastructure improvements with the location of the Regional Growth Boundary and Capital Improvements Planning.

**Objective:** Coordinate Park/ recreation /open space planning with other land use planning efforts.

**Goal:** Provide a range of park, recreation, and open space opportunities which support both active and passive recreation needs and serve all ages and abilities.

**Objective:** Acquire open space that includes opportunities to enhance natural areas as well as to develop recreation/sports fields

**Objective:** Propose multi-purpose facilities which can also be converted to other uses with minimal cost and effort.

**Goal:** Ensure public awareness and involvement in the planning process

**Objective:** Obtain public input during the development of the Update to the Plan.

**Objective:** Utilize the survey and facilities inventory to determine where there are gaps in the current delivery of services.

**Objective:** Hold a public hearing to obtain public feedback on the Update to the Plan

## **NATURAL FEATURES AND COMMUNITY DEVELOPMENT**

Ferguson Township is characterized by a diversity of land uses. A portion of the Township(14%) is located within the Regional Growth Boundary for the Centre Region. This acreage is predominately developed and contains residential, commercial, and employment uses. The Centre Region, defined as the Townships of College, Patton, Harris, Halfmoon, Ferguson and the Borough of State College, recently amended this boundary and extended the associated sewer service area. One value of the RGB is the ability to better define the area in which growth will occur, as well as the extent of the provision of the services needed to support such growth. The portion of the Township outside of the boundary is primarily rural and agricultural and is currently zoned to provide for the continuation of this pattern of development.

Based on this growth management approach to future community development, the RPOS Planning Committee determined that the location and amount of future recreation, park and open space should be impacted by the following factors:

1. The presence of natural features in the Township that should be preserved and, where appropriate, coordinated with the provision of parkland and/or recreational opportunities
2. Demographic distribution of residents and accessibility of recreation, park and open space facilities.
3. The availability of both appropriate land and adequate funding to allow the Township to provide the necessary services.
4. Consistency with the goals and objectives of the adopted Regional Comprehensive Plan

## **NATURAL FEATURES**

### Location and Topography

Ferguson Township is comprised of 49.7 square miles and is situated in the southwest corner of Centre County. The Township is bordered on the northeast by College Township, State College Borough and Harris Township; on the northwest by Patton Township and Halfmoon Township; on the southeast by Jackson Township and Barree Township in Huntingdon County; and on the southwest by Franklin Township, Huntingdon County. The Township is relatively flat with the exception of the southeast section of the Township that extends onto Tussey Mountain. The majority of steep slopes within the Township are located along the southern section of the Township on the Tussey Ridge.

### Streams / Floodplains / Wetlands

Ferguson Township's perennial streams include portions of Halfmoon Creek, Spruce Creek, Beaver Branch and Slab Cabin Run. Portions of these streams however, are

also intermittent streams which dry up during periods of dry weather. In general the floodplains in the Township follow Halfmoon Creek, Spruce Creek, Beaver Branch, Slab Cabin Run and the Big Hollow Drainageway. There are also many low lying areas throughout the Township that hold water during heavy storms. The eastern half of the Township drains to the Spring Creek drainage area and the western half drains to the Spruce Creek drainage area.

According to the PA Fish and Game Commission, none of the streams located in Ferguson Township are stocked for recreational fishing purposes. All of the stocked fishing areas in the region are located outside of the Township.

The National Wetland Inventory maps for Ferguson Township indicate that small areas of wetlands are scattered throughout the Township and are mostly located within the floodplain areas.

#### Woodlands

The major areas of woodlands within the Township are located along the south end of the Township in the Rothrock State Forest, along the south side of Tadpole Road throughout the State Game Lands and west through the Penn State Lands on the north end of the Township.

#### Agricultural Lands

Approximately 15,000 acres of the Township's total 30,448 acres (approximately 49% percent) are located in an agricultural security area. This land, containing prime agricultural soils, is a unique and non-renewable resource that requires protection from the impacts of unmanaged growth and incompatible development. The Township currently participates in two programs which seek to sustain the industry of agriculture within the community.

The Township has established an agricultural security area which provides the opportunity for a landowner, who expresses the intent to continue farming, to be relieved from compliance with the Township's nuisance laws (ordinances which are related to restrictions such as odor, noise, etc). This allows everyday farming practices to continue without constituting a violation of Township code. In addition, acreage within the Agricultural Security Area then becomes eligible for the County Agricultural Land Conservation Easement Program. As of August 2007, there are a total of twelve (12) farms comprised of 1,954.44 acres of land located in Ferguson Township that have been purchased as part of the Agricultural Land Conservation Easement Program. This program, which is run by the County, is designed to preserve farmland for farming purposes. The owners of properties in the program have been paid a fee in return for the development rights to their property. Thus, the land will be preserved for agricultural use in perpetuity.

## Sensitive Lands

According to the Centre County Natural Heritage Inventory prepared by the Western Pennsylvania Conservancy in 1991, there are six areas within Ferguson Township that are unique or uncommon within Centre County. These areas include the Beaver Branch Gorge, eastern side of Overlook Heights, Chime and Miller Caves, Scotia Barrens, Gobbler Knob Vernal Pools, and Fairbrook Cemetery, as well as areas of managed lands identified as Rothrock State Forest and State Game Lands Number 176. These areas also encompass an Audubon Important Bird Area and Important Mammal Areas established through the State Wildlife Society. Identification of these areas is important because it allowed the RPOS Planning Committee to determine whether or not these areas should be included in this plan as areas of open space preservation, as parks or open space, and/or as areas to avoid because of their environmental significance.

The Beaver Branch Gorge is a natural community located along the western edge of the Township between Tadpole Road and the Centre County / Huntingdon County border. The Beaver Branch Gorge is an old railroad grade with the remnants of a calcareous glade and beaver wetland. Historically this general area was known for several rare species, but today a gas pipeline runs through the area and the limestone glade appears to be disrupted. The east side of the gorge contains approximately 50 acres of pure eastern hemlock and white pine. Although the tree stand is only about 100 years old, the white pines and eastern hemlock represent a type of forest that was once more prevalent than it is today. Natural Heritage sites in Centre County are ranked according to their significance as areas of importance to the biological diversity and ecological integrity of the county. This site has been identified as having low county significance yet, it will have increasing importance to the future quality of the County's overall environment and merits the attention of planners and conservationists to maintain the area's present condition.

The area identified as comprising the Beaver Branch Gorge is in private ownership and currently falls within two different zoning districts; the RA Rural Agricultural and the RR Rural Residential. These districts have distinctly divergent abilities to protect this resource from future development. The RA zone allows only one lot to be subdivided for every fifty (50) acres while the RR zone permits unlimited one acre lot development. Although the RR zone includes an opportunity to utilize a conservation development design, this practice is not required. Without the application of this design approach, there is no language in the current code which would provide protection for the existing natural features identified by the inventory.

Calcareous cliff communities within the Gorge are threatened by adjacent upslope development and its associated runoff. Other threats include habitat alteration and recreational overuse. Several cliff communities are threatened by invasive species such as Black swallow-wort, Canada bluegrass, Garlic mustard, and Tree of heaven. This acreage is currently enrolled in the Clean and Green program, which provides some restrictions on development opportunities. However, it is recommended that the Township consider rezoning this area or, providing some type of overlay in the RR zone to provide a more appropriate level of long-term protection for this resource.

The Overlook Heights area is located on the east side of the Overlook Heights development on Penn State University land and straddles the boundary of Ferguson and College Townships. The area probably once supported a unique calcareous community but is now limited to a few isolated spots in the middle of largely developed lands. A rare species (species not named due to sensitivity) has been able to adapt to the disturbance but is in such a heavily traveled area that it is danger of being harvested, trampled or removed. This area is also considered to be of low importance to the biological diversity and ecological integrity of the county. The Western Pennsylvania Conservancy recommends mowing be discontinued in this area and the site should be managed by a qualified biologist to help restore some of the habitat to insure that the species remains viable. This area appears to be encompassed entirely by the Township's RA Rural Agricultural zoning district which limits the potential for development to compromise the integrity of the resource. In addition, this acreage appears to be owned in its entirety by the University which intends to carry out plans to create an arboretum on the site. It is recommended that the Township discuss the recommendations of the Conservancy with Penn State personnel in order to provide the most appropriate preservation measures for the area and that an overlay zoning district continue to be considered as an appropriate tool for the protection of the resource(s) found in this location.

The Miller Caves are located on Penn State's Russell E. Larson Agricultural Research Farm on the southeast side of State Route 45 adjacent to the Rothrock State Forest. Both the northern long-eared bat and the even rarer eastern small-footed bat have been documented to hibernate in this cave during the winter. This site is ranked high as a natural heritage area in Centre County, indicating outstanding significance. It supports possibly the rarest animal species (species not named due to sensitivity) in Centre County. These caves also support three other special animals and two natural communities. Because of the high significance of the caves, the Western Pennsylvania Conservancy recommends they be fully protected and established as an area of no disturbance. This area falls entirely within the Township's AR Agricultural Research zoning district and entirely on University owned land. The AR zone was established to permit the uses associated with the University's Ag Research Days to take place in an area otherwise protected from such intrusions. As a result, a relatively wide range of uses are permitted. There is currently no language that would provide for protection of this significant resource. As above, it is recommended that the Township discuss the recommendations of the Conservancy with Penn State personnel in order to provide the most appropriate preservation measures for the area. An overlay, or the inclusion of other protective language within the AR district, could serve to greatly limit the impact to this resource.

The greatest threat to the globally rare aquatic animals that occupy the aquifer connected to these caves is the degradation of water quality in the aquifer through pollutant runoff from the watershed above. Sediment pollution, nutrient enrichment, and chemical contamination could all be very damaging to these species (names unknown). The bat populations cannot tolerate disturbances in the caves during their hibernation period in the winter months. Additionally, any physical alterations to the cave entrance

or the rock surrounding the cave could render the cave unusable to bats by altering the patterns of air and water flow such that the microclimate conditions would no longer meet their requirements.

The Scotia Barrens is a 9,000 acre scrub oak-pitch pine community located in the north central section of the Township straddling the Township's border with Patton and Halfmoon Townships. It is currently considered one of Pennsylvania's Important Bird Areas (IBA's). A majority of the Scotia Barrens is located within and around State Game Lands Number 176. The Scotia Barrens is identified as high significance and is one of the highest priority sites in the County. In fact, three natural communities, three special plants and fourteen special animals have a habitat within this area. This unique habitat is one of the largest barrens left in Pennsylvania. It harbors large numbers of Neotropical migrants during spring and fall migration. Thirty-three species of warblers have been observed. The Western Pennsylvania Conservancy recommends that because of the high county significance of the Scotia barrens it should be fully protected and established as an area of no disturbance. The land within this area that is controlled by the Commonwealth falls within the FG Forest and Gameland zoning district. This limits the development potential of this acreage and provides reasonable protection to the resources identified. However, land within the Barrens that falls outside of the State Game Lands is located in both the AR Agricultural Residential and RR Rural Residential zoning districts. If the limits of the Barrens can be defined, it would be appropriate to provide both some form of protection for the area itself, as well as some form of buffer on the adjacent lands to preserve the integrity of the resource. This is an area of heavy use by humans for foot travel, biking, and hunting. Attempts have been made, with little success, to provide buffer areas between the Gamelands and encroaching housing developments. It is again recommended that the Township consider amending the existing code to establish some form of overlay district that would provide the appropriate level of protection.

There are two publicly managed areas within the Township including Rothrock State Forest and the State Game Lands Number 176. The State Game Lands are located in the north central section of the Township and straddle the Township's boundary with Patton and Halfmoon Townships. The Rothrock State Forest is located on Tussey Mountain along the southern boundary of the Township adjacent to the Township's border with Huntingdon County. Both of these areas are considered to be of high County significance. As noted above, the zoning applicable to both these areas is FG Forest and Gameland. Acreage adjacent to Rothrock State Forest falls within the Township's RR Rural Residential zoning district which has been previously identified as providing limited protection. However, in the area of Tussey Mountain, the Township recently adopted Ridge Overlay zoning that aims to protect the fragile soils and steep slopes of the mountain side from inappropriate and indiscriminate development. This overlay acts as a form of buffer between the State Forest and the more intensely developed areas along Routes 45 & 26. To the west, acreage adjacent to the State lands is owned by the University and falls within the AR Agricultural Research zoning district. As mentioned previously, the Township should consider discussing future land uses with Penn State personnel in order to provide the most appropriate preservation

measures for the area. An overlay, or the inclusion of other protective language within the AR district, could serve to greatly limit potential impacts to this area which borders State Gameland and State Forest.

## COMMUNITY DEVELOPMENT

As noted above, the adopted Regional Growth Boundary establishes a basis for managing the amount and location of growth in the Township. According to the guidelines of the National Recreation and Parks Association, the means for determining the appropriateness of the acreage and distribution of parkland and the availability of recreational opportunities is directly related to the size and location of the population to be served. As a result, the following sections provide data on the past and present population as well as forecasts for future growth in the Township and comparisons to the Region, the County, and the State.

The demand for recreational services and, in some cases the type of recreational opportunities desired, is often the product of the socio-economic characteristics of the subject population. Therefore, census data, such as income, employment, and educational attributes is incorporated here in order to track trends and/or establish relationships in these areas over time.

### Population Growth

Ferguson Township has been one of the fastest growing Townships in the Centre Region. Population tripled in the 30 years between 1960 and 1990. The 2000 Census data identified another significant rise in the number of Township residents. All projections seem to indicate that the Township will continue to grow; perhaps more slowly but, at a steady pace.

The following table shows the growth of Ferguson Township in relation to the Centre Region as a whole from 1960 through the 2000 census.

<b>TABLE 2-4</b>				
<b>POPULATION</b>				
<b>AREA</b>	<b>1960<sup>1</sup></b>	<b>1980<sup>1</sup></b>	<b>1990<sup>1</sup></b>	<b>2000<sup>1</sup></b>
Ferguson Township	3,832	8,105	9,349	14,063
Centre Region	34,147	62,015	71,633	79,406
<sup>1</sup> Data from the U.S. Census				

From 1980-1990, Ferguson Township's population grew approximately 34 percent while the Centre Region as a whole grew approximately 9 percent. Between 1990 and 2000,

Ferguson Township's population grew by more than 50 percent which is almost five times (5x) the rate of growth within the Centre Region as a whole.

### General Demographics

Table 2-5 identifies the median age of the residents of the Township and the percentage of the population less than 18 years and over 65 years in 2000. Also noted is the percentage of older residents with some form of disability. Growth in this demographic may suggest the importance of providing recreational opportunities that are designed consistent with ADA regulations.

<b>TABLE 2-5</b>				
<b>2000 GENERAL DEMOGRAPHICS<sup>1</sup></b>				
<b>AREA</b>	<b>MEDIAN AGE</b>	<b>UNDER 18 YEARS</b>	<b>OVER 65 YEARS</b>	<b>OVER 65 WITH A DISABILITY</b>
Ferguson Township	31.8 years	22%	10%	23%
Centre County	28.7 years	18%	10%	36%
State of Pennsylvania	38.0 years	24%	16%	39%

<sup>1</sup> U.S. Census, 2000

The median age of the Township in 2000 was higher than the County, but lower than the State. Assuming the distribution of the population has not changed drastically since 2000, more than a fifth of the Township's population is less than 18 years of age while less than 1500 residents are over 65. Over the next several years, it is expected that the median age of the population and the percentage over 65 years will increase as baby boomers reach retirement age and retirees continue to migrate to the area.

### Future Population Growth

Table 2-6 identifies the estimated future populations for Ferguson Township and the Centre Region based on forecasts by the Centre Region Planning Agency.

<b>TABLE 2-6</b>			
<b>ESTIMATED FUTURE POPULATION</b>			
<b>AREA</b>	<b>2010</b>	<b>2020</b>	<b>2030</b>
Ferguson Township	16,027 <sup>1</sup>	19,359 <sup>1</sup>	21,513 <sup>1</sup>
Centre Region	85,689	91,972	98,255

<sup>1</sup> Estimated population based on housing units and average population per household.  
<sup>2</sup> Data estimated from Centre Region Planning Population Projections.

Over the next twenty (20) years, it is estimated that the population of Ferguson Township could increase by approximately 5,500 people or about 36 percent if current growth trends continue. The Region's population is anticipated to increase approximately 15 percent during the same time period.

## **SOCIO-ECONOMIC DATA**

### Income

Table 2-7 details the per capita income, household median income and average family size in Ferguson Township compared to the Centre Region, Centre County and the State of Pennsylvania. Income is directly related to leisure services. Higher levels of affluence are associated with higher levels of participation, varied interests and a willingness to pay for services.

<b>TABLE 2-7</b>			
<b>2000 INCOME AND FAMILY SIZE<sup>1</sup></b>			
<b>AREA</b>	<b>PER CAPITA INCOME</b>	<b>MEDIAN FAMILY INCOME</b>	<b>AVERAGE FAMILY SIZE</b>
Ferguson Township	\$22,724	\$62,461	3.00
Centre Region	\$22,900	\$62,334	2.99
Centre County	\$18,020	\$50,557	2.95
State of Pennsylvania	\$20,880	\$49,184	3.04

<sup>1</sup> U.S. Census 2000 (figures not adjusted for inflation)

While family size is relatively consistent in the State, County, Region, and Township, the table reveals that median family income is distinctly different when comparing the Township and Region with the County and the State. This same disparity is identified by the figures which indicate per capita income.

## Housing

Table 2-8 identifies housing data related to Ferguson Township as well as the Centre Region, Centre County, and the State of Pennsylvania. Home ownership is one indicator of affluence.

TABLE 2-8				
2000 HOUSING UNIT STATUS <sup>1</sup>				
AREA	PERCENT OF HOUSING UNITS OWNER OCCUPIED	MEDIAN VALUE OF OWNER OCCUPIED HOUSING	UNITS THAT ARE SINGLE FAMILY DETACHED	UNITS BUILT SINCE 1990
Ferguson Township	59.6%	\$144,900	59%	36%
Centre Region	89%	\$129,367	44%	19%
Centre County	60.2%	\$114,900	57%	17%
State of Pennsylvania	71.3%	\$97,000	56%	10%
<sup>1</sup> U.S. Census 2000				

Ferguson Township's households include a wide variety of single family detached and attached homes, duplexes, quadraplexes, mobile homes, apartments and personal care homes. The Township is similar to both Centre **County** and the State of Pennsylvania in terms of the percentage of owner occupied housing units. However, Ferguson Township has the lowest percentage of owner occupied homes in the Centre **Region**, where the average is significantly higher than the remainder of the County. This may be due to the average value of housing in the Township or may be an indication of the family status of Township residents. This lower incidence of home ownership may also relate to the affordability of homes in the Township. Many families may simply be unable to afford their own home thus increasing the number of rental properties.

The Township's median value of owner occupied housing in 2000 is 12 percent more than the Centre Region, 26 percent more than Centre County and 49 percent more than the State of Pennsylvania. This tends to support the suggestion that home ownership rates are lower due to the high costs of homeownership in the Township

More than one-third of the Township's dwelling units were constructed in the last decade (1990-2000); nearly twice the amount of new units in the Region as a whole. This rate of growth impacts the Township's ability to provide the necessary infrastructure to support these new residents in a timely manner. Even land acquired as part of the development approval process cannot be immediately ready to serve as park and open space facilities to these new inhabitants. Although the Township should appropriately anticipate growth, it must rely on capital improvement planning to implement the expected park improvements. Thus, there may always be a discrepancy

between the demand for parkland and its availability for active recreation.

## Employment

Table 2-9 shows the unemployment rate in 2000 of Ferguson Township, Centre County and the State of Pennsylvania.

<b>TABLE 2-9</b>	
<b>EMPLOYMENT STATUS <sup>1</sup></b>	
<b>AREA</b>	<b>2000 PERCENT UNEMPLOYMENT</b>
Ferguson Township	1.6%
Centre County	3.3%
State of Pennsylvania	3.5%
<sup>1</sup> U.S. Census 2000	

In 2000 Ferguson Township had a significantly lower percentage of unemployment than Centre County and the State of Pennsylvania. The Centre Region continues to have one of the lowest unemployment rates in the State of Pennsylvania.

## Education

Table 2-10 details the educational attainment level for Ferguson Township, the Centre Region, Centre County, and the State of Pennsylvania. Educational attainment is the strongest indicator of an individual's income potential, attitudes and spending habits.

<b>TABLE 2-10</b>			
<b>2000 EDUCATIONAL ATTAINMENT <sup>1</sup></b>			
<b>AREA</b>	<b>OVER 25 YEARS HIGH SCHOOL GRADUATE OR HIGHER</b>	<b>OVER 25 YEARS BACHELOR'S DEGREE OR HIGHER</b>	<b>OVER 25 YEARS GRADUATE DEGREE</b>
Ferguson Township	95.0%	56.0%	29.0%
Centre Region	95.0%	59.0%	31.0%
Centre County	88.2%	36.3%	17.5%
State of Pennsylvania	81.9%	22.4%	8.4%
<sup>1</sup> U.S. Census 2000			

The Centre Region's over -25 population is more highly educated than that of the County or State. Ferguson Township residents are closely aligned with these regional

numbers. This is most likely due to the proximity of the University and the characteristics of the work force which supports the businesses located within the Township.

## **PUBLIC PARTICIPATION**

The Ferguson Township Board of Supervisors solicited citizen input into the development of the Recreation, Parks and Open Space Plan by:

1. Appointing Township residents to the Ad Hoc Recreation, Parks and Open Space (RPOS) Planning Committee.
2. Providing a resident survey of Parks, Recreation and Open Space.
3. Scheduling public meetings to review the RPOS Committee's recommendations.

### **RPOS Planning Committee**

In 2004 Ferguson Township began the selection process for the Ad Hoc RPOS Planning Committee whose members would be responsible for development of the Recreation Parks and Open Space Plan for the Township. Township staff developed a list of knowledgeable residents who should be involved in the development of the Recreation, Park and Open Space Plan. These persons included:

1. One Representative from the Ferguson Township Board of Supervisors
2. One Representative from the Ferguson Township Planning Commission
3. Ferguson Township Representative to the Centre Region Parks and Recreation Board
4. The Centre Region Director of Parks and Recreation
5. The Ferguson Township Director of Planning and Zoning

The range of recreation experience from the RPOS Planning Committee is broad. The following list identifies the membership in the RPOS Planning Committee:

1. George Pytel - Ferguson Township Supervisor
2. Bill Zeigler - Ferguson Township Planning Commission
3. Sue Mascolo - Ferguson Township Representative to the Centre Region Parks and Recreation Board
4. Dale Roth - Penn State Director of Recreation Services
5. Ronald Woodhead - Director of the Centre Region Parks & Rec. Agency
6. Trisha Lang - Ferguson Township Director of Planning and Zoning
7. Brad Ross – Biological Consultant
8. Donald Suit – Ferguson Township Planning Commission

## **PUBLIC INPUT AND REVIEW**

Upon completion of the first draft of this plan copies were distributed for review to several different agencies. The Township solicited comment on the plan from the PA Department of Conservation and Natural Resources, Centre Region Planning Agency, Centre Region Planning Commission, Centre Region Parks and Recreation Department, Ferguson Township Planning Commission and Ferguson Township Board

of Supervisors.

In order to obtain input from the public, the following were done:

1. An article was placed in the Township Newsletter which identified the goals of the Plan and provided a survey for input to the Plan.
2. The Planning Commission reviewed the Plan during public meetings on November 23, and December 8, 2009.
3. On February 16, 2009, the Board of Supervisors received a presentation of the Plan at a public meeting.
5. In May 2008, the Township held an Open House which was attended by approximately 300 residents. One of the displays was the Recreation Plan. In addition a representative was on hand to receive comment and answer any questions raised.
6. On December 14, 2009, the Board of Supervisors held a public hearing to receive comment on the Update to the Parks, Recreation and Open Space Plan.

In general, although the public had opportunity to comment on the plan, there were no comments that significantly changed the content of the current Plan update.

## **PARKS, RECREATION AND OPEN SPACE SURVEY**

In 2006, the Township distributed a Parks, Recreation and Open Space survey through the Township Newsletter to all households within Ferguson Township. This survey asked residents about their opinion of parks and open space, recreation programs, and the level of service and commitment to parks and recreation. Of the surveys that were sent out, 95 were returned; a 1.3% response rate. A sampling of the key survey results which have an impact on this Plan Update are identified below.<sup>1</sup> A copy of the entire survey is available at the Ferguson Township Office.

Based on the results of the survey, a broad set of assumptions influenced the development of the Ferguson Township Recreation, Parks and Open Space Plan. These include:

1. The availability of parkland is very important to the majority of residents of Ferguson Township.
2. Convenient access to Township parkland is very important to the residents of Ferguson Township.
3. Preserved open space is very important to Ferguson Township residents.
4. Ferguson Township Parks were visited on average 1-2 times/week by nearly one-half of those responding to the survey.
5. The attributes which attract visitors to the Township parks include open space,

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<sup>1</sup> Note: Not all questions were answered by each individual and some questions asked for more than one response, therefore totals may not be 100%.

- trails, woods, and convenience.
6. Factors which discourage residents from using Township parks include distance, not having the desired facilities, and a lack of interest.
  7. The most desired improvements to the existing park system include natural areas, flush toilets, off-leash dog areas, and picnic areas.
  8. Ferguson Township residents are satisfied with the Township's efforts to provide parkland and other recreational opportunities
  9. Ferguson Township residents believe that the quality of the programs currently offered is adequate and that the level of park maintenance is high.
  10. Ferguson Township residents agree that more parkland is needed in the Township.
  11. Ferguson Township residents are generally satisfied with the amount and location of parkland in the Township
  12. Ferguson Township residents strongly support linking local parks with a bikeway network.
  13. Ferguson Township residents strongly agree that more effort should be placed on protecting environmental features of the Township. These areas include woodlands, wildlife areas, meadows, wetlands, streams, etc.
  14. A majority of respondents agree that more effort should be placed on providing fields for active recreation such as football, soccer, softball, etc.
  15. The majority of respondents agree that the development of Township parks should follow a master planning process.
  16. Ferguson Township residents agree that a portion of municipal taxes should be dedicated to open space / parkland acquisition and support placing this issue on the ballot as a referendum

With regard to the then proposed purchase of regional parkland on Whitehall Road, the survey results reveal the following:

1. The most important features to provide at this facility would include fitness trails, restrooms, parking areas, public gardens, and picnic areas.
2. The majority of respondents would access the site by motor vehicle although many indicated the intent to walk or bike
3. Facilities in the park should not target a single age group. However, facilities specifically for pre-school and college age individuals were the least supported.
4. Most of the respondents felt that the availability of a community-wide facility would be just as important in meeting their recreational needs. However, a considerable percentage felt it would not be as important as the local park sites.

These assumptions will be used in to assist in establishing the ultimate recommendations of the Plan Update.

## **EXISTING FACILITY AND OPEN SPACE INVENTORY**

### **TOWNSHIP OWNED**

There is a wide variety of open space located in the Township that is available to residents. The following table lists municipal parkland, acreage, and a summary of existing facilities at each location:

#### **FAIRBROOK PARK**

Fairbrook Park is a twenty-nine acre park located on the south side of Whitehall Road between Tadpole Road and the Fairbrook Subdivision. The southeast end of the park borders on the Russell E. Larsen Agricultural Research Center.

The park provides a wide variety of equipment and facilities which can be used by all age groups. The baseball fields and soccer fields are used for league play. There are no formal pedestrian or bicycle access points in the park.

#### **AUTUMNWOOD PARK**

Autumnwood park contains nine and one-half (9.5) acres and is located at the southeast end of the proposed Foxpointe subdivision. Vehicular access to the park is from Autumnwood Drive. There are no formal pedestrian or bicycle access points to this park

#### **GREENBRIAR/SAYBROOK PARK**

The Greenbriar/Saybrook park is an eight and one-half (8.5) acre park located between the Greenbriar and Saybrook subdivisions on the south side of Sleepy Hollow Road. Vehicular access to the park is through North Foxpointe Drive on the Saybrook side and Apple Green Drive on the Greenbriar side. Dedicated pedestrian and bicycle access exists via the Tudek/Circleville bike path.

#### **HAYMARKET PARK**

Haymarket Park is a twelve (12) acre park which is located at the southwest corner of the intersection of Blue Course Drive and Bristol Avenue. The southern edge of the property abuts the Stonebridge open space which is where the State College Area Little League baseball fields are located. Vehicular access to this park is via Blue Course Drive. Dedicated pedestrian and bicycle access is through the bike path which is located on the west side of Blue Course Drive.

#### **HOMESTEAD PARK**

Homestead Park is a ten (10) acre park located between Farmstead Lane, Berkshire Drive and Cambridge Drive in the Homestead Farms subdivision. Dedicated pedestrian access to the site is provided through three easements between the single-family home lots which surround the park. There are no bicycle paths which access the site although there is a walking/bicycle path which surrounds the perimeter of the park. Both bicycles and pedestrians can access the site from Yorkshire Drive.

#### **MEADOWS PARK**

Meadows Park is a four (4.0) acre park located on the east side of Timothy Lane in the Meadows subdivision. Vehicular access and on-street parking are from Timothy Lane. There is no dedicated pedestrian or bicycle access to this park.

#### **OVERLOOK TOT LOT**

The Overlook Tot Lot is located on a one(1) acre parcel at the eastern corner of Overlook Heights. This park is very small and is developed for small children only. The Clinton Avenue/McKee Street bike path connects the tot lot with Sunset Park in State

College Borough. Vehicles can only reach the site via East Clinton Avenue and, with the exception of the bike path, this is the only access for bicycles and pedestrians.

**PARK HILLS PARK**

Park Hills Park is a four (4.0) acre linear park located on the east side of Park Hills Avenue on the north side of Circleville Road. The only vehicular access is from Park Hills Avenue where parking is permitted along the street. There are three dedicated pedestrian easements which connect Glenwood Drive, Cherry Hill Road and Oxford Circle to Park Hills Park. There are no bicycle paths which connect with this park. The facilities at this park are geared toward younger children.

**SUBURBAN PARK**

Suburban Park is a ten (10) acre park located on the north end of Overlook Heights adjacent to Vairo Boulevard. Vehicle access is from Suburban Avenue.

**TOM TUDEK MEMORIAL PARK**

Tom Tudek Memorial Park is an eighty-seven (87) acre park located between Circleville Road, Martin Street, West Aaron Drive and Park Hills Avenue. Vehicular access to the site is currently via Herman Drive and Park Crest Lane. Access to the site for pedestrians and bicyclists is provided by the Tudek/Circleville Bike Path which extends through the site from Circleville Road to West Aaron Drive.

**WESTFIELD PARK**

Westfield Park is a 1.5 acre park located on the north side of Sunday Drive in the Westfield Subdivision. The park is situated so that the parkland dedication from future subdivisions can be added to this park to create a larger more community oriented park. Access to the park is from a future road to be built as additional land develops.

**CENTRE REGION PARKS AND RECREATION FACILITIES NOT LOCATED IN FERGUSON TOWNSHIP**

There are a wide variety of park and recreation facilities which are not located in Ferguson Township but are readily available for use by Township residents. The following list identifies the facilities, the acreage, and the recreation opportunities available at each location.

**College Township – 180acres**

Thompson Woods Playlot	1.8	
Harris Acres Parklet	2.0	
Mt. Nittany Terrace Parklet	2.7	
Oak Grove Parklet	2.92	
Nittany Orchard Park	6.3	Playground, tennis court, basketball court, youth ball field, gazebo
Moutainside Park	7.17	
Penn Hills Park	10.14	Youth ball field, play equipment
Slab Cabin Park	14.02	Picnic pavilion, playground, seasonal sledding slope, covered bridge
Dalevue Park	14.78	Playground, picnic pavilion, bike path, basketball, tennis court, volleyball, youth ball field
Fogleman Fields Park	15	Soccer fields, walking paths
Stoney Batter Natural Area	32.90	Hiking trail to Mt. Nittany overlooks
Spring Creek Park	33.99	Playground, horseshoes, picnic pavilions, sand volleyball, tennis courts, walking paths, adult softball field, adult baseball field, fitness unit, covered bridge, fishing, restrooms, maintenance building
Thompson Woods Preserve	36.6	Hiking trails, nature study

Shamrock Avenue Park	-----	Future development
Stearn's Crossing Park	-----	Future development

**Harris Township – 64 acres**

Country Place Park	4.1	Playground, half-court basketball
Blue Spring Park	8	Basketball, youth ball fields with seasonal soccer field, seasonal ice rink, playground, pavilion
Nittany View Park	9	Pavilion, playground, walking path, youth ball field, seasonal soccer field
Kaywood Park	10	Playground, pavilion, basketball court, youth ballfield
Stan Yoder Memorial Preserve	15	Walking paths, nature study
Eugene Fasick Park	18.3	Playground, bocce court, horseshoes, youth ball field, pavilion, basketball court, nature trails

**Patton Township – 235 acres**

Carnegie Drive Tot Lot	0.4	Play equipment, tot swings, spring riders, drinking fountain, benches, tables
Ridgemont Parklet	0.46	Basketball court, swing set, benches
Park Forest Tot Lot	0.85	Pavilion, playground
Graycairn Park	1.5	Intended to remain as open space
Ghaner Drive Parklet	2.21	Play equipment, swings, pavilion, drinking fountain, benches, tables
Cedar Cliff Park	2.48	Intended to remain as open space
Oakwood Park	4.33	Playground, pavilions, youth ball field, walking path, drinking fountain
Marjorie Mae Park	4.7	Play equipment, pavilion
Woodycrest Park	6.0	Playground, basketball court, youth ball field with seasonal soccer field, pavilion, drinking fountain
Ambleside Park	7.14	For Future Development
Graysdale Park	14.1	Playground, soccer field, youth ball field, basketball, pavilion, walking path
Green Hollow Park	15.64	Playground & tot lot, pavilion, tennis courts, basketball court, youth ball field
Circleville Park	37.69	Playground, dedicated soccer field, youth ball field, pavilion, disc-golf course, walking path, future development
Patton Wood's Natural Recreation Area	62.7	
Bernel Road Park	74.36	For Future Development

**State College Borough – 115 acres**

Central Parklet	0.5	Tot climbing apparatus, picnic tables, at-grade stage
Nittany Village Park	0.5	Playground, picnic tables
East Fairmount Park	1.5	Playground, picnic tables
South Hills Park	1.5	Playground, covered picnic table, basketball court
Smithfield Park	1.7	Playground, picnic pavilion, half-court basketball
Tusseyview Park	4.5	Playground, basketball, tennis courts, picnic pavilion
High Point Park	6.2	Playground, basketball, tennis court, youth ball field with seasonal soccer field, picnic tables
Thompson Woods Preserve	6.75	Hiking trails, nature study
Holmes-Foster Park	11	Picnic pavilions, playground areas, basketball court, horseshoes, bocce courts, restrooms
Orchard Park	19.4	Playgrounds, picnic pavilion, lawn volleyball court, tennis courts, adult softball field with seasonal soccer field, youth ball field, basketball court, bike path, walking path, amphitheater, restrooms
Walnut Springs Park	19.4	Hiking trails, nature study

Sunset Park	20	Playground, picnic pavilions, basketball court, exercise trail, horseshoes, youth ball field, hiking trail, restrooms
Lederer Park	21.8	Walking paths, arboretum, picnic pavilions

### **CENTRE REGION NON-MUNICIPAL RECREATION FACILITIES**

Non-municipal recreation facilities located throughout the Centre Region include: The Pennsylvania State University Intramural Fields and athletic facilities such as Recreation Hall, White Building, Intramural Building, Bryce Jordan Center, Beaver Stadium, and various walking and bicycle paths located on PSU land. The Blue Golf course, located between the Teaberry Ridge PRD and West College Avenue on the east side of Corl Road, provides a public golf course for the Centre Region. Additionally, Toftrees Golf Course, PSU White Golf Course, Pebble Creek Miniature Golf Course, and various fitness facilities owned and operated as private business enterprises are available for residents.

Other non-profit, non-municipal facilities, acquired through the subdivision and land development ordinance provisions that require dedication of open space, are owned by various Homeowners Associations throughout the Township. This type of open space is private and intended to be for use only by the residents of the neighborhood development which it serves. Some of these are developed for active recreation and some accommodate passive recreation.

Centre Soccer Field	9.0	Young Scholars of Central Pennsylvania
Greenleaf Manor PRD Open Space	4.7	Greenleaf Manor Homeowners Association
Stonebridge PRD Open Space	9.75	Stonebridge Homeowners Association
Teaberry Ridge PRD Open Space	6.5	Teaberry Ridge Homeowners Association
Landings PRD Open Space	12.4	Landings Homeowners Association
Foxpointe PRD Open Space	13.9	Foxpointe Homeowners Association
Homestead Farms Open Space	5.7	Cato Associates & Ginther Family

#### **Greenleaf Manor PRD Open Space**

The Greenleaf Manor PRD Open Space consists of two (2) main lots. The first lot is 2.1 acres and is planned to be developed as private open space for the residents of the PRD with a basketball court, play equipment and benches.

The second open space area in the PRD is a 2.6 acre stormwater management facility which will be developed with a soccer field and parking area to be used as a regional facility.

#### **Stonebridge PRD Open Space**

The Stonebridge PRD Open Space is private open space located on two (2) separate lots. The first lot is located on the north side of Bristol Avenue, is 5.75 acres in size and contains two ball fields which are used exclusively by the State College Area Little League. The second open space area, located on the south side of Bristol Avenue, is 4.0 acres in size and contains a swimming pool, picnic pavilion, two tennis courts, volleyball court and picnic grove and is for the exclusive use of the Homeowners Association.

#### **Foxpointe PRD Open Space**

The Foxpointe PRD has 13.9 acres of open space of which 9.4 acres are dedicated to stormwater management

#### **Landings PRD Open Space**

The Landings PRD has three (3) open space areas which are for the residents of the

PRD only. The first area is a 7.4 acre parcel developed with a baseball field for use by the Teener League. This site is also proposed to be developed with a pavilion, grills, play equipment, and swings. The second area is a 4.2 acre stormwater management area to be developed with a soccer field, volleyball court, horseshoe pits and a playground. The third area is an 0.8 acre parcel which is proposed as a vacant passive recreation area that connects to Haymarket Park.

**Teaberry Ridge PRD Open Space**

The Teaberry Ridge PRD has two areas of open space. The first is the Tudek / Circleville Bikeway and a 6.5 acre natural area which extends along the eastern edge of the property. The second is another natural area and a walking path on the west side of Corl Road between Megan Drive and Sowards Place.

**Homestead Farms Open Space**

The Homestead Farms Open Space is 5.7 acres located between Valley Vista Drive and Berkshire Drive in the Homestead Farms III Subdivision. The land is partially wooded, partially meadow and does not have any improvements. At one time this land was offered for dedication to the Township, but was rejected due to the steep slopes. A small portion (0.9 acres) of the open space is privately owned and maintained by Ray and Jeannie Ginther, and the remaining section is owned by Cato Associates. Although the entire property is held in private ownership, it is available for public use.

**COMMUNITY FACILITIES**

Some recreational facilities, although located in one municipality, are available to all residents of the region. At some of these facilities, fees are charged to cover operating expenses. The table below identifies the name, address, and acreage of each such facility. As with the locally owned facilities, maintenance and programming of these are the responsibility of the Centre Region Parks and Rec Department.

Centre Region Senior Center	-----	131 S. Fraser Street #1 State College, PA
Houserville Elementary Ballfield	1.5	Houserville Elementary School State College, PA
Ferguson Elementary Ballfields	3	Ferguson Elementary School Pine Grove Mills ,PA
Wm. Welch Community Pool	3.15	670 Westerly Parkway State College, PA
Radio Park Elementary Ballfields	4	Radio Park Elementary School State College, PA
Park Forest Community Pool	4.4	2100 School Drive State College, PA
Millbrook Marsh Nature Center	62	614 Puddintown Road State College, PA
Oak Hall Parkland	68	102 Linden Hall Road State College, PA
Whitehall Road Parkland	75	Blue Course Drive State College, PA

**EXISTING RECREATION PROGRAMS**

The Centre Region Parks and Recreation Department coordinates recreation programs and services at Township Parks and other facilities throughout the Township and the Region. These programs and services are offered year round and serve all ages of people. The specific activities run by CRPR, Centre Soccer and various other

organizations that coordinate recreation programs that occur in Ferguson Township parks are identified in the following chart:

<b>PROGRAMS AND ACTIVITIES IN FERGUSON TOWNSHIP PARKS</b>	
Fairbrook Park	Softball, Soccer, Baseball, Neighborhood Park Program
Ferguson Elementary School	Neighborhood Park Program
Homestead Park	Softball, Soccer, Baseball, Neighborhood Park Program
Meadows Park	Neighborhood Park Program
Overlook Heights	No Programs or Activities
Park Hills Park	Neighborhood Park Program
Suburban Park	Softball, Tennis, Baseball, Neighborhood Park Program
Tudek Park	Softball, Soccer, Baseball

### **REGIONAL FACILITIES**

The following list identifies regional park and recreational facilities located outside of the Centre Region. Most are located within a two hour drive, and all are open to the public. While many of these are State owned and operated, some are non-profit, and others are commercial business ventures.

**Bald Eagle State Park** - Located in Centre County off of State Route 150 - Facilities and activities include picnicking, ballfield, playground, beach, snack bar, fishing, boat rentals, boat mooring, boat launching, wheelchair accessible, bicycle rentals, ice fishing, ice skating, camping and showers.  
[www.dcnr.state.pa.us/stateparks/parks/baldeagle](http://www.dcnr.state.pa.us/stateparks/parks/baldeagle).

**Black Moshannon State Park** - Located in Centre County off of State Route 504 - Facilities and activities include picnicking, beach, snack bar, fishing, boat rentals, boat mooring, boat launching, wheelchair accessible, hiking, ice fishing, ice skating, camping and showers.  
[www.dcnr.state.pa.us/stateparks/parks/blackmoshannon](http://www.dcnr.state.pa.us/stateparks/parks/blackmoshannon)

**Greenwood Furnace State Park** - Located in Huntingdon County off of State Route 305 - Facilities and activities include picnicking, ballfield, playground, beach, snack bar, fishing, wheelchair accessible, hiking, ice fishing, ice skating, camping and showers.  
[www.dcnr.state.pa.us/stateparks/parks/greenwoodfurnace](http://www.dcnr.state.pa.us/stateparks/parks/greenwoodfurnace)

**McCall Dam State Park** - Located in Centre County off of State Route 192 - Facilities and activities include picnicking and fishing.  
[www.dcnr.state.pa.us/stateParks/parks/mccallsdam](http://www.dcnr.state.pa.us/stateParks/parks/mccallsdam)

**Parker Dam State Park** - Located in Clearfield County off of State Route 153 - Facilities and activities include picnicking, ballfield, playground, beach, snack bar, fishing, boat rentals, boat launching, wheelchair accessible, hiking, bicycle rentals, ice fishing, skating, camping and showers.  
[www.dcnr.state.pa.us/stateparks/parks/parkerdam](http://www.dcnr.state.pa.us/stateparks/parks/parkerdam)

**Penn Roosevelt State Park** - Located in Centre County off of Interstate Route 322 - Facilities and activities include picnicking, fishing, wheelchair accessible, hiking, ice fishing, ice skating and camping.  
[www.dcnr.state.pa.us/stateparks/parks/pennroosevelt](http://www.dcnr.state.pa.us/stateparks/parks/pennroosevelt)

**Poe Paddy State Park** - Located in Centre County off of Interstate Route 322 - Facilities and activities include picnicking, playground, fishing, wheelchair accessible, hiking and camping.

[www.dcnr.state.pa.us/stateparks/parks/poepaddy](http://www.dcnr.state.pa.us/stateparks/parks/poepaddy)

**Poe Valley State Park** - Located in Centre County off of Interstate Route 322 - facilities and activities include picnicking, playground, beach, snack bar, fishing, boat rentals, boat launching, boat mooring, hiking, ice fishing, ice skating and camping. [www.dcnr.state.pa.us/stateparks/parks/poevalley](http://www.dcnr.state.pa.us/stateparks/parks/poevalley)

**Reeds Gap State Park** - Located in Mifflin County off of Interstate Route 322 - Facilities and activities include picnicking, playground, pool, snack bar, fishing, hiking and camping.

[www.dcnr.state.pa.us/stateParks/parks/reedsgap](http://www.dcnr.state.pa.us/stateParks/parks/reedsgap)

**S.B. Elliott State Park** - Located in Clearfield County off of State Route 153 - Facilities and activities include picnicking, ballfield, playground, hiking and camping.

[www.dcnr.state.pa.us/stateparks/parks/sbelliott](http://www.dcnr.state.pa.us/stateparks/parks/sbelliott)

**Shaver's Creek Environmental Center** - Located in Huntingdon County off of State Route 26 next to the Stone Valley Recreation Center - Facilities and activities include nature exhibits and education programs, hiking, picnicking and a raptor center. [www.shaverscreek.org](http://www.shaverscreek.org)

**Stone Valley Recreational Facility** - Located in Huntingdon County off of State Route 26 - Facilities and activities include picnicking, fishing, hiking, boating, ice skating, lodge and cabin rentals. [www.psu.edu/Stone\\_Valley](http://www.psu.edu/Stone_Valley)

**Tussey Mountain Ski Area** - Located in Centre County off of State Route 322 - Facilities include ski slopes, restaurant, driving range, par three golf course, summer concerts and go carts. [www.tusseymountain.com](http://www.tusseymountain.com)

**Whipple Dam State Park** - Located in Huntingdon County off of State Route 26 - Facilities and activities include picnicking, beach, snack bar, fishing, boat mooring, boat launching, wheelchair accessible, hiking, ice fishing and ice skating. [www.dcnr.state.pa.us/stateParks/parks/whippedam](http://www.dcnr.state.pa.us/stateParks/parks/whippedam)

**Sproul State Forest:** The 278,000-acre Sproul State Forest is in western Clinton and northern Centre counties. The multiple-use management system provides forest-based recreational opportunities such as hiking, backpack camping, snowmobiling pleasure driving, and horseback, ATV, and mountain bike riding. All areas of Sproul State Forest are open to hunting and fishing. Camping permits are required before setting up camp on state forest lands. 570-923-6011

[www.dcnr.state.pa.us/FORESTRY/stateforests/sproul](http://www.dcnr.state.pa.us/FORESTRY/stateforests/sproul)

**Alvin R. Bush Dam:** This flood control dam is operated by the U.S. Army Corps of Engineers and creates 4.5 miles of natural, scenic shoreline. This is one of four dams in the flood control plan for the West Branch Basin of the Susquehanna River watershed. 570-923-1800

[www.nab.usace.army.mil/recreation/bush.htm](http://www.nab.usace.army.mil/recreation/bush.htm)

**Kettle Creek State Park:** Kettle Creek State Park consists of 1,793 acres along Kettle Creek in Western Clinton County. The park is in a valley surrounded by mountainous

terrain and wilderness. Many of the existing recreational facilities arose from a joint flood control project developed by the U.S. Army Corps of Engineers and the former Pennsylvania Department of Environmental Resources.

[www.dcnr.state.pa.us/stateParks/parks/kettlecreek](http://www.dcnr.state.pa.us/stateParks/parks/kettlecreek)

**Kettle Creek Vista:** Three miles west of the park, this vantage point provides a breathtaking view of the Kettle Creek Valley.

**Pennsylvania Wilds** is two million acres of public lands for hiking, biking, fishing, boating, hunting and exploration in northcentral Pennsylvania. Within the twelve-county region are; 27 state parks, eight state forest districts (1.3 million acres), 50 state game lands and Allegheny National Forest (500,000 acres). Highlights of the area are; elk watching, scenic Pennsylvania Route 6, Pine Creek Gorge (PA Grand Canyon), the darkest skies in the east at Cherry Springs State Park, and hundreds of miles of backpacking trails, bike paths and trout fishing streams. [www.pawilds.com](http://www.pawilds.com)

**Fort Roberdeau Historic Site and Natural Area** is located near Altoona in Blair County, Pennsylvania. The rural **230-acre tract** features a reconstructed Revolutionary War stockade surrounding six log cabins. It also includes an 1858 barn containing exhibits and a museum shop, an education center in an 1860 farmhouse, three nature trails, picnic facilities, and White Oak Hall, a large multipurpose facility.

[www.fortroberdeau.org](http://www.fortroberdeau.org)

**Canoe Creek State Park**, 12 miles east of Altoona, is a modern day use facility developed during the Project 70 expansion era of state parks and was dedicated in 1979. The vast openness of this 958-acre park is exemplified with a panoramic view when cresting the hill on Canoe Creek Road. A 155-acre lake provides excellent year-round fishing, a popular swimming area and enjoyment for small pleasure boaters. Fields and woodlots are managed to provide diversified habitat for small game species and a variety of wildlife. Canoe Creek's proximity to nearby communities allows local residents to take a short pleasure drive and enjoy an evening of fishing, picnicking or walking. Within an hour's drive of the park are the world famous Horseshoe Curve, [Blue Knob Ski Area](#), State Game Land 166, and [Rothrock](#) and [Gallitzin](#) state forests.

[www.dcnr.state.pa.us/stateparks/parks/canoecreek](http://www.dcnr.state.pa.us/stateparks/parks/canoecreek)

**Raystown Lake**, an 8,300-acre flood control reservoir, is operated by the Corps of Engineers to provide flood control, fisheries enhancement, water quality, and recreational opportunities. Nestled between the ridges of Huntingdon County, adjacent to the southern portion of Rothrock State Forest, the visitor to this 29,300-acre Federal facility can participate in hiking, fishing, camping, recreational boating, hunting, picnicking, and many other outdoor activities. [www.raystownlake.com](http://www.raystownlake.com)

**Rothrock State Forest** <http://www.dcnr.state.pa.us/forestry/stateforests/rothrock>

**Gallitzin State Forest** consists of 2 separate areas of State Forest land located in Northern Bedford, Cambria, Indiana, and Northern Somerset counties. The total area of

State Forest land is 15,336 acres.

<http://www.dcnr.state.pa.us/forestry/stateforests/gallitzin>

**Prince Gallitzin State Park** this 6,249-acre site is in the scenic Allegheny Plateau Region of Pennsylvania. Large portions of the park can be seen from several easily accessible vistas. The major attractions to the park are the 1,600-acre Glendale Lake and the large campground. [www.dcnr.state.pa.us/stateParks/parks/princegallitzin](http://www.dcnr.state.pa.us/stateParks/parks/princegallitzin)

**R. B. Winter State Park** covers 695 acres of the Ridge and Valley Province in central Pennsylvania. Located within Bald Eagle State Forest, the park lies in a shallow basin surrounded by rocky ridges covered with an oak and pine forest. The focal point of the park is Halfway Lake which is filled by spring-fed mountain streams and contained by a hand-laid, native sandstone dam. Open year-round, the park provides diverse opportunities for recreation.

[www.dcnr.state.pa.us/stateParks/parks/rbwinter](http://www.dcnr.state.pa.us/stateParks/parks/rbwinter)

**The Tiadaghton State Forest** is one of twenty forest districts created for the protection and management of Pennsylvania's forest lands. The Tiadaghton State Forest is comprised of approximately 215,500 acres of state forest land, most of which is in Lycoming County. Small portions extend into Tioga, Sullivan, Potter, Clinton, and Union counties. [www.stateparks.com/tiadaghton.html](http://www.stateparks.com/tiadaghton.html)

**Ravensburg State Park** is located in Clinton County on PA 880. Twenty-one non-reservable, tent-camping-only sites are available. Visitors can also enjoy hiking, picnicking and cold-water fishing. The park lies in a cozy, steep-walled gorge carved by Rauchtown Run through the side of Nippenose Mountain. A northern hardwood forest blankets the bottomland along this spring-fed stream.

[www.dcnr.state.pa.us/stateParks/parks/ravensburg](http://www.dcnr.state.pa.us/stateParks/parks/ravensburg)

**Sand Bridge State Park** located on PA 192 east of R.B. Winter, includes picnic tables, pavilions and restrooms. The park also offers stream fishing.

[www.dcnr.state.pa.us/stateParks/parks/sandbridge](http://www.dcnr.state.pa.us/stateParks/parks/sandbridge)

**State Forest Picnic Areas** - Located at various points in surrounding counties.

**Mid State Trail** The Mid State Trail System (MST) is a long distance hiking trail and its side trails in central Pennsylvania. The current northern end is at the West Rim Trail on Bohem Run north of Blackwell and the southern end is a junction with Green Ridge Hiking Trail in Maryland at the Mason-Dixon line. The MST is almost entirely on public land: state forests, game lands and parks.

[www.dcnr.state.pa.us/FORESTRY/hiking/midstate](http://www.dcnr.state.pa.us/FORESTRY/hiking/midstate)

## **ADMINISTRATION AND THE PLANNING PROCESS**

At this time, CRPR maintains eleven (11) parks within Ferguson Township and more than 40 parks throughout the Centre Region. The eleven (11) Township owned parks within Ferguson Township create a combined total of 258 acres of parkland. This includes: Fairbrook Park, Meadows Park, Suburban Park, Overlook Heights Tot Lot, Tom Tudek Memorial Park, Park Hills Park, Homestead Park, Haymarket Park, Autumnwood Park, Greenbriar / Saybrook Park, and Westfield Park as well as an eighty (80) acre preserve formerly owned by the Township Municipal Authority. In addition there are five (5) bikeways. These bikeways are the Tudek / Circleville, the Cato / Stonebridge Bikeway, the Mckee Street Bikeway, the Blue / White Bikeway and the Vairo/Suburban Bikeway.

The bikeways are provided and maintained solely by Ferguson Township.

## **THE MUNICIPALITIES PLANNING CODE (MPC)**

Article III, Section 301 of the Municipalities Planning Code addresses the contents of a municipal comprehensive plan. According to the MPC, this document "...shall include but need not be limited to..." such basic elements as:

- (4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police stations, libraries, hospitals, water supply and distribution, sewerage and waste treatment, solid waste management, storm drainage, and flood plain management, utility corridors and associated facilities, and other similar facilities or uses.
- (6) A plan for the protection of natural and historic resources to the extent not preempted by federal or state law. This clause includes but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, floodplains, unique natural areas and historic sites.

In addition:

- (d) The municipal, multi-municipal or county comprehensive plan may identify those areas where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate growth.

As noted below, the Centre Region Comprehensive Plan, a multi-municipal planning document, contains a chapter on Open Space Conservation and Preservation that qualifies as the required basic element identified by the MPC. However, adoption of this Township Recreation, Park and Open Space Plan Update, as an adjunct to these provisions in the Regional Comprehensive Plan, can provide more guidance at the local level, and result in the provision of facilities and services that are consistent with the needs and desires of the Township residents. Additionally, it is intended that this RPOS Plan Update may serve to identify how local efforts can begin to address the regional

goals highlighted by the Plan.

## **RELATIONSHIP TO CENTRE REGION COMPREHENSIVE PLAN**

The Centre Region Comprehensive Plan, adopted in June 2000, provides a framework for regional cooperation in all aspects of comprehensive planning and community decision making. The 2000 Plan maintains the intent and regional context of the 1990 plan, but with new emphasis on detail and implementation. To this end, the Plan includes Goals, Policies, Initiatives and specific Action steps to aid in achievement of the various objectives. Goals of the adopted Plan speak to the necessity of assessing the recreation, park, and open space needs of each municipality and providing the appropriate protection for community resources at the local level. These include:

- Balance community growth while protecting and enhancing the Centre Region's environmental, historic and cultural resources.
- Direct the majority of future growth to areas within the Regional Growth Boundary so that new development can be efficiently served by public utilities, services, and transit.
- Obtain additional parkland and open-space areas, and provide a broad range of recreational opportunities.

The Open Space Conservation and Preservation chapter of the Plan details several Policies and Initiatives that help guide the content of the Township's Recreation, Parks, and Open Space Plan. It is intended that this update to the Recreation, Parks, and Open Space Plan be consistent with these adopted policies and further, that it provide details on their implementation at the local level.

### **Policies:**

Coordinate inter-connected open-space systems for the Centre Region based on existing permanent open space resources, sensitive natural features, and projected future development patterns.

Encourage the placement of conservation easements on significant regional natural or open space resources.

Develop, with the support of the Centre Region Municipalities, municipal park plans, fee-in-lieu regulations and local tax financing strategies to acquire land within the Centre Region for open-space and recreational activities.

### **Initiatives:**

Use current survey data and/or a voter referendum to assess the public's attitude toward the public purchase of lands for preservation and recreational uses

Determine all sources of financing strategies applicable to the acquisition of lands for preservation and recreational uses

Require pedestrian and bikeway trail connections as part of the land development approval process when existing trails are adjacent or nearby a future land development site.

Identify open-space and natural resource areas that will provide the basis for future decisions in the land development review process regarding protection and acquisition of these areas.

Identify and provide information on potential sites that contain significant natural and open space features.

Coordinate activities with property owners, municipalities and environmental organizations in the acquisition of conservation easements.

Other chapters of the adopted Comprehensive Plan, including those on Community Design, Historic Preservation, Future Development Patterns, Transportation, and Environment & Natural Resources also provide relevant objectives that guide the Township in development of this RPOS Plan. These are:

**Policies:**

Preserve the Centre Region’s historic resources and maintain regional community identity, history, and culture.

Preserve and enhance the Region’s open-space areas

Preserve steep slopes and existing topographic features of the Centre Region during the planning and development process.

Protect floodplains, wetlands, and stream corridors within the Spring Creek and Spruce Creek Watersheds.

Protect the quality of the Region’s groundwater resources through efficient and effective land-use management

Limit land development activities in areas identified as habitats for threatened and endangered plant and animal species in the Centre County Natural Heritage Inventory.

Transportation projects and programs that provide support for a broad range of transportation options and that decrease the Region’s dependence on the private automobile are critical to meeting future travel needs.

**Initiatives:**

Develop a continuous, interconnected system of pedestrian and bicycle facilities, which can be implemented in phases, to meet the needs of existing developed areas and future growth needs.

Encourage municipal regulations to provide site design features such as pedestrian and transit amenities, parks, woodland protection, landscaping, and building construction consistent with the character of the site location.

Encourage and maintain interconnections between open-space areas.

Implement regulations to protect identified aquifers, floodplains, wetlands, waterways, future park locations, and valuable woodlands.

Encourage the continued use of the Official Map provisions to identify and preserve future open-space areas.

Implement riparian buffer regulations to filter run-off, reduce stream temperatures, provide open space and wildlife habitat and prevent the development of parking lots and structures within close proximity of a stream corridor,

Prohibit development activities within 100-year floodplain boundaries.

Identify the one-year zone of contribution for all public well sites in the Centre Region.

Develop and implement wellhead protection regulations in the Centre Region.

Direct intensive development activities away from groundwater recharge areas identified within the one-year zone of contribution.

Centre County and the Centre Region municipalities should develop an update to the 1991 Centre County Natural Heritage Inventory.

Encourage municipal land development and subdivision regulations that protect identified threatened and endangered species.

Although generally consistent with the stated goals of this Recreation, Parks, and Open Space Plan Update, many of these statements deserve candid consideration; as they have not been the focus of previous planning efforts in the Township. One goal of this Plan Update is to ensure that these fundamental tenets of the preservation and conservation of resources are adequately addressed by the Township.

In keeping with the provisions of the Municipalities Planning Code, chief among these concerns is the adequate protection of resources such as wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, floodplains, and unique natural areas and historic sites within the Township. While existing regulations provide a level of protection for certain features such as floodplains, steep slopes, and agricultural land, there are many Township resources that are not provided with any protection at the local level. As a result, many of these features can be impaired or destroyed by development projects and/or construction practices, as well as through the actions of individual property owners who may not be aware of the presence or value of these resources.

## **LOCAL ORDINANCES**

There are two existing Township ordinances which impact the preservation of parkland / open space during the subdivision / land development process. These Ordinances are the subdivision ordinance, Chapter 22, Section 513.2C, and the Zoning Ordinance which includes provisions for Planned Residential Developments (Chapter 27, Section 407) and Traditional Town Developments (Chapter 27, Section 701). The following sections describe how these regulations can affect the amount and location of park and open space provided in the Township.

### **Subdivision Ordinance**

The following list highlights the current parkland requirements of the subdivision

ordinance which apply to both single and multi-family residential developments.

The total acreage required to be dedicated for each development is based on an acreage per person calculation as follows:

Total average number of people per dwelling unit (2.54 people per unit) x .024 acres per person x 65% (developable acreage)

For the Township to accept land for dedication, the park must have the following attributes:

- Access - Must be accessible to all residents. Minimum frontage should be 50 feet if adjacent to public street.
- Location - Located equally to serve all residents.
- Shape - Suitable to accommodate activities which meet needs of residents.
- SWM - May not be developed in stormwater management basin.
- Soils - Soil shall be suitable for the intended park uses. No parkland may be located on or within any drainageway, wetland area, steep slope area or stormwater detention basin, with the exception that up to 25 percent of the total parkland may be located within a floodplain with approval of the Board of Supervisors.
- Size - The minimum parcel size shall be no less than 4 acres.
- Slope - The majority of the park shall have a slope of no more than 4 percent, and the average slope of the park, as measured perpendicular to the contour lines, shall not exceed 8 percent.
- Unity - Fewer larger pieces rather than several smaller pieces.
- Utilities - Utilities shall not cross land above ground. May be underground.

Under certain conditions, the applicant may be permitted to contribute fee-in-lieu rather than acreage for parkland. This money is required to be used to enhance public recreation areas which will directly benefit future inhabitants of the development or subdivision for which the fee was provided.

The fee-in-lieu payment is determined using the following calculation:

$$D \times 2.54 \text{ person/d.u.} \times \text{Parkland Fee/person} = \text{Parkland Fee - in - Lieu}$$

D= Number of Dwelling Units

Parkland Fee /person = Fee established by Resolution of the Board

**Zoning Ordinance**

- A. The following list highlights the parkland requirements of the existing PRD regulations as outlined in the Township Zoning Ordinance.

The percent of acreage required to be dedicated for each PRD is based on the total number of dwelling units per acre as follows:

<u>Residential Dwelling Units Per Acre</u>	<u>Required Common Open Space Percentage</u>
1-4.9	15
5-9.9	18
10-14.9	20
15-19.9	25
>20	25

The requirements for the common open space dedicated as part of a PRD include:

- (1) The location, shape, size and character of the common open space shall be provided in a manner to meet the needs of the planned residential development and the criteria of the Subdivision and Land Development Ordinance, §§22-513.2.D(1)-(6); 22-513.2.G.
- (2) Common open space shall be used for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned residential development, considering its size, density, expected population, topography and the number and type of dwellings to be provided.
- (3) Adequate access shall be provided to the open space from all dwelling units in the PRD. This includes providing connections to existing and proposed sidewalks and bikeway systems.
- (4) A minimum of 50% of the required open space shall be contiguous land.
- (5) A minimum of 50% of the required open space shall be suitable for recreation purposes (i.e., no floodplain, wetlands, steep slopes, sinkholes).
- (6) Common open space must be suitably improved for its intended use, but common open space containing natural features, existing trees and ground cover worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the common open space shall be appropriate to the uses which are authorized for the common open space having regard to its topography and unimproved condition.
- (7) The development schedule which is part of the development plan must coordinate the improvement of the common open space, the construction of buildings, structures, and improvements in the common open space, and the construction of residential dwellings in the planned residential development.
- (8) The use and improvement of the common open space shall be planned in relation to any existing or proposed public or semipublic open space which adjoins or which is within 1,500 feet of the perimeter of the planned residential development.

There are five PRDs in existence within the Township. However, three of these were approved prior to the adoption of the ordinance standards indicated above. As a result,

the total open space provided by these developments is somewhat less than is currently. As a result, it may be recommended that this method of obtaining and/or owning open space not be continued required. In addition, since the majority of this open space is in private ownership, it is not available to all residents in the Township and therefore does not contribute toward the inventory of parkland used to calculate the Township's ability to meet the needs of the majority of residents..

The provisions for Traditional Town Development, also found in the Zoning Chapter, require that the provision of open space within the development conform to the following standards:

1. A minimum of 50% of the site proposed for development is to be devoted to useable common open space. Through the use of incentives offered in subsection 4.F, the amount of required useable common open space may be significantly reduced. However, in no case is less than 25% of a site permitted to be devoted to the provision of usable common open space, including permitted percentages of public areas.
2. All common open space reserved is to be designed for one or more of the following uses:
  - Community green, square, or commons.
  - Community garden or park.
  - Streams, ponds and other natural or man-made bodies of water.
  - Playground or tot-lot.
  - Bikeway, greenway, trail or environmental corridor.
  - Active recreational facility.
  - Public space.
  - Conservation area/protected natural area which may include: woodlands, wildlife corridor(s), meadow, horticulture, or wetland that is incorporated into the design for stormwater management.
3. Stormwater management facilities such as detention basins and swales are only permitted to be included to the extent that the open space exceeds the 25% required minimum, or through the use of one or more design incentives.
4. In addition to responding to the unique conditions and environmental resources of the parcel(s), the open space provided on each site is to be responsive to the needs of the community as expressed in the Ferguson Township Recreation, Parks, and Open Space Plan and, to the extent feasible, is required to provide useable play or recreation areas, or equipment, that is conveniently accessible to residents throughout the community. Conformance with the provisions of the Subdivision and Land Development Ordinance, §22- 513.2.G (1) - (4), and .H is expected as well.

The reservation of passive parkland which may include wooded sites, formal gardens, conservation areas, and open grass spaces may also be included. However, such facilities are not permitted to account for more than 40% of the

required common open space. Where the existence of adequate play or recreation areas within walking distance of a proposed TTD or associated Mixed Residential Area can be shown, the percentage of passive parkland permitted to be credited toward the total required common open space may be raised to as much as 55%.

5. Public space is required to serve as a focal point and may comprise up to 10% of the useable common open space provided. Such areas shall be subject to the same maintenance criteria as identified by §27- 702.4.C(4)(m).

6. All common open space is to be publicly accessible either from a public street or public area, and/or from a pedestrian/bicycle network that links various playgrounds, parks, commons and greens to each other as well as to the developed portions of the site. Land designated as common open space shall be suitable for the purpose specified.

7. Each Traditional Town Development or associated Mixed Residential Area site that includes 50 or more dwelling units is required to include at least one public square or green with a minimum size of 20,000 square feet. Other squares, greens, commons, or public areas of not less than 10,000 square feet in area shall be dispersed throughout the development. Each dwelling unit shall be situated so as to be located no more than 1,000 feet from a commons, square, green, or trail.

The addition of the TTD zoning district to the Zoning Ordinance created an opportunity for the Township to obtain a significant amount of parkland in an area where the previous Recreation, Parks, and Open Space Plan called for the provision of Community and/or Neighborhood Parkland. The TTD regulations contain language that seeks to preserve the unique features of a site, such as woodland, floodplain, and steep slopes, in addition to the traditional emphasis on providing land that will be available for active recreational pursuits. The text of the zoning district also calls for all open space within the future development to be linked through the provision of pedestrian greenways, bikeways, or other off-street corridors. This will facilitate the Township's ability to incorporate these areas into the existing park infrastructure while limiting the expenditure of taxpayer dollars to do so.

The addition of the TTD zoning district to the Township's Zoning map occurred through the rezoning of acreage previously zoned for Industrial development and adjacent acreage previously zoned RA or rural agricultural. Combined, this area constitutes approximately 350 acres that is located within the existing Regional Growth Boundary. If the development of this land adheres to the requirement to preserve 50% in open space, a total of 175 acres will be added to the Township's parkland inventory. Even at the minimum 25% reservation, more than 87 acres would be set aside for use as open space.

In 2008, an ordinance amendment was instituted to allow the collection of a fee for the

master planning of parkland. This fee of \$165.00 per dwelling unit will be collected when parkland is offered for dedication.

## **PARK ACQUISITION AND DEVELOPMENT POLICY**

Ferguson Township acquires and owns parkland and completes the capital improvements at each park site. The Township generally acquires parkland through the ordinance provisions described above. Then, based on financing constraints and the adopted Capital Improvements Plan, the Township develops the land and purchases or constructs the equipment and facilities. Details of the current CIP, which budgets funds through 2012, can be obtained from the Township.

As a general policy, the Township considers a park master plan good for approximately 15 years. However, if grant funding requires a newer master plan, the Township will evaluate updating a master plan prior to the 15 year limit. Where the capital improvements will require a substantial time frame for implementation, the Township might consider a phased approach to Master Planning for parkland. This would allow new input at appropriate intervals – perhaps in five (5) year increments, consistent with the capital improvement budget.

The existence of a master plan helps the Township plan and budget for park development and improvements on a yearly basis. The Township may apply for a grant or use capital funds to develop either a portion of or the entire park. Decisions regarding the timing and amount of funds expended are a product of the Capital Improvements Planning process. However, this Recreation, Park and Open Space Plan Update should provide appropriate guidance for this decision-making so that residents can better understand how the Township's efforts to provide park and recreation opportunities on a community-wide basis relate to the available funding and its distribution for Township services.

## **CLASSIFICATION SYSTEM**

According to the National Recreation and Park Association publication Open Space Guidelines & Standards, the following are classifications for local and regional recreation open space:

**Mini-Park:** Specialized facilities of an acre or less that serve a concentrated or limited population or specific group such as tots or senior citizens. The service area is less than ¼ mile. They are generally located within neighborhoods and in close proximity to apartment complexes, townhouse developments, or housing for the elderly. NRPA recommends .25 to .5 acres/1,000 population. **2020 need: 4.75 -9.5 acres**

**Neighborhood Park/Playground:** Area(s) for intense recreational activities such as field games, court games, crafts, playground apparatus area, skating, picnicking, wading pools, etc. The service area is ¼ mile to ½ mile and the expected size is 15+

acres. These parks are suited for intense development and are easily accessible to the neighborhood population with safe walking and bike access. NRPA recommends 1.0 to 2.0 acres/1,000 population. **2020 need: 19-38 acres**

**Community Park:** Area(s) of diverse environmental quality. May include natural features such as water bodies and areas suited for intense development. The service area is a 1 to 2 mile radius and the expected size is 25+ acres. NRPA recommends 5.0 to 8.0 acres/1,000 population. **2020 need: 95-152 acres**

**Regional/Metropolitan Park:** Area(s) of natural or ornamental quality for outdoor recreation such as picnicking, boating, fishing, swimming, and camping, contiguous to or encompassing natural resources. The service area is within a one hour drive and the anticipated size is 200+ acres. NRPA recommends 5.0 to 10.0 acres/1,000 population.

Recent research on the use of Recreation, Park and Open Space Standards and Guidelines by the NRPA suggests that few jurisdictions feel that nationally prescribed minimums by park type are feasible. The NRPA recommends that a community use the guidelines for guidance only, and determine their own mix of recreation needs. This can be accomplished by completing a Level of Service analysis. This is a detailed analysis that outlines the recreation activity menu, open space standards, present supply, expressed demand and minimum population service requirements for each park class and the entire park and recreation system.

Rather than attempt to conform to the NRPA established guidelines for recreation facilities or complete an in-depth level of service analysis, the RPOS Planning Committee recommends that the Township deal with future equipment/facility needs through the master plan process for each park, through general citizen input, special interest group input and through input from the CRPR Department and Recreation Board.

Assuming build-out within the regional growth boundary, the Township is anticipating the addition of 1312 dwelling units, or 3,332 new residents by the year 2020. Using NRPA guidelines, existing demographics, expected community parkland acquisition, and anticipated future development, the Township's current parkland resources appear sufficient to address this growth. An update to this plan, which would be scheduled for 2012, will provide an evaluation of this assessment

If needed in the future, the Township could undertake a detailed level of service analysis to determine facility needs.

## **RECOMMENDATIONS**

The RPOS Planning Committee has defined through the development of this plan, a set of recommendations to be considered by the Township Board of Supervisors. The recommendations are divided into five categories: General, Parks and Recreation, Ordinance Revisions, Regional, and Financing and are listed below. Upon approval of this plan, Township staff should pursue implementation of the recommendations.

### **GENERAL**

1. The Township should adopt this update to the Recreation, Parks and Open Space Plan to be used as a guide for future park, recreation and open space development and to continue the Township's compliance with the PA Municipalities Planning Code.
2. This Recreation, Parks and Open Space Plan should be updated again in five years to assure that the proposed changes are consistent with anticipated development.
3. The Board should establish an advisory committee to oversee implementation and updating of the Plan and to advise on priorities.

### **PARKS, RECREATION AND OPEN SPACE**

1. The Township should adopt a minimum set of standards for parkland development. The recommendations for minimum development of parkland are:
  - a. Each park which has been only partially developed should be fully developed to meet the master plan recommendations.
  - b. Each park which has not been developed should have a master plan completed and development started in incremental stages.
  - c. During the master planning process the Township should ensure that there is an appropriate mix of active and passive recreation areas in each park to meet the needs of the park users. In addition, the public should be actively involved in determining the facilities that are constructed within the park.
  - d. The minimum facilities within each park should include a playground, picnic area, active recreation area and a park trail that connects to adjacent bikepaths.
  - e. The facilities planned in each park should be flexible in use (ie. Dual soccer and ballfield) and should be able to be converted to meet changing needs.
  - f. The Township should provide CIP funding each year to develop portions of the parks.
2. The Township has established and should continue to utilize a standard master planning process as outlined below:
  - a. A park planning consultant is retained to prepare the master plan.
  - b. A public meeting is held to obtain input from the public prior to the development of alternatives.
  - c. The consultant prepares several alternative conceptual plans based on citizen input.
  - d. A second public meeting is held to obtain input on the individual concepts and to determine which alternate or combination of alternatives is preferable.

- e. The consultant prepares a final master plan alternative based on input from the public which is reviewed by the Board of Supervisors.
  - f. A public hearing is held by the Board of Supervisors prior to adoption of the master plan.
  - g. The Township may apply for a grant or use capital funds to develop either a portion of or the entire park.
  - h. The Master Plan design should be posted at each park location.
  - h. As a general policy, the Township considers a park master plan good for approximately 15 years. If grant funding requires a newer master plan, the Township will evaluate updating a master plan prior to the 15 year limit. In addition, if the implementation of the Master Plan improvements has not been undertaken within thi 15 year time frame, the Township will consider redoing the Master Plan.
3. The Township should complete development of partially developed parks. The partially developed parks are:
- a. Homestead Park
  - b. Fairbrook Park
  - c. Meadows Park
  - d. Suburban Park
  - e. Tudek Park
  - f. Haymarket Park
  - g. Greenbriar / Saybrook Park
  - h. Autumnwood Park
4. The Township should continue to utilize the Official Map to designate future parkland locations
5. The Township should continue to utilize a regional master planning process for the development of community parkland.
6. The Township should determine the status of the following bike paths and, if appropriate, depict on the Official Map.
- Bikepath 2 (BP-2):** A bikepath independent of the roadway that extends from the end of the Tudek / Circleville bikeway at Teaberry Ridge to the multi-use trail that extends east across the PSU Golf Course to North Atherton Street.
- Bikepath 4 (BP-4):** An on-road bike lane that extends from the Tudek / Circleville bikepath north along Farmstead Lane to Homestead Park.
- Bikepath 7 (BP-7):** A bikepath aligned with the roadway that extends from Foxpointe Drive along Old Gatesburg Road west and then along the entire length of Nixon Road from Old Gatesburg Road to Sunday Drive in Pine Grove Mills.
- Bikepath 8 (BP-8):** An on-road bike lane along Nixon Road from Sunday Drive to Pine Grove Road (Route 45) and along Pine Grove Road from Meckley Drive west to Wyoming Avenue.
- Bikepath 11 (BP-11):** A bikepath independent from the roadway on the south side of Whitehall Road from the Township Boundary with the Borough of State College west to West College Avenue.
- Bikepath 13 (BP-13):** An on-road bike lane along Bristol Avenue from Pamela Court east to West College Avenue.
- Bikepath 14 (BP-14):** An on-road bike lane along Concord Drive from Bristol Avenue north to the bikepath through the Good Hope Farms II open space.
- Bikepath 15 (BP-15):** An on-road bikepath along Park Center Boulevard from Bristol Avenue to Qual Run Road.

- Bikepath 17 (BP-17):** A bikepath aligned with the roadway along Science Park Road from West College Avenue to Old Gatesburg Road.
- Bikepath 18 (BP-18):** A bikepath independent from the roadway from Vairo Boulevard to Curtin Road and south along the eastern edge of Overlook Heights to the Clinton Avenue / McKee Street bikepath.
- Bikepath 19 (BP-19):** A bikepath independent from the roadway that extends from the Ryder property along the Western Inner Loop, west along the old railroad bed to Foxpointe Drive.
- Bikepath 22 (BP-22):** The bikepath along Foxpointe Drive should be identified as a bikepath aligned with the roadway.
- Bikepath 23 (BP-23):** The bikepath along the Western Inner Loop and Blue Course Drive should be identified as a bikepath aligned with the roadway.
- Bikepath 24 (BP-24):** The bikepath along Old Gatesburg Road from Foxpointe Drive to the Western Inner Loop should be identified as a bikepath aligned with the roadway.
- Bikepath 25 (BP-25):** The bikepath along Science Park Road and Valley Vista Drive should be identified as a bikepath aligned with the roadway.
- Bikepath 26 (BP-26):** The bikepath from Foxpointe Drive to Sandy Drive should be identified as a bikepath independent from the roadway.
- Bikepath 27 (BP-27):** The bikepath along Bristol Avenue from Park Center Boulevard to Blue Course Drive should be identified as a bikepath aligned with the roadway.
- Bikepath 28 (BP-28):** The bikepath along Park Center Drive should be identified as an on-road bike lane.
- Bikepath 29 (BP-29):** The bikepath from Foxpointe Drive to Concord Drive should be identified as a bikepath independent from the roadway.
- Bikepath 30 (BP-30):** The bikepath along Enterprise Drive should be identified as an on-road bike lane.
- Bikepath 31 (BP-31):** The bikepath along Cato Avenue from Enterprise Drive to Research Drive should be identified as an on-road bike lane.
- Bikepath 32 (BP-32):** The bikepath from the Western Inner Loop east across the PSU Golf Course should be identified as a bikepath independent from the roadway.
- Bikepath 36 (BP-36):** The bikepath which extends from Toftrees to the Tudek/Circleville Bikepath through the Overlook Heights Tot Lot should be identified as a bikepath independent from the roadway.
- Bikepath 37 (BP-37):** The bikepath which extends from the end of the Tudek/Circleville Bikepath along West Aaron Drive, Park Lane, and Devonshire Drive through to the Township border should be shown as an on-road bike lane.

7. The Township's Official Map should be revised to add the recommended open space areas. The recommended open space areas are:

**Open Space 1 (OS-1):** Area adjacent to Overlook Heights (described in Section 2.1) which is owned by PSU and will be developed as an arboretum.

**Open Space 2 (OS-2):** The Miller Caves, Scotia Barrens, and Beaver Branch Gorge

8. The Township should continue to pursue the purchase of agricultural conservation easements in order to manage growth and to preserve the industry of farming. This will allow the cost effective provision of services to residents located within the growth boundary.
9. The Township should limit the rezoning of RA land outside of the growth boundary as a strategy for the preservation and provision of adequate open space.
10. The Township should pursue additional forms of open space preservation such

as greenways and linear parks.

11. The Township should coordinate the timing, funding, location, and maintenance of bikepaths with adjacent municipalities where connections are feasible.
12. The Township should continue to pursue the opportunity to purchase open space adjacent to existing park facilities to expand recreational opportunities.

## **ORDINANCE REVISIONS**

1. The Township Subdivision Ordinance and zoning Ordinance should be updated regularly to ensure consistency with the goals and objectives of this Plan.
2. The zoning ordinance should be reviewed regularly to determine whether there is a need to revise the requirements to assure the protection of environmentally significant areas of the Township.

## **REGIONAL/COMMUNITY**

1. The Township should actively support the acquisition and continued operation of other parks and recreation facilities in the Centre Region. Many facilities, although located in adjacent municipalities, serve the residents of Ferguson Township. Some facilities, such as the Millbrook Marsh, Welsh and Park Forest Pools and the Senior Center are designed to serve the region. The recently acquired Oak Hall and Whitehall Road parkland parcels are also examples of facilities with a regional focus. These community facilities contribute to the level of service enjoyed by residents throughout the region.
2. The Township should utilize the services of CRPC to ensure that the plans of adjacent municipalities are compatible with this Plan Update.
3. The Township should continue to work with COG to support the regional funding of acquisition, development and operations for parks, trails and open space.

## **FINANCING**

1. The RPOS Planning Committee recommends that increasing taxes for the purpose of developing, maintaining and operating recreation and park facilities should be avoided.
2. The Township should pursue creative funding alternatives to develop the parks and bikepaths and preserve open space
3. The Township should continue to set aside a portion of each year's budget for parkland purchase or development.
4. The Township and CRPR should continue, and look for opportunities to expand,

the program for accepting financial contributions to acquire, develop and maintain parkland.

5. The Township and CRPR should continue, and look for opportunities to expand, the Park Partners program to maintain parks and recreational facilities.
6. The Township and CRPR should continue to apply for available grants on a yearly basis.

## Board of Supervisors Request – Pennsylvania Cap and Trade Petition

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**From: Sent:** Pribulka,David  
**Subject:** Wednesday, January 2, 2019 8:05 AM  
**Attachments:** FW: Pennsylvania Cap and Trade Petition  
PA auction cap and trade petition.docx; Draft EQB Regulation.docx; Exhibit A - Identification of Petitioners.docx; EQB Rulemaking Petition fact sheet 11.17.18.docx

**From:** Peter Buckland <[pdbuckland@gmail.com](mailto:pdbuckland@gmail.com)>  
**Sent:** Wednesday, January 2, 2019 6:40 AM  
**To:** Buckland,Peter  
**Subject:**

<http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=45184>

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**From:** Buckland,Peter  
**Sent:** Wednesday, January 2, 2019 6:26 AM  
**To:** Pribulka,David <[dpribulka@twp.ferguson.pa.us](mailto:dpribulka@twp.ferguson.pa.us)>  
**Subject:** Fwd: Pennsylvania Cap and Trade Petition

Please include in the Consent Agenda with the with attachments. Thank you!

Ferguson Township should endorse the attached petition to Pennsylvania's Environmental Quality Board to establish, by regulation, an economy-wide auction greenhouse cap-and-trade system. By joining as a petitioner, the board would be living into its provision under Resolution 2017-14 to cooperate and lead by example to achieve net zero emissions by 2050, ensure our township's right to a sustainable energy future under the Community and Environmental Bill of Rights attached to our Home Rule Charter, and align our strategic priorities more deeply with Article 1, § 27 of the Commonwealth Constitution. The Clean Air Council is the lead petitioner. They are joined by Widener University Commonwealth Law School Environmental Law and Sustainability Center, and others. Professors at Widener co-authored Resolution 2017-14. The auction cap-and-trade as it is drafted would have the Commonwealth reduce emissions consonant with the most recent Intergovernmental Panel on Climate Change 1.5 C report and the Fourth National Climate Assessment, both of which were released this past fall. Signatories must join by the end of January 2019.

The auction-cap-and-trade program is described in the overview portion of the attached current draft of the Petition, as well as the attached Fact Sheet. The legal basis, which includes the obligation to act under Article I, § 27 of the Pennsylvania Constitution, is set forth in Part III of the Petition and the draft article (Exhibit C) by John Dernbach and Robert McKinstry, to be published in the Fall edition of the Michigan Journal of Environmental and Administrative Law. As set forth in the article, they believe that the Pennsylvania Environmental Rights Amendment creates a constitutional mandate for Pennsylvania to take meaningful action to curtail greenhouse gas emissions to the extent necessary to prevent the worst impacts and that the Pennsylvania Air Pollution Control Act provides sufficient legislative authority to adopt the proposed regulation. The proposed regulation will mandate the emissions

reductions that the most recent IPCC report indicates will be necessary to forestall the worst effects of climate disruption. The current draft of the regulation and Exhibit A to the Petition listing the petitioners is also attached.

The proposed regulatory structure will promote good government and economic development in several respects. First, it would create a measured and foreseeable path for the Commonwealth to do what is necessary to avoid the worst consequences of climate disruption. Second, in the decadal term, it will ameliorate the Commonwealth's severe and structural budget deficit without impairing environmental capital, through the auction of GHG allowances with a reserve price (i.e. setting a floor on the price at which allowances may be sold). McKinstry has described the fiscal impacts in the attached Impact of the Proposed Regulation. Third, if used wisely, some of the income could be used to provide seed capital for the infrastructure projects that will be necessary to adapt to the effects of climate change, impacts our board recognizes. Finally, it will provide an incentive for investment in the types of projects that will be key to keeping Pennsylvania's--and by extension Ferguson Township's--economy strong as we transition to an economy that does not emit greenhouse gases.

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November 27, 2018

Patrick McDonnell, Secretary  
Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101  
[pcmcdonnell@pa.gov](mailto:pcmcdonnell@pa.gov)

Laura Edinger, Regulatory Coordinator  
Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA, 17105-8477  
[ledinger@pa.gov](mailto:ledinger@pa.gov)  
[RA-EPEQB@pa.gov](mailto:RA-EPEQB@pa.gov)  
(717) 787-4526

*By email*

**Re: Petition Pursuant to 25 Pa. Code §§ 23.1-23.5, Article I, §27 of the Pennsylvania Constitution, and the Pennsylvania Air Pollution Control Act to Adopt the Attached Regulation Establishing a Comprehensive Program to Limit Greenhouse Gas Emissions Though an Auction-Cap-and-Trade Program to Conserve and Maintain a Stable Climate and Other Public Resources for Which the Commonwealth is a Trustee.**

Dear Secretary McDonnell and Ms. Edinger,

On behalf of the Pennsylvania Clean Air Council, the Widener University Commonwealth Law School Environmental Law and Sustainability Center, and the other Petitioners identified at Exhibit A to the Petition, we hereby submit the following Petition for Rulemaking to adopt the proposed regulation attached as Exhibit B to the Petition or an equally effective regulation.

Article I, Section 27 of the Pennsylvania Constitution provides: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Section 4005 of the Pennsylvania Air Pollution Control Act (“APCA”) provides the Environmental Quality Board (“EQB” or “Board”) the power and imposes upon the Board the affirmative duty to “[a]dopt rules and regulations, for the prevention, control reduction and abatement of air pollution . . . which shall be applicable to all air contamination sources.” 35 P.S. § 4005. Those regulations may “establish . . . maximum quantities of air contaminants” from any air pollution source” and “prohibit or regulate the combustion of certain fuels.” *Id.* Greenhouse gases are regulated air pollutants within the meaning of the federal Clean Air Act and the PaAPCA. *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007); *Coalition for Responsible Regulation*,

*Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *see also Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014); *Funk v. Wolf*, 144 A.3d 228, 250 n. 17 (Pa. Cmwlth. 2016), *aff'd without opinion* 158 A.3d 642 (Pa. 2017). Pollution caused by excessive levels of these contaminants poses an existential threat the Pennsylvania's climate and other public natural resources for which the Commonwealth, including the Board, have a duty, as trustees, to maintain and conserve.

For the reasons set forth in this Petition and its Exhibits, we urge the Board to accept the attached regulation establishing an economy-wide auction-cap-and-trade program for Pennsylvania, with measures to prevent leakage and auction most allowances with a reserve price. Excess allowances will be retired and the cap will be reduced to zero by the fifth decade of this century, consistent with the requirements of the United Nations Framework Convention on Climate Change, as defined in the Paris Agreement.

The proposed regulation will require the degree of greenhouse gas emissions reductions on a schedule that will achieve the reductions that the most recent report of the Intergovernmental Panel on Climate Change has determined will be necessary throughout the world to avoid the worst impacts of climate disruption. The emissions reductions and the schedule are necessary to assure the beneficiaries of the constitutional environmental trust established by Article I, §27 of the Pennsylvania Constitution that the corpus of the trust will be conserved and maintained and that the beneficiaries and the Commonwealth will recover income from the sustainable husbanding of the remaining capacity of the atmosphere to absorb greenhouse gases.

For the benefit of the Board, we have also attached a Fact Sheet that provides a more abbreviated summary of the regulation than is provided in the Overview portion of the Petition.

Respectfully,

Robert B. McKinstry, Jr., Esq.  
John C. Dernbach, Esq.  
Joseph Minott, Esq.  
Robert Routh, Esquire  
C. Baird Brown, Esquire

cc: Jessica Shirley [jesshirley@pa.gov](mailto:jesshirley@pa.gov)  
Robert A. Reiley [reiley@pa.gov](mailto:reiley@pa.gov)  
Petitioners

## EQB Climate Petition: Pennsylvania Cap-and-Trade Fact Sheet

- Article I, Section 27 of the Pennsylvania Constitution provides: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” This requires the Commonwealth to control greenhouse gas (“GHG”) emissions, which pose a threat to human health and the environment and to limit such emissions to the extent consistent with the social cost of carbon.
- Section 4005 of the APCA grants EQB the power, and imposes the duty, to “[a]dopt rules and regulations, for the prevention, control, reduction and abatement of air pollution . . . which shall be applicable to all air contamination sources” and to “[e]stablish and publish maximum quantities of air contaminants.”
- The proposed regulation will establish a Pennsylvania program where emissions from covered sources of GHG emissions would be capped, with the cap declining each year by an amount equal to 3% of the 2016 emissions, beginning in 2018. This would put Pennsylvania on track to achieve carbon neutrality by 2052, consistent with the goal established by the United Nations Framework Convention on Climate Change, as defined in the Paris Agreement. Under the proposed regulation:
  - o DEP would auction or distribute allowances equal to the cap, with each allowance equal to one metric ton of CO<sub>2</sub>e, as determined under the EPA’s Mandatory Greenhouse Gas Reporting Rule (MRR). Sources required to report their emissions under the MRR, or otherwise required to report direct emissions, must annually surrender a number of allowances equal to their total annual GHG emissions (in CO<sub>2</sub>e).
  - o Fossil fuel distributors (petroleum fuel products, natural gas, propane and natural gas liquids used for fuel, and coal) must annually surrender a number of allowances equal to the total annual GHG emissions (in CO<sub>2</sub>e) released into the ambient atmosphere from combustion of the fuels.
  - o Fossil fuels sold to entities required to surrender allowances based on their GHG emissions will be exempt from the requirement for the surrender of allowances. Sales of fossil fuels to manufacture products that will not release GHGs, such as plastics, will be exempt from the requirement for the surrender of allowances. Biogenic CO<sub>2</sub> and geologically sequestered CO<sub>2</sub> will also be exempt.
  - o Most allowances will be distributed by auction, subject to a reserve price equal to 10% in 2020, increasing by 10% per year plus inflation, or any higher reserve price in a program linked to the Pennsylvania program. Auctions occur periodically. Unsold allowances will be offered for sale at the next auction, put into a price containment reserve or retired.
  - o Industries with products (excluding fossil fuel and electricity generation) subject to international and interstate competition may apply for distribution of some allowances free of charge, by showing that this is necessary to prevent “leakage,” which might result if production were moved to other states or nations that do not put a price on GHG emissions. The number of free allowances will be reduced by 5% annually. If a company closes or reduces production, its free allowances will be reduced proportionately. DEP will be entitled to distribute free allowances to new businesses subject to international or interstate competition from any unsold allowances or the containment reserve in order to assure that this program does not discourage new business formation. Allowances may be bought by any person and may be freely traded. Allowances may also be banked for future use.



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL QUALITY BOARD

PETITION FORM

**I. PETITIONER INFORMATION**

Name: Robert B. McKinstry, Jr., Clean Air Council, John C. Dernbach, C. Baird Brown and others on Exhibit A to the attached Petition. Others will be joining in the future and Exhibit A will be supplemented.

Mailing Address: See Exhibit A to the attached Petition.

Telephone Number: See Exhibit A to the attached Petition.

Date: November 27, 2018

**II. PETITION INFORMATION**

A. The petitioner requests the Environmental Quality Board to (check one of the following):

- Adopt a regulation
- Amend a regulation (Citation\_)
- Repeal a regulation (Citation\_)

**Please attach suggested regulatory language if request is to adopt or amend a regulation.**

B. Why is the petitioner requesting this action from the Board? (Describe problems encountered under current regulations and the changes being recommended to address the problems. State factual and legal contentions and include supporting documentation that establishes a clear justification for the requested action.)

See the reasons set forth in the introduction and sections I, II, and III and Exhibit C to the attached longer Petition.

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C. Describe the types of persons, businesses and organizations likely to be impacted by this proposal.

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See Section IV of the attached Petition.

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D. Does the action requested in the petition concern a matter currently in litigation? If yes, please explain.

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No.

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E. For stream redesignation petitions, the following information must be included for the petition to be considered complete. Attach supporting material as necessary.

1. A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.
2. The current designated use(s) of the watershed or segment.
3. The requested designated use(s) of the watershed or segment.
4. Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates and/or fishes), or instream habitat. If such data are not included, provide a description of the data sources investigated.
5. A description of existing and proposed point and nonpoint source discharges and their impact on water quality and/or the aquatic community. The names, locations, and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.
6. Information regarding any of the qualifiers for designation as high quality waters (HQ) or exceptional value waters (EV) in §93.4b (relating to qualifying as High Quality or Exceptional Value waters) used as a basis for the requested designation.
7. A general description of land use and development patterns in the watershed. Examples include the amount or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural and the like).
8. The names of all municipalities through which the watershed or segment flows, including an official contact name and address.
9. Locational information relevant to items 4-8 (except for contact names and addresses) displayed on a map or maps, if possible.

**All petitions should be submitted to the  
Secretary of the Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17105-2063**

**BEFORE THE PENNSYLVANIA ENVIRONMENTAL HEARING BOARD**

**PETITION PURSUANT TO 25 PA. CODE §§23.1-23.5, ARTICLE I, §27 OF THE PENNSYLVANIA CONSTITUTION, AND THE PENNSYLVANIA AIR POLLUTION CONTROL ACT TO ADOPT THE ATTACHED REGULATION ESTABLISHING A COMPREHENSIVE PROGRAM TO LIMIT GREENHOUSE GAS EMISSIONS TO CONSERVE AND MAINTAIN A STABLE CLIMATE AND OTHER PUBLIC RESOURCES FOR WHICH THE COMMONWEALTH IS A TRUSTEE**

Submitted on Behalf of the Clean Air Council, Widener University Commonwealth Law School Environmental Law and Sustainability Center, and the Other Petitioners Identified on Exhibit A

Robert B. McKinstry, Jr.  
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**PETITION PURSUANT TO 25 PA. CODE §§ 23.1-23.5, ARTICLE I, §27 OF THE PENNSYLVANIA CONSTITUTION, AND THE PENNSYLVANIA AIR POLLUTION CONTROL ACT TO ADOPT THE ATTACHED REGULATION ESTABLISHING A COMPREHENSIVE PROGRAM TO LIMIT GREENHOUSE GAS EMISSIONS THROUGH AN AUCTION-CAP-AND-TRADE PROGRAM TO CONSERVE AND MAINTAIN A STABLE CLIMATE AND OTHER PUBLIC RESOURCES FOR WHICH THE COMMONWEALTH IS A TRUSTEE**

Pursuant to the Pennsylvania State Constitution Article I, § 20 “[t]he citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition...” The Environmental Quality Board (“Board” or “EQB”) has promulgated regulations governing the manner and means that the citizens may exercise that right to request the promulgation of a regulation within the Board’s authority at 25 Pa. Code Chapter 23. The Petitioners identified on Exhibit A<sup>1</sup> hereby submit this petition for rulemaking on behalf of themselves, the citizens of the Commonwealth of Pennsylvania, and present and future generations to adopt the attached proposed regulation, which has been designed to limit Pennsylvania’s contribution to greenhouse gas pollution and to achieve climate neutrality by the second half of the 21<sup>st</sup> Century. The Petition seeks the adoption of the proposed regulation attached as Exhibit B.

This Petition conforms to the rules for petitioning the Board under Pennsylvania Code § 23.1 and is attached to the form for petitioning supplied by the Pennsylvania Department of Environmental Protection (“Department” or “DEP”). 25 Pa. Code § 23.1(a). Exhibit A to this Petition sets forth petitioners’ names, addresses, and telephone numbers. Pa. Code § 23.1(a)(1). Section I of this Petition set forth a clear description of the action requested and suggested regulatory language is set forth in a draft regulation attached hereto as Exhibit B. 25 Pa. Code § 23.1(a)(2)(i). Section II this Petition sets forth the facts that mandate the Board’s action adopting the proposed regulations. 25 Pa. Code §23.1(a)(3). Section III of this Petition and the article incorporated by reference in Section III set forth both the legal authorization to adopt it and the Constitutional mandate requiring its adoption. 25 Pa. Code § 23.1(a)(3). Finally, Section IV describes the impacts of the proposed regulation, including the types of persons, businesses and organizations that will be affected. 25 Pa. Code 23.1(a)(4).

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<sup>1</sup> A large number of additional parties have expressed an interest in becoming petitioners, so that Exhibit A will be supplemented in the future.

## I. Overview of the Proposed Rule

The Petitioners identified on Exhibit A respectfully request that the Pennsylvania Environmental Quality Board (“EQB” or “Board”) propose and promulgate a regulation limiting emissions of greenhouse gases (“GHGs” expressed as CO<sub>2</sub>e) to prevent climate disruption substantially in the form of the proposed 25 Pa. Code Chapter 147 attached hereto as Exhibit B. The proposed Chapter 147 would establish a program in which GHG emissions would be capped, with the cap declining each year. The budget is based on an initial budget for calendar year 2018 set at 97% of the 2016 GHG emissions. The cap then declines annually by an amount equal to three percent of the 2016 base emissions. Thus, if the regulation becomes effective for 2020, the cap would be equal to 91% of 2016 emissions. This will put Pennsylvania on a track to achieve the reductions that the latest report of the Intergovernmental Panel on Climate Change (“IPCC”) concludes will be necessary to avoid the worst impacts of climate disruption,<sup>2</sup> thereby achieving the goal of the United Nations Framework Convention on Climate Change (“UNFCCC”), as defined in the Paris Agreement. The budget for 2030 will be 45% below 2010 emissions and will achieve emissions neutrality by 2052.<sup>3</sup> The emissions reductions contemplated by the proposed Chapter 147 are also consistent with the scientific consensus of the reductions from developed nations that will be necessary to prevent disruption of the climate system and to conserve and maintain Pennsylvania’s climate and other public natural resources within the meaning of Article I, §27 of the Pennsylvania Constitution. The proposed Chapter 147 is both authorized and required by the Pennsylvania Air Pollution Control Act, 35 P.S. §§4001-4106, as described further in Section III and the article attached Exhibit C to this Petition and incorporated herein.

Under the proposed regulation, the Pennsylvania Department of Environmental Protection (“DEP” or the “Department”) would annually auction or distribute a number of allowances equal to the cap, with each allowance equal to one metric ton of CO<sub>2</sub>e, as defined and determined under the Environmental Protection Agency’s Mandatory Greenhouse Gas Reporting Rule (“MRR”), 40 C.F.R. pt. 98 (2017), as it is incorporated in and modified by the proposed regulation. Three categories of potential emissions sources will be required to surrender allowances. First, sources that are required to report their direct emissions under the MRR will be required annually to surrender a number of allowances equal to their total annual GHG emissions (in CO<sub>2</sub>e) attributable to Pennsylvania sources. Second, distributors of fossil fuels (petroleum fuel and petroleum fuel products, natural gas, propane and natural gas liquids used for fuel, and coal) in Pennsylvania will be required annually to surrender a number of allowances equal to the total annual GHG emissions (in CO<sub>2</sub>e) that will be released into the ambient atmosphere from combustion of the fuels they distribute in Pennsylvania. Third, importers of electricity generated with fossil fuels that are not subject to an equivalent program will be required to surrender allowances equal to the emissions resulting from the generation of that

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<sup>2</sup> IPCC, Myles Allen et al, Global Warming of 1.5 °C (Oct. 6, 2018) (“*IPCC 2018 Report*”), [www.IPCC%20-%20SR15.htm](http://www.IPCC%20-%20SR15.htm) at SPM-19.

<sup>3</sup> According to the 2018 EPA Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016, <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2016>, 2016 U.S. GHG emissions were 5.9% lower than 2010 emissions. Under the proposed rule, the emissions cap for 2030 will be 61% of 2016 emissions, represented approximately a 45% reduction from 2010, consistent with what the IPCC report indicates will be necessary.

electricity; this requirement can be satisfied by a carbon adder program administered by PJM, if PJM should adopt such a program. As discussed below, the PaAPCA authorizes regulations limiting both direct emissions from facilities and fuels and the proposed regulation is consistent with that authorization.

Sales of fossil fuels to entities required to surrender allowances based on their direct GHG emissions will be exempt from the requirement for the surrender of allowances. Likewise, sales of coal, petroleum and natural gas products for the purpose of the manufacturing products that will not release GHGs, such as plastics, will be exempt from the requirement for the surrender of allowances. Imported electricity from states with requirements similar to those imposed by Pennsylvania or subject to a carbon adder program that imposes an equivalent cost on the imported sources' GHG emissions will also be exempt from the program. No allowances need to be surrendered for biogenic CO<sub>2e</sub> and geologically sequestered CO<sub>2e</sub>.

Compliance periods will coincide with the compliance periods for the California-Quebec-Ontario program. The proposed regulation would, therefore in most cases, establish a three-year compliance period, with one-year interim compliance periods. Covered sources would be required to surrender allowances equal to at least 30% of their GHG emissions every year with a true-up at the end of three years, when the covered entity must assure that it has surrendered allowances equal to all (100%) GHG emissions during the three-year period. To coordinate compliance periods with the California-Quebec-Ontario program (and to allow maximum trading opportunities), the first compliance period will begin on the effective date of the regulation and end on December 31 of the year that is consistent with the end of the next compliance period that is at least two years and no more than four years after the effective date of the proposed regulation.

Most allowances will be distributed by auction in which any person may bid and purchase allowances. The proposed regulation is generally consistent with the California economy-wide GHG auction-cap-and-trade regulation, which governs the regulatory program currently in force in California, Quebec, and Ontario. Thus, the mechanisms proposed, including the technical provisions for the auction, registration and trading are already functioning, will already be familiar to many of the affected industries so that it can be readily implemented, and will provide for a broad market and high liquidity for allowances. The auction will be subject to a reserve price that is designed to provide consistency with other GHG cap-and-trade programs. It is initially set at \$10.00 per ton in 2020, increasing by 10% plus the rate of inflation thereafter. This will keep initial allowance prices below the RGGI cost for triggering the release of allowances from its cost containment reserve until 2024. If the Pennsylvania program becomes linked to any other program with a higher reserve price (i.e. the California program), the reserve price will increase to that program's reserve price. If any allowances are unsold in advance auctions for future years, the remaining allowances will be auctioned in future years. If allowances are unsold in an auction for the current vintage year, up to 25% will be offered at sale in the next auction (subject to the applicable reserve price) and any allowances that are unsold for more than two years will be retired or placed in an allowance price containment reserve. Allowances in the containment reserve will be released for auction only when the price exceeds the containment trigger, which was \$40 in 2013, increased by 5% annually plus the rate of

inflation. The number of allowances in the price containment reserve will be limited to  $\frac{1}{4}$  of the then applicable cap and unsold allowances exceeding that maximum will be permanently retired.

For industries producing products subject to international and interstate competition (excluding fossil fuel distribution and electricity generation), some allowances will initially be distributed free of charge to prevent “leakage” that might result if production were moved to other states or nations that do not put a price on GHG emissions. The proposed regulation includes a mechanism for companies to apply to DEP for direct allocation of allowances, which may be distributed without charge or at a lower charge to the extent necessary to prevent leakage. This provision also includes a mechanism to protect companies that have already reduced emissions, by awarding them an equal number of allowances per unit of production as their competitors who have not taken early action (if the competitor receives a direct allocation). The number of free allowances directly awarded would initially be based on a company’s GHG emissions reported in 2018 and its level of production in that year and would be reduced by 5% of that initial baseline amount annually. Thus, all free allowances will be eliminated after 20 years. If a company closes its operations in Pennsylvania, it will lose the right to receive direct allowances. Likewise, if it moves any portion of its production out of the Commonwealth or otherwise reduces production, the number of direct allowances it receives will be reduced proportionately. DEP will be entitled to distribute free allowances to new businesses subject to international or interstate competition from any unsold allowances or the price containment reserve to assure that this cap-and-trade program does not discourage new business formation.

Allowances may be freely traded. Allowances may also be banked for future use. The regulatory program is being designed to allow interstate and international trading with any program that DEP determines is equivalent to the Pennsylvania program and which allows use of Pennsylvania allowances. The program is currently designed to be equivalent to the California-Quebec-Ontario program. Although the Regional Greenhouse Gas Initiative (“RGGI”) Program and the proposed Virginia cap-and-trade program are limited to larger electricity generation units, it will be important to allow trading with those programs to prevent leakage. The proposed regulation therefore provides that, with the exception noted below, if any of those programs agrees to accept Pennsylvania allowances, allowances may be freely traded with those programs. To assure that the program does not unduly disrupt electricity markets, the regulation provides that allowances from programs applying to electricity generating units in the PJM market, *i.e.* RGGI and Virginia, may be accepted for compliance with the Pennsylvania program and retired through the first full compliance period (3 to 5 years). This will cause allowance prices in those programs to rise and protect the export of low-emissions Pennsylvania electricity to those programs without the need for the states to negotiate, in advance, the terms under which RGGI and Virginia would accept Pennsylvania allowances. We anticipate that eventually the Pennsylvania program will be linked to all other cap-and-trade programs. Active markets and futures markets have already developed for allowances in the other existing programs, increasing liquidity and price discovery, and thus improving predictability for industry and industrial development.

The provision for trading with RGGI states, Virginia and the California-Ontario-Quebec program should limit leakage to those states. However, additional measures will need to be employed to limit leakage in the electric generation sector to states in PJM that do not put a price

on GHG emissions. The regulation includes provisions requiring imported electricity to obtain and surrender allowances equal to the emissions generated during the electricity generation. PJM has mechanisms (i.e. the GATS system) to measure environmental attributes that can be employed to implement that requirement. It has also developed, but has not implemented, a potential two-stage mechanism for establishing a carbon adder that would prevent such leakage between regulated and unregulated zones. The proposed regulation's requirement for the surrender of allowances for imported electricity would be satisfied if a carbon adder were imposed on electricity by PJM, to be implemented upon FERC's approval of a modification to PJM's tariff. We anticipate that New Jersey, Delaware, Maryland, Virginia and the District of Columbia would join with Pennsylvania to request that PJM implement its carbon adder to prevent leakage and that if they do so, PJM will be willing to implement the program, subject to FERC approval.

The proposed regulation will also allow the creation of offset credits for projects involving the sequestration of GHGs or reduction of GHGs from activities that are not required to surrender allowances. An offset must represent a GHG emission reduction or GHG removal enhancement that is real, additional, quantifiable, permanent, verifiable, and enforceable and be consistent with a compliance offset protocol. The proposed regulation incorporates offset protocols approved by California for ozone depleting substances projects, livestock projects, sustainable forestry projects and mine methane capture projects, as well as applicable RGGI offset protocols. The proposed regulation requires that DEP develop a protocol and provide credit for emissions reduction resulting from abandoned minelands reclamation, including control of mine fires and fires in culm and gob piles. It further requires DEP to develop a protocol for offsets for carbon capture and sequestration of emissions from combustion of biomass. DEP may develop and approve additional protocols in the future.

The proposed regulation includes provisions for administering auctions and for creating allowance accounts. It also includes provisions governing reporting and procedures for the surrender of allowances. If a party fails to submit an adequate number of allowances by the deadline, that party will be required to surrender four times the number of allowances that it did not timely submit. Failure timely to surrender an adequate number of allowances or non-compliance with any of the provisions of the regulation will also be subject to enforcement action under the APCA.

The proposed regulation includes provisions authorizing municipalities that administer their own air quality programs, currently Philadelphia and Allegheny Counties, to apply to administer this greenhouse gas auction-cap-and-trade program. If these jurisdictions undertake this program and wish to do so, they would be entitled to auction allowances for sources within their jurisdiction or participate in the larger Pennsylvania auction and receive their share of auction revenues. These jurisdictions may adopt their own allowance allocation rules and apply revenues as their governing bodies direct. The regulation, would, however, prohibit or limit the award of free allowances to electricity generators. This restriction is necessary to prevent perverse results.

## II. Statement of Facts Constituting the Reasons the Board is Constitutionally Required to Adopt the Proposed Regulation Under Article I, § 27 of the Pennsylvania Constitution.

The following facts constitute the reasons that reduction of greenhouse gases emissions in Pennsylvania consistent with the recommendations of the Intergovernmental Panel on Climate Change the *IPCC 2018 Report* is necessary to conserve Pennsylvania's public natural resources within the meaning of Article I, § 27 of the Pennsylvania Constitution. The proposed regulation attached as Exhibit B would do so. As described in Section III, the facts set forth in this section create a constitutional mandate for this Board, as a trustee, to take action to conserve Pennsylvania's natural resources from the damages caused by greenhouse gas pollution consistent with its authorization and existing law provides the Board with the authority to do so by adopting the regulation attached to this Petition as Exhibit B.

1. According to the United States Global Change Research Program<sup>4</sup>, disruption of the global climate due to global warming is occurring and adversely impacting the Earth's climate.<sup>5</sup> The present rate of global heating is occurring as a result of human activities that release heat-trapping greenhouse gases ("GHGs") and intensify the Earth's natural greenhouse effect, at an accelerated rate, thereby disrupting Earth's climate.<sup>6</sup> This abnormal climate change is unequivocally human-induced<sup>7</sup>, is occurring now, and will continue to occur unless drastic measures are taken to curtail it<sup>8</sup>. Climate change is damaging both natural and human systems, and if unrestrained, will alter the planet's

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<sup>4</sup> "The U.S. Global Change Research Program (USGCRP) coordinates and integrates federal research on changes in the environment and their implications for society." The organization's vision is to produce "[a] nation, globally engaged and guided by science, meeting the challenges of climate and global change." The organization is comprised of "[t]hirteen departments and agencies [that] participate in the USGCRP...steered by the Subcommittee on Global Change Research under the Committee on Environment and Natural Resources, overseen by the Executive Office of the President, and facilitated by an Integration and Coordination Office." <http://www.globalchange.gov/about>.

<sup>5</sup> UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM (USGCRP), GLOBAL CLIMATE CHANGE IMPACTS IN THE UNITED STATES 13 (2009) available at <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf> [hereinafter *Global Climate Change Impacts*] ("Human activities have led to large increases in heat-trapping gases over the past century. Global average temperature and sea level have increased, and precipitation patterns have changed.").

<sup>6</sup> *Id.* ("The global warming of the past 50 years is due primarily to human-induced increases in heat-trapping gases."); DEUTSCHE BANK GROUP CLIMATE CHANGE ADVISORS, CLIMATE CHANGE: ADDRESSING THE MAJOR SKEPTIC ARGUMENTS 9 (September 2010) available at <http://www.dbcca.com/dbcca/EN/media/DBCCAColumbiaSkepticPaper090710.pdf>; Intergovernmental Panel on Climate Change (IPCC), *IPCC Fourth Assessment Report: Climate Change 2007 (AR4)*, 1.1 (2007) available at [http://www.ipcc.ch/publications\\_and\\_data/ar4/syr/en/mains1.html#1-1](http://www.ipcc.ch/publications_and_data/ar4/syr/en/mains1.html#1-1).

<sup>7</sup> USGCRP, *Global Climate Change Impacts* at 12 (2009).

<sup>8</sup> *Id.* ("Future climate change and its impacts depend on choices made today."); IPCC, *AR4 1.1* (2007) ("Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level.").

habitability.<sup>9</sup>

2. In December 2009, the United States Environmental Protection Agency (“EPA”) made an Endangerment Finding under the federal Clean Air Act.<sup>10</sup> The Administrator concluded that “the body of scientific evidence compellingly supports” the finding “that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.” The primary scientific bases for the finding were the “major assessments by the U.S. Global Climate Research Program (USGCRP), the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council (NRC).” “The Administrator reached her determination by considering both observed and projected effects of greenhouse gases in the atmosphere, their effect on climate, and the public health and welfare risks and impacts associated with such climate change.” The finding was affirmed on judicial review.<sup>11</sup> As a result of the finding, EPA established emissions standards for mobile sources and GHGs became “regulated pollutants” under the Clean Air Act that must be regulated for new and modified major sources of air pollution.<sup>12</sup> EPA has also established GHG standards for new and existing electric generating units under section 111 of the Clean Air Act, although the standards have been stayed and EPA has proposed to withdraw the standards for existing electric generating units, known as the Clean Power Plan and to replace those standards with weaker standards.<sup>13</sup>
3. Multiple reports of the U.S. Global Change Research Program, including its 2017 report,<sup>14</sup> multiple reports of the National Research Council (“NRC”) of Academy of Natural

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<sup>9</sup> USGCRP, *Global Climate Change Impacts* at 12 (2009) (“Thresholds will be crossed, leading to large changes in climate and ecosystems.”).

<sup>10</sup> “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule,” 74 Fed. Reg. 66,496, 66,514 (Dec. 15, 2009) (“Endangerment Finding”), *aff’d* *Coal. for Responsible Regulation, Inc. v. U.S. Envtl. Prot. Agency*, 684 F.3d 102 (D.C. Cir. 2012) (“CRRP”), *aff’d in part and rev’d in part on other grounds sub nom. Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) (“UARG”).

<sup>11</sup> *CRRI, supra*.

<sup>12</sup> *UARG, supra*.

<sup>13</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 Fed. Reg. 64,661 (Oct. 23, 2015) (codified at 40 C.F.R. Part 60). *See also, Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule*, 82 Fed. Reg. 48,035 (Oct. 16, 2017).

<sup>14</sup> U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I (2017), [https://science2017.globalchange.gov/downloads/CSSR2017\\_FullReport.pdf](https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf). *See also* John C. Dernbach & Robert Altenburg, *Evolution of U.S. Climate Policy*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 84-87 (Michael B. Gerrard & Jody Freeman eds. 2014) (explaining authorizing legislation for U.S. Global Change Research Program and describing some earlier reports).

Sciences,<sup>15</sup> the reports of the Intergovernmental Panel on Climate Change,<sup>16</sup> numerous reports of other national academies of natural science,<sup>17</sup> and even judicial decisions<sup>18</sup> have all concluded that emissions of GHGs from human activities are disrupting the climate, that adverse effects already occurring and these effects will get significantly worse without achieving net carbon neutrality. They further conclude that catastrophic impacts are possible.

4. We human beings have benefited from living on a planet that has been remarkably hospitable to our existence and provided conditions that are just right for human life to expand and flourish.<sup>19</sup> The Earth is a “Goldilocks” planet with an atmosphere that has fewer GHGs than that of Venus (which is too hot), and more than that of Mars (which is too cold), which is just perfect for the life that has developed on planet Earth.<sup>20</sup>
5. GHGs in the atmosphere trap a portion of the heat that the earth receives from the sun by reflecting infrared radiation back rather than allowing it to escape the atmosphere.<sup>21</sup> More GHGs in the atmosphere means that more heat is being retained on Earth, with less heat radiating back out into space.<sup>22</sup> Without this greenhouse effect, the average surface temperature of our planet would be 0°F (-18°C) instead of 59°F (15°C).<sup>23</sup> Scientists have understood this basic mechanism of global warming since the late-nineteenth century.<sup>24</sup>
6. Human beings have significantly altered the chemical composition of the Earth’s atmosphere and its climate system.<sup>25</sup> We have changed the atmosphere and Earth’s

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<sup>15</sup> NRC, *America’s climate choices: Advancing the Science of Climate Change* (2010), available at <http://www.ipcc.ch/report/ar5/wg1/>; NRC, *Climate stabilization targets: Emissions, Concentrations, and Impacts over Decades to Millennia* (2011), available at <https://www.nap.edu/catalog/12877/climate-stabilization-targets-emissions-concentrations-and-impacts-over-decades-to>; NRC, *Abrupt impacts of climate change: Anticipating Surprises* (2013), available at <https://www.nap.edu/catalog/18373/abrupt-impacts-of-climate-change-anticipating-surprises>.

<sup>16</sup> IPCC, *Fifth Assessment Report (AR5)* (2014), available at <http://www.ipcc.ch/report/ar5/index.shtml>.

<sup>17</sup> See, e.g. Royal Society, *Climate Change: A Summary of the Science* (2010), available at <https://royalsociety.org/topics-policy/publications/2010/climate-change-summary-science/>.

<sup>18</sup> See, *CRRI, supra*, n. 33 *Green Mt. Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 295 (D. Vt. 2007).

<sup>19</sup> John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* 11, 15-22 (Joseph F. C. DiMento & Pamela Doughman eds., MIT Press 2007) (“The earth’s climate system can be thought of as an elaborate balancing act of energy, water, and chemistry involving the atmosphere, oceans, ice masses, biosphere, and land surface.”).

<sup>20</sup> JAMES HANSEN, *STORMS OF MY GRANDCHILDREN* 224-225 (2009); See John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* at 23.

<sup>21</sup> John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* at 22.

<sup>22</sup> *Id.* at 16-17.

<sup>23</sup> *Id.* at 17.

<sup>24</sup> See *id.* at 35 (describing the efforts of Swedish chemist Svante Arrhenius).

<sup>25</sup> Naomi Oreskes, *The Scientific Consensus on Climate Change*, in *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* 65, 93 (Joseph F. C. DiMento & Pamela Doughman

climate system by engaging in activities that produce, or release GHGs into the atmosphere.<sup>26</sup> Carbon dioxide (CO<sub>2</sub>) is the key GHG, and there is evidence that its emissions are largely responsible for the current warming trend.<sup>27</sup> Although much of the excess carbon dioxide is absorbed by the oceans, plants and forests, the increase of GHG concentrations resulting from historic and present human activities has altered the Earth's ability to maintain the delicate balance of energy between that which it receives from the sun and that which it radiates back out into space.<sup>28</sup>

7. Pollution by GHGs is similar to air and water pollution by other naturally occurring substances, such as NO<sub>x</sub>, ammonia, phosphates and many metals, that are necessary to sustain life but can disrupt natural systems and damage health and welfare if concentrations rise too high.
8. The average CO<sub>2</sub> concentration in our atmosphere in 2016 was 402.9 ppm.<sup>29</sup> The pre-industrial concentration was 280 ppm; the last time the atmospheric concentration was as high as in 2016 “was more than 3 million years ago, when temperature was 2-3°C (3.6 - 5.4° F) higher than during the pre-industrial era, and sea level was 15-25 meters (50-80 feet) higher than today.”<sup>30</sup> On March 4, 2018, the level of carbon dioxide in the atmosphere had reached 409.97 ppm.<sup>31</sup>
9. Concentrations of other GHGs in the atmosphere have also increased due to human

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eds., MIT Press 2007) (“We have changed the chemistry of our atmosphere, causing sea level to rise, ice to melt, and climate to change. There is no reason to think otherwise.”).

<sup>26</sup> *Id.*

<sup>27</sup> See James E. Hansen et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?* 2 OPEN ATMOS. SCI. 217, 217-231 (2008).

<sup>28</sup> John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN 11, 15-22 (Joseph F. C. DiMento & Pamela Doughman eds., MIT Press 2007).

<sup>29</sup> Rebecca Lindsey, *Climate Change: Atmospheric Carbon Dioxide* (Oct. 17, 2017), NOAA, Climate.gov, available at <https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>.

<sup>30</sup> *Id.*; see also, IPCC, *AR4* at 37 (“The global atmospheric concentration of CO<sub>2</sub> increased from a pre-industrial value of about 280ppm to 379ppm in 2005.”); National Science and Technology Council, *Scientific Assessment of the Effects of Global Change on the United States 2* (May 2008) [hereinafter *Scientific Assessment*], available at <http://www.climate-science.gov/Library/scientific-assessment/Scientific-AssessmentFINAL.pdf> (“The globally averaged concentration of carbon dioxide in the atmosphere has increased from about 280 parts per million (ppm) in the 18<sup>th</sup> century to 383 ppm in 2007.”); Environmental Protection Agency (EPA), *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act 17* (December 9 2009) [hereinafter *TS Endangerment Findings*]; Dieter Lüthi et al., *High-resolution carbon dioxide concentration record 650,000-800,000 years before present* 453 *Nature* 379, 379-382 (May 2008) available at <http://www.nature.com/nature/journal/v453/n7193/full/nature06949.html> (prior to this publication it was accepted atmospheric CO<sub>2</sub> record extended back 650,000 years, but now research indicates that the record can be extended 800,000 years, or two complete glacial cycles)..

<sup>31</sup> NOAA, Climate.gov, available at <http://co2now.org/Current-CO2/CO2-Now/Current-Data-for-Atmospheric-CO2.html> (visited March 7, 2018).

activities. As of 2007, when EPA made its Endangerment Finding, atmospheric concentrations of methane had increased nearly 150% since the pre-industrial period and concentrations of nitrous oxide had increased by almost a quarter.<sup>32</sup> Although methane is relatively short-lived in the atmosphere, methane concentrations in the atmosphere have continued to rise and recently spiked. At the time of the Endangerment finding, methane concentrations were rising at a rate of about 0.5 parts per billion annually, but in 2014, methane concentrations rose 12.5 parts per billions, and in 2015, they rose 9.9 parts per billion.<sup>33</sup>

10. Humans continue to add GHGs into the atmosphere at a rate that outpaces their removal through natural processes.<sup>34</sup> The current and projected CO<sub>2</sub> increase, for example, is about one hundred times faster than has occurred over the past 800,000 years.<sup>35</sup> This increase has to be considered in light of the lifetime of greenhouse gases in the atmosphere. A substantial portion of every ton of CO<sub>2</sub> emitted by humans persists in the atmosphere for as long as a millennium or more.<sup>36</sup> The current concentrations of GHGs in the atmosphere therefore, are the result of both historic and current anthropogenic emissions.
11. According to the latest Pennsylvania GHG Inventory, in 2013, Pennsylvania was responsible for emitting 305.75 million metric tons of CO<sub>2</sub>e.<sup>37</sup> Only approximately eleven percent of those GHGs, or 34.36 million metric tons, is sequestered by the

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<sup>32</sup> *Endangerment Finding*, 74 Fed. Reg. at 6651718 (“The global atmospheric concentration of methane has increased by 149 percent since pre-industrial levels (through 2007); and the nitrous oxide concentration has increased 23 percent (through 2007).” available at <https://insideclimatenews.org/news/19032018/global-warming-arctic-air-pollution-short-lived-climate-pollutants-methane-black-carbon-hfcs-slep> (visited March 19, 2018).

<sup>33</sup> Sabrina Shankman, *These Climate Pollutants Are Short-Lived, But They’re Wreaking Havoc on the Arctic: If we can cut back on methane, black carbon and other short-lived climate pollutants, it could buy time to solve the trickier problem of CO<sub>2</sub>*, INSIDE CLIMATE NEWS (March 19, 2018).

<sup>34</sup> *TS Endangerment Findings* at ES-2 (“Atmospheric GHG concentrations have been increasing because anthropogenic emissions have been outpacing the rate at which GHGs are removed from the atmosphere by natural processes over timescales of decades to centuries.”).

<sup>35</sup> Dieter Lüthi et al., *High-resolution carbon dioxide concentration record 650,000-800,000 years before present* 453 *Nature* 379, 379-382 (May 2008) available at <http://www.nature.com/nature/journal/v453/n7193/full/nature06949.html>.

<sup>36</sup> James E. Hansen et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?* 2 *OPEN ATMOS. SCI.* 217, 220 (2008); See also EPA, *TS Endangerment Findings* at 16 (“Carbon cycle models indicate that for a pulse of CO<sub>2</sub> emissions, given an equilibrium background, 50% of the atmospheric increase will disappear within 30 years, 30% within a few centuries, and the last 20% may remain in the atmosphere for thousands of years.”); John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in *CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN* 11, 29 (Joseph F. C. DiMento & Pamela Doughman eds., MIT Press 2007) (“Since CO<sub>2</sub> has a lifetime of over one hundred years, these emissions have been collecting for many years in the atmosphere.”).

<sup>37</sup> *Pennsylvania Greenhouse Gas Inventory 2016* (2018), at p. 5, Table 1, (*Pa Inventory*) available at [http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/Docs/Inventory-2016\\_1-18-17\\_\(final\).pdf](http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/Docs/Inventory-2016_1-18-17_(final).pdf); see also *CO<sub>2</sub> Emissions from Fossil Fuel Combustion – Million /metric Tons CO<sub>2</sub> (MMTCO<sub>2</sub>)* [http://www.epa.gov/statelocalclimate/documents/pdf/CO2FFC\\_2009.pdf](http://www.epa.gov/statelocalclimate/documents/pdf/CO2FFC_2009.pdf) See also *Greenhouse Gas Emissions in the Mid-Atlantic Region*, (Jan. 21, 2012) [http://www.epa.gov/reg3artd/globclimate/ccghg.html#Total\\_Emissions](http://www.epa.gov/reg3artd/globclimate/ccghg.html#Total_Emissions)

Commonwealth's private and public forests annually.<sup>38</sup> According to the draft 2017 inventory, in 2014 the emissions decreased by approximately 3.6 million metric tons of CO<sub>2</sub>e, with the largest decrease in the electricity generation sector, largely due to the switch from coal to natural gas, and the decreases in that sector, transportation and agricultural sectors being partially offset by increases in residential commercial, industrial and waste categories.<sup>39</sup>

12. Pennsylvania's GHG emissions are globally significant. Pennsylvania is the third largest CO<sub>2</sub> emitter after Texas and California, emitting 4.3% of total US GHG emissions in 2014<sup>40</sup> and 0.86 percent of total global emissions (which totaled 35.7 billion metric tons in 2014).<sup>41</sup> At 19.4 metric tons per year, Pennsylvania's per capita energy-related GHG emissions were greater than the US national average of 16.9 metric tons per year in 2015.<sup>42</sup> Pennsylvania's total GHG emissions in 2014 exceeded all but 21 nations of the world, with 16 nations exceeding Pennsylvania and Pennsylvania's emissions being approximately the same as 5 nations.<sup>43</sup> Pennsylvania's per capita emissions exceeded those of all of the nations in the world in 2014, and were more than double the per capita emissions of Germany (9.3) and China (7.6) and three times the per capita emissions of the UK (6.5), France (5.0) and Italy (5.5).<sup>44</sup>
13. One key observable change from the rising levels of GHG pollution in the atmosphere is the rapid increase in recorded global surface temperatures.<sup>45</sup> As a result of increased atmospheric GHGs from human activities, based on fundamental scientific principles, the Earth has been warming as scientists have predicted.<sup>46</sup> The increased concentrations of

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<sup>38</sup> Pa Inventory, at 5, Table 1; *see also*, *Carbon Sequestration*, Pennsylvania Department of Conservation and Natural Resources, <http://www.dcnr.state.pa.us/info/carbon/index.aspx>

<sup>39</sup> *Presentation of Draft Pennsylvania Greenhouse Gas Inventory 2017 to Climate Change Advisory Committee*, available at [http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/2017/8-7-17/Emission\\_Inventory\\_for\\_8-7\\_CCAC\\_meeting\\_r1.pdf](http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/2017/8-7-17/Emission_Inventory_for_8-7_CCAC_meeting_r1.pdf).

<sup>40</sup> Johannes Friedrich Johannes Friedrich, Mengpin Ge & Alexander Tankou, *6 Charts to Understand U.S. State Greenhouse Gas Emissions*, World Resources Institute (Aug. 10, 2017), available at <http://www.wri.org/blog/2017/08/6-charts-understand-us-state-greenhouse-gas-emissions> (visited March 19, 2018).

<sup>41</sup> *Trends in Global CO<sub>2</sub> Emissions 2015 Report*, PBL Netherlands Environmental Assessment Agency (2015) at 10, available at [http://edgar.jrc.ec.europa.eu/news\\_docs/jrc-2015-trends-in-global-co2-emissions-2015-report-98184.pdf](http://edgar.jrc.ec.europa.eu/news_docs/jrc-2015-trends-in-global-co2-emissions-2015-report-98184.pdf) (visited March 18, 2018) ("*Global Trends*").

<sup>42</sup> EIA, *Energy-Related Carbon Dioxide Emissions by State, 2000–2015* (January 2018) at 15, Table 5, available at

<https://www.eia.gov/environment/emissions/state/analysis/pdf/stateanalysis.pdf> (visited March 19, 2018).

<sup>43</sup> *Global Trends*, *supra* at 28-29, table 2.3.

<sup>44</sup> *Global Trends* at 3, Table 2.4.

<sup>45</sup> National Science and Technology Council, *Scientific Assessment* at 51; IPCC, *AR4* at 30; USGCRP, *Global Climate Change Impacts* at 19; EPA, *TS Endangerment Findings* 26-30; National Aeronautics and Space Administration (NASA) & Goddard Institute for Space Studies (GISS), *Global Surface Temperature*, <http://climate.nasa.gov/keyIndicators/#globalTemp> (illustrating the change in global surface temperatures) (last visited April 7, 2011).

<sup>46</sup> IPCC, *AR4* at 39; USGCRP, *Global Climate Change Impacts* at 13; EPA, *TS Endangerment Findings* at 48.

greenhouse gases in our atmosphere, primarily CO<sub>2</sub>,<sup>47</sup> have raised global surface temperature by 1.4°F (0.8°C) in the last one hundred to one hundred fifty years.<sup>48</sup> In the last thirty years, the acceleration of change has intensified as the Earth has been warming at a rate three times faster than that over the previous one hundred years.<sup>49</sup>

14. Because of year-to-year variations in these thermometer readings, as with daily readings, scientists compare temperature differences over a decade to determine patterns.<sup>50</sup> Employing this decadal scale, the surface of the planet has warmed at a rate of roughly 0.3 to 0.4°F (0.15 to 0.2°C) per decade since the late 1970s.<sup>51</sup> Global mean surface temperature has been decidedly higher during the last few decades of the twentieth century than at any time during the preceding four centuries.<sup>52</sup> Global surface temperatures have been rising dramatically since 1951. “Seventeen of the 18 warmest years in the 136-year record all have occurred since 2001 with the exception of 1998. The year 2016 ranks as the warmest on record.”<sup>53</sup>
15. The dramatic increase of the average global surface temperature is alarming. By comparison, the global surface temperature during the last Ice Age was about 9°F (5°C) cooler than today.<sup>54</sup> It has become quite clear that the past several decades present an

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<sup>47</sup> EPA, *Climate Change – Science*, available at <http://epa.gov/climatechange/science/index.html> (August 19, 2010) (last visited April 7, 2011); EPA, *TS Endangerment Findings* at ES-1-2.

<sup>48</sup> EPA, *TS Endangerment Findings* at ES-2 (“Global mean surface temperatures have risen by 1.3 ± 0.32°F (0.74°C ± 0.18°C) over the last 100 years.”); See J. Hansen et al., NASA & GISS, *Global Surface Temperature Change* (August 3, 2010); NASA, *Climate Change: Key Indicators*, <http://climate.nasa.gov/keyIndicators> (last visited April 7, 2011); John Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts*, in CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN 11, 15-22 (Joseph F. C. DiMento & Pamela Doughman eds., MIT Press 2007).

<sup>49</sup> EPA, *TS Endangerment Findings* at 32 (“U.S. average annual temperatures (for the contiguous United States or lower 48 states) are now approximately 1.25°F (0.69°C) warmer than at the start of the 20th century, with an increased rate of warming over the past 30 years. The rate of warming for the entire period of record (1901–2008) is 0.13°F (0.072°C) per decade while the rate of warming increased to 0.58°F (0.32°C) per decade for the period 1979–2008.”); USGCRP, *Global Climate Change Impacts* at 9.

<sup>50</sup> IPCC, *AR4* at 40.

<sup>51</sup> See NASA, *Climate Change: Key Indicators, Global Land-Ocean Temperature Index*, <http://climate.nasa.gov/keyIndicators/#globalTemp> (last visited April 7, 2011).

<sup>52</sup> The National Academies Press (Board on Atmospheric Sciences and Climate), *Surface Temperature Reconstructions for the Last 2,000 Years* 3 (2006), available at [http://www.nap.edu/catalog.php?record\\_id=11676](http://www.nap.edu/catalog.php?record_id=11676).

<sup>53</sup> NASA, *Global Climate Change – Global Surface Temperature*, <http://climate.nasa.gov/keyIndicators/index.cfm#globalTemp> (last visited March 7, 2018); NASA, *Global Climate Change*, <https://climate.nasa.gov/evidence/> (last visited March 7, 2018) (“Most of the warming occurred in the past 35 years, with 16 of the 17 warmest years on record occurring since 2001. Not only was 2016 the warmest year on record, but eight of the 12 months that make up the year — from January through September, with the exception of June — were the warmest on record for those respective months.”).

<sup>54</sup> James E. Hansen & Makiko Sato, *Paleoclimate Implications for Human-Made Climate Change* 5 (January 18, 2011), available at

anomaly, as global surface temperatures are registering higher than at any point in the past 400 years (and for the Northern Hemisphere the past 1,000 years).<sup>55</sup>

16. The IPCC has observed that “[w]arming of the climate system is unequivocal”.<sup>56</sup> The United States EPA has recognized the scientific consensus that has developed on the fact of global warming and its cause; that the Earth is heating up and the climate is being disrupted due to human activities.<sup>57</sup>
17. Reports by the United States Academy of Sciences have consistently concluded that anthropogenic emissions of GHGs are disrupting the climate. that this disruption will increase without significant emissions reductions, and that there is a potential for abrupt and disastrous impacts.<sup>58</sup>
18. Changes in many different aspects of Earth’s climate system over the past century are consistent with this warming trend: based on straightforward scientific principles, human-induced GHG increases lead not only to warming of land surfaces<sup>59</sup>, but also to the warming of oceans<sup>60</sup>, increased atmospheric moisture levels<sup>61</sup>, rises in the global sea level<sup>62</sup>, and changes in rainfall<sup>63</sup> and atmospheric air circulation patterns that affect water and heat distribution.<sup>64</sup>
19. Although there is some uncertainty, most of the possible variation falls on the side of greater disruption. For example, reports developed since the last IPCC report was

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[http://www.columbia.edu/~jeh1/mailings/2011/20110118\\_MilankovicPaper.pdf](http://www.columbia.edu/~jeh1/mailings/2011/20110118_MilankovicPaper.pdf) (last visited April 10, 2011).

<sup>55</sup> USGCRP, *Global Climate Change Impacts* at 19.

<sup>56</sup> IPCC, *Summary for Policymakers*, in CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS, CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, at 1, 3, 22, 31 (S. Solomon et al. eds. 2007).

<sup>57</sup> EPA, *TS Endangerment Findings* at ES-2 (“Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level. ... Most of the observed increase in global average temperatures since the mid-20<sup>th</sup> century is very likely due to the observed increase in *anthropogenic* GHG concentrations.”) (emphasis added).

<sup>58</sup> See, e.g., National Research Council, *Climate Change 2013: The Physical Science Basis* (2013), <http://www.ipcc.ch/report/ar5/wg1/>; National Research Council, *Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millennia* (2011), <https://www.nap.edu/catalog/12877/climate-stabilization-targets-emissions-concentrations-and-impacts-over-decades-to>; National Research Council, *Abrupt Impacts of Climate Change: Anticipating Surprises* (2013), <https://www.nap.edu/catalog/18373/abrupt-impacts-of-climate-change-anticipating-surprises>.

<sup>59</sup> IPCC, *AR4* at 30.

<sup>60</sup> *Id.* at 72.

<sup>61</sup> USGCRP, *Global Climate Change Impacts* at 18; B.D Santer et al., *Identification of human-induced changes in atmospheric moisture content*, 104 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, 15248, 15248-15253 (September 25, 2007).

<sup>62</sup> IPCC, *AR4* at 30.

<sup>63</sup> USGCRP, *Global Climate Change Impacts* at 18, 44.

<sup>64</sup> *Id.* at 42.

produced in 2013 have determined that sea level rise due to melting glaciers will be more rapid than estimated. That last IPCC assessment estimated that sea levels could rise from between 44 cm and 74 cm by 2100.<sup>65</sup> A study published in 2018 based on 25 years of satellite data showed accelerated rates of sea level rise driven by the melting of the Greenland and Antarctic ice sheets and predicted that if these rates continue, sea levels would rise by 65 centimeters or 26 inches by 2100 compared to past estimate, or about double the rate originally estimated.<sup>66</sup>

20. As expected (and consistent with the temperature increases in land surfaces), ocean temperatures have also increased.<sup>67</sup> This has led to changes in the ocean's ability to circulate heat around the globe; which can have catastrophic implications for the global climate system.<sup>68</sup> Two studies published in *Nature* in 2018 determined that freshwater from melting glaciers had slowed the Atlantic meridional overturning circulation to an extent not evident over the last 1,600 years.<sup>69</sup> The average temperature of the global ocean has increased significantly despite its ability to absorb enormous amounts of heat before exhibiting any signs.<sup>70</sup> In addition, the most significant indicator of the planet's energy imbalance due to human-induced GHG increases, is the long-term increase in global average ocean heat content over the last 50 years, extending down to several thousand meters below the ocean surface.<sup>71</sup>
21. As predicted, precipitation patterns have changed due to increases in atmospheric moisture levels and changes in atmospheric air circulation patterns; just another indicator that the Earth is warming.<sup>72</sup> As the Earth warms, moisture levels are expected to increase when temperature increases because warmer air generally holds more moisture.<sup>73</sup> In more arid regions, however, higher temperatures lead to greater evaporation.<sup>74</sup>
22. These changes in the Earth's water cycle increase the potential for, and severity of, severe storms, flooding and droughts.<sup>75</sup> Storm-prone areas are already experiencing a greater chance of severe storms, and this will continue.<sup>76</sup> Precipitation intensity is likely to

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<sup>65</sup> John A. Church, Peter U. Clark et al. *Sea Level Change*, IPCC, Climate Change 2013: The Physical Science Basis, Chapter 13, at 1182, Table 13.5 (2013), available at <http://www.ipcc.ch/report/ar5/wg1/>.

<sup>66</sup> R. S. Nerem, B. D. Beckley, J. T. Fasullo, B. D. Hamlington, D. Masters and G. T. Mitchum, *Climate-change-driven accelerated sea-level rise detected in the altimeter era*, 115 *Proceedings Nat'l Academy Sciences* 2022-2025 (Feb. 2018), available at <https://doi.org/10.1073/pnas.1717312115>.

<sup>67</sup> IPCC, *AR4* at 30; EPA, *TS Endangerment Findings* at ES-2.

<sup>68</sup> USGCRP, *Global Climate Change Impacts* at 26.

<sup>69</sup> Summer K. Praetorius, North Atlantic circulation slows down, 556 *Nature* 180 (2018), available at <https://www.nature.com/magazine-assets/d41586-018-04086-4/d41586-018-04086-4.pdf>.

<sup>70</sup> UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), *CLIMATE CHANGE SCIENCE COMPENDIUM 2009* at 26 (UNEP/Earthprint, 2009).

<sup>71</sup> S. Levitus et al., *Global ocean heat content 1955-2008 in light of recently revealed instrumentation problems* 36 *J. GEOPHYSICAL RES. LETTERS* L07608 (April 2009).

<sup>72</sup> USGCRP, *Global Climate Change Impacts* at 13, 17, 21, 36, 42, 74.

<sup>73</sup> EPA, *TS Endangerment Findings* at 111.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 120-121; USGCRP, *Global Climate Change Impacts* at 27.

increase across the United States, with increase prevalence of flash flooding, coupled with increased droughts between these intense precipitation events.<sup>77</sup>

23. These changes are already occurring: Droughts in parts of the midwestern, southeastern, and southwestern United States have increased in frequency and severity within the last fifty years, coincident with rising temperatures.<sup>78</sup> In 2009, more than half of the United States received above normal precipitation; yet the southwestern United States (Arizona in particular) had one of its driest periods.<sup>79</sup>
24. Based on the laws of physics and the past climate record, scientists have concluded that precipitation events will increase globally, particularly in tropical and high latitude regions, while decreasing in subtropical and mid-latitude regions,<sup>80</sup> with longer periods between normal heavy rainfalls.<sup>81</sup>
25. Other changes consistent with climate modeling resulting from global warming have been observed not just in the amount, intensity, and frequency of precipitation but also in the type of precipitation.<sup>82</sup> In higher altitude and latitude regions, including in mountainous areas, more precipitation is falling as rain rather than snow.<sup>83</sup> With early snow melt occurring because of climate change, the reduction in snowpack can aggravate water supply problems.<sup>84</sup> In Northern Europe and the northeastern United States, a change in air currents -- caused by the warming Arctic -- brought severe snowstorms during the winters of 2009-2010.<sup>85</sup>
26. As expected global sea levels have also risen.<sup>86</sup> Sea levels have been rising at an average rate of 3.1 millimeters per year based on measurements from 1993 to 2003.<sup>87</sup> Though sea levels rose about 8 inches over the last century, with the rate nearly doubling in the last two decades.<sup>88</sup> Rising seas, brought about by melting of polar icecaps and glaciers, as

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<sup>77</sup> EPA, *TS Endangerment Findings* at 115.

<sup>78</sup> *Id.* at 145, 143, 148.

<sup>79</sup> *State of the Climate, 2009* at S138.

<sup>80</sup> EPA, *TS Endangerment Findings* at ES-4, 74.

<sup>81</sup> EPA, *TS Endangerment Findings* at 74.

<sup>82</sup> *Id.* at ES-2.

<sup>83</sup> USGCRP, *Global Climate Change Impacts* at 18, 45.

<sup>84</sup> *Id.* at 33

<sup>85</sup> NOAA, *Arctic Report Card: Update for 2010*, (December 10, 2010) (last visited November 16, 2018) available at [ftp://ftp.oar.noaa.gov/arctic/documents/ArcticReportCard\\_full\\_report2010.pdf](ftp://ftp.oar.noaa.gov/arctic/documents/ArcticReportCard_full_report2010.pdf)) at 13, 15; See also Climate Science Watch, *Climatologist Ben Santer on the attribution of extreme weather events to climate change*, (December 29, 2010) (last visited April 9, 2011) <http://climateprogress.org/2010/12/29/ben-santer-attribution-extreme-weather-events-to-climate-change/#more>.

<sup>86</sup> USGCRP, *Global Climate Change Impacts*, at 10; EPA, *TS Endangerment Findings* at ES-3; IPCC, *AR5* at 42.

<sup>87</sup> IPCC, *AR5* at 124.

<sup>88</sup> NASA, *Climate Change: How Do We Know?, Sea Level Rise* (last visited November 16, 2018) <http://climate.nasa.gov/evidence/#no4> (citing J.A. Church & N.J. White, *A 20<sup>th</sup> Century Acceleration in Global Sea Level Rise* (2006) 33 *Geophysical Research Letters*, L01602, doi: 10.1029/2005GL024826).

well as by thermal expansion of the warming oceans, will cause flooding in coastal and low-lying areas.<sup>89</sup> The combination of rising sea levels and more severe storms creates conditions conducive to severe storm surges during high tides.<sup>90</sup> In coastal communities this can overwhelm coastal defenses (such as levees and sea walls), as witnessed during Hurricane Katrina.<sup>91</sup>

27. Sea level is not uniform across the globe, because it depends on variables such as ocean temperature and currents.<sup>92</sup> Unsurprisingly, the most vulnerable lands are low-lying islands, river deltas, and areas that already lie below sea level because of land subsidence.<sup>93</sup> Based on these factors, scientists have concluded that the threats to the United States from rising seas are the most severe on the Gulf and Atlantic Coasts.<sup>94</sup> Worldwide, hundreds of millions of people live in river deltas and vulnerable coastlines along the southern and eastern coasts of Asia where rivers draining the Himalayas flow into the Indian and Pacific Oceans.<sup>95</sup>
28. In a comprehensive review of studies on sea level rise in the 21<sup>st</sup> century published by the British Royal Society, researchers estimated the probable sea level rise for this century between .5 and 2 meters (1 ½ to 6 ½ feet), continuing to rise for several centuries after that, depending on future CO<sub>2</sub> levels and the behavior of polar ice sheets.<sup>96</sup>
29. The IPCC and other scientists estimate a 1 to 2 meter rise in sea level by 2100 that does not include flows of major ice sheets.<sup>97</sup> “Today, rising sea levels are submerging low-lying lands, eroding beaches, converting wetlands to open water, exacerbating coastal flooding, and increasing the salinity of estuaries and freshwater aquifers.”<sup>98</sup> The impacts of rising sea levels can be seen in many coastal locations across the nation; along the Florida coast for instance, sea level is rising about 1 inch every 11-14 years.<sup>99</sup> This

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<sup>89</sup> EPA, *TS Endangerment Findings* at ES-7; USGCRP, *Global Climate Change Impacts* at 25, 62-63.

<sup>90</sup> USGCRP, *Global Climate Change Impacts* at 109; EPA, *TS Endangerment Findings* at 75.

<sup>91</sup> EPA, *TS Endangerment Findings* at 86, 118.

<sup>92</sup> USGCRP, *Global Climate Change Impacts* at 25-26, 37.

<sup>93</sup> EPA, *TS Endangerment Findings* at 121.

<sup>94</sup> *Id.* at 128; USGCRP, *Global Climate Change Impacts* at 57.

<sup>95</sup> EPA, *TS Endangerment Findings* at 159; IPCC, *AR4* at 52.

<sup>96</sup> R.J. Nicholls et al., *Sea-level rise and its possible impacts given a ‘beyond 4°C world’ in the twenty-first century*, PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY 161-181, 168 (2011).

<sup>97</sup> IPCC, *AR5* at 47; M. Vermeer & S. Rahmstorf, *Global Sea Level Linked to Global Temperature*, 106 PROC. NATL. ACAD. SCI. 21527, 21531 (2009).

<sup>98</sup> U.S. Climate Change Science Program, USCCSP, *Coastal Sensitivity to Sea-Level Rise: A Focus on the Mid-Atlantic Region* [hereinafter *Coastal Sensitivity to Sea-Level Rise*] 2 (Jan. 2009), available at <https://www.globalchange.gov/sites/globalchange/files/sap4-1-final-report-all.pdf>.

<sup>99</sup> EPA, *Saving Florida’s Vanishing Shores* (March 2002) available at <https://nepis.epa.gov/Exe/ZyNET.exe/0000014E.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000004%5C0000014E.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=h>

seemingly small rise in ocean levels is contributing to massive erosion, causing many homeowners to remove beachfront property, and has led to a decline in the recreational value of beaches.<sup>100</sup> Other coastal states (such as Maryland and Louisiana) are also experiencing wetland loss due to rising sea levels.<sup>101</sup> Scientists have predicted that wetlands in the Mid-Atlantic region of the United States cannot withstand a 7-millimeter per year rise in sea levels.<sup>102</sup>

30. As expected, mountain glaciers, which are the source of freshwater for hundreds of millions of people, are receding worldwide because of warming temperatures.<sup>103</sup> In 2010, Glacier National Park in Montana had twenty-five glaciers larger than twenty-five acres, down from one hundred and fifty in 1850.<sup>104</sup> The year 2017 marked the 38th consecutive year in which glaciers lost mass.<sup>105</sup> Mountain glaciers are in retreat all over the world, including Mt. Kilimanjaro in Africa, the Himalayas, the Alps (99% in retreat), the glaciers of Peru and Chile (92% in retreat), and in the United States.<sup>106</sup> In the Brooks Range of northern Alaska, all of the glaciers are in retreat and in southeastern Alaska 98% are in retreat.<sup>107</sup>
31. Although a minor contribution to sea level rise, the melting of mountain glaciers is particularly serious in areas that rely on snow melt for irrigation and drinking water supply.<sup>108</sup> In effect, a large snow pack or glacier acts as a supplemental reservoir or water tower, holding a great deal of water in the form of ice and snow through the winter and spring and releasing it in the summer when rainfall is lower or absent.<sup>109</sup> The water systems of the western United States (particularly in California) and the Andean nations of Peru and Chile, among other places, all heavily rely on these natural forms of water storage.<sup>110</sup> In addition to providing a more reliable water supply, the storing of

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<sup>100</sup> *Id.*

<sup>101</sup> USCCSP, *Coastal Sensitivity to Sea-Level Rise*, at 3-4.

<sup>102</sup> *Id.* at 4.

<sup>103</sup> See *TS Endangerment Findings* at 111 (“Glaciers throughout North America are melting, and the particularly rapid retreat of Alaskan glaciers represents about half of the estimated loss of glacial mass worldwide.”).

<sup>104</sup> United States Geological Survey (Northern Rocky Mountain Science Center), *Retreat of Glaciers in Glacier National Park* (June 2010), [https://www.usgs.gov/centers/norock/science/retreat-glaciers-glacier-national-park?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/centers/norock/science/retreat-glaciers-glacier-national-park?qt-science_center_objects=0#qt-science_center_objects)

<sup>105</sup> National Oceanic and Atmospheric (NOAA), *State of the Climate in 2017*, 99 BULL. AMER. METEOR. SOC. at Sxvi (2017).

<sup>106</sup> L. Thompson, *Climate Change: The Evidence and Our Options*, 33 THE BEHAVIOR ANALYST No. 2 (Fall) 153, 155-160 (2010); USGRCP, *Global Climate Change Impacts* at 18.

<sup>107</sup> L. Thompson, *Climate Change: The Evidence and Our Options*, 33 THE BEHAVIOR ANALYST No. 2 (Fall) 153, 158 (2010).

<sup>108</sup> IPCC, *AR4* at 49.

<sup>109</sup> See L. Thompson, *Climate Change: The Evidence and Our Options*, 33 THE BEHAVIOR ANALYST No. 2 (Fall) 153, 164 (2010).

<sup>110</sup> See *Id.* at 155 – 160, 164.

precipitation as ice and snow helps moderate potential flooding.<sup>111</sup>

32. Yet as temperatures warm, not only will these areas lose this supplemental form of water storage, but also severe flooding is likely to increase (because when rain falls on snow, it accelerates the melting of glaciers and snow packs).<sup>112</sup> Ice is melting most dramatically at the poles.<sup>113</sup> Sea ice in the Arctic oceans is expected to decrease and may even disappear entirely in coming decades.<sup>114</sup>
33. Beginning in late 2000, the Jakobshavn Isbrae Glacier (which has a major influence over the mass of the Greenland ice sheet), lost significant amounts of ice.<sup>115</sup> In August of 2010, an enormous iceberg (roughly ninety-seven square miles in size) broke off from Greenland.<sup>116</sup> Nine Antarctic ice shelves have also collapsed into icebergs between 1959 and 2009, (six of them after 1996).<sup>117</sup> An ice shelf roughly the size of Rhode Island collapsed in 2002, an ice bridge collapsed in 2009, leaving an ice shelf the size of Jamaica on the verge of shearing off, and in 2018 an ice sheet twice the size of Luxembourg calved.<sup>118</sup> The 2002 collapse of the Larsen Ice Shelf, which had existed for at least 11,000 years, was “unprecedented in respect to both area and time.”<sup>119</sup> The “sudden and complete disintegration” of the Larsen Ice Shelf took a *mere 35 days*.<sup>120</sup>
34. During the 2007-melt season, the extent of Arctic sea ice (frozen ocean water) declined precipitously to its lowest level since satellite measurements began in 1979.<sup>121</sup> By the end

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<sup>111</sup> EPA, *TS Endangerment Findings* at 111; USGCRP, *Global Climate Change Impacts* at 64.

<sup>112</sup> EPA, *TS Endangerment Findings* at 111.

<sup>113</sup> L. Thompson, *Climate Change: The Evidence and Our Options*, 33 THE BEHAVIOR ANALYST No. 2 (Fall) 153, 160 (2010) (“[P]olar ice sheets are slower to respond to temperature rise than the smaller mountain glaciers, but they too, are melting. . . . The loss of ice in the Arctic and Antarctic regions is especially troubling because these are the locations of the largest ice sheets in the world.”).

<sup>114</sup> EPA, *TS Endangerment Findings* at 120; USGCRP, *Global Climate Change Impacts* at 20-21 (“Studies published after the appearance of the IPCC Fourth Assessment Report in 2007 have also found human fingerprints in the increased levels of atmospheric moisture (both close to the surface and over the full extent of the atmosphere), in the decline of Arctic sea ice extent, and in the patterns of change in Arctic and Antarctic surface temperatures.”).

<sup>115</sup> GARY BRAASCH & BILL MCKIBBEN, EARTH UNDER FIRE 18-20 (2009); See also J.E. Box et. al., (NOAA) *Greenland*, ARCTIC REPORT CARD at 55 (Oct. 2010) (“A clear pattern of exceptional and record-setting warm air temperatures is evident at long-term meteorological stations around Greenland.”).

<sup>116</sup> NASA Earth Observatory, *Ice Island Calves Off Petermann Glacier* (Aug. 2010), <http://earthobservatory.nasa.gov/NaturalHazards/view.php?id=45112&src=eorss-nh>.

<sup>117</sup> Alister Doyle, *Antarctic Ice Shelf Set to Collapse Due to Warming*, Reuters (Jan. 19, 2009) <http://www.reuters.com/article/idUSTRE50I4G520090119>.

<sup>118</sup> NASA Earth Observatory, *Wilkins Ice Bridge Collapse* (April 2009), <http://earthobservatory.nasa.gov/IOTD/view.php?id=37806>; see also *Expected Sea-Level Rise Following Antarctic Ice Shelves' Collapse*, SCIENCE DAILY (July, 2018), <https://www.sciencedaily.com/releases/2018/07/180719085424.htm>.

<sup>119</sup> U.S. Geological Survey, *Coastal-Change and Glaciological Map of the Larsen Ice Shelf Area, Antarctica: 1940-2005* at 10 (2008) <http://pubs.usgs.gov/imap/2600/B/Larsenpamphlet12600B.pdf>

<sup>120</sup> *Id.* at 10.

<sup>121</sup> National Snow and Ice Data Center (NSDIC), Press Release, *Arctic Sea Ice Shatters All Previous Record Lows* (October 1, 2007),

of 2010 Arctic sea ice was at the lowest level in the satellite record for the month of December.<sup>122</sup> Continuing the trends of the last several years, ice formation in the autumn of 2018 lagged significantly behind averages from the 30 years prior to 2010.<sup>123</sup>

35. Arctic sea ice plays an important role in stabilizing the global climate, because it reflects back in to space much of the solar radiation that the region receives.<sup>124</sup> In contrast, open ocean water absorbs much more heat from the sun, thus, amplifying human-induced warming and creating an increased global warming effect.<sup>125</sup> As arctic sea ice decreases the region is less capable of stabilizing the global climate and may act as a feedback loop (thereby aggravating global warming).<sup>126</sup>
36. Scientists have also documented an overall trend of sea-ice thinning.<sup>127</sup> The year 2017 marked the 11<sup>th</sup> time in the past 12 years, and 12<sup>th</sup> consecutive June, with lower spring Canadian and American Arctic snow cover than averages from the 1981-2010 period.<sup>128</sup>
37. There has been a general increase in permafrost temperatures and permafrost melting in Alaska and other parts of the Arctic (particularly since 2000). Permafrost temperatures in 2016 were among the highest on record (since 1978) with the greatest increases in cold permafrost<sup>129</sup> Because much of the Arctic permafrost overlays old peat bogs, scientists believe (and are concerned) that the melting of the permafrost<sup>130</sup> may release methane that will further increase global warming to even more dangerous levels.<sup>131</sup>
38. Changes in these different aspects of Earth's climate system over the last century tell a coherent story: the impacts we see today are consistent with the scientific understanding of

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[http://nsidc.org/news/press/2007\\_seaiceminimum/20071001\\_pressrelease.html](http://nsidc.org/news/press/2007_seaiceminimum/20071001_pressrelease.html) (last visited April 9, 2011); EPA, *TS Endangerment Findings* at 27 (“Average arctic temperatures increased at almost twice the global average rate in the past 100 years.”).

<sup>122</sup> NSIDC, *Repeat of a negative Arctic Oscillation leads to warm Arctic, low sea ice extent*, ARCTIC SEA ICE NEWS & ANALYSIS, (January 5, 2011), <http://nsidc.org/arcticseaicenews/2011/010511.html> (last visited November 16, 2018).

<sup>123</sup> NSIDC, *Unusual Warmth Continues*, ARCTIC SEA ICE NEWS & ANALYSIS (November 5, 2018) <http://nsidc.org/arcticseaicenews/2018/11/unusual-warmth-continues/> (last visited November 16, 2018).

<sup>124</sup> EPA, *Climate Change Indicators in the United States*, 39 (2016), available at [https://www.epa.gov/sites/production/files/2016-08/documents/climate\\_indicators\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/climate_indicators_2016.pdf) [hereinafter *Climate Change Indicators*]; See also EPA, *TS Endangerment Findings* at 40.

<sup>125</sup> EPA, *Climate Change Indicators* 52 (2010); USGCRP, *Global Climate Change Impacts* at 39.

<sup>126</sup> EPA, *Climate Change Indicators*, *supra* note 121.

<sup>127</sup> NOAA, *State of the Climate in 2017*, *supra* note 102, at sxvi.

<sup>128</sup> Derksen, C., R. Brown, L. Mudryk, K. Luoju, & S. Helfrich, *Terrestrial Snow Cover*, ARCTIC REPORT CARD (2017), available at

[ftp://ftp.oar.noaa.gov/arctic/documents/ArcticReportCard\\_full\\_report2017.pdf](ftp://ftp.oar.noaa.gov/arctic/documents/ArcticReportCard_full_report2017.pdf).

<sup>129</sup> J. Richter-Menge, J.E. Overland, J.T. Mathis, & E. Osborne, *Executive Summary*, ARCTIC REPORT CARD, *supra*.

<sup>130</sup> *Id.*, see also, USGCRP, *Global Climate Change Impacts* at 139, 142 (“The higher temperatures are already contributing to . . . permafrost warming.”).

<sup>131</sup> See IPCC, *4.4.6 Tundra and Arctic/Antarctic Ecosystems*, CLIMATE CHANGE 2007: FOURTH ASSESSMENT REPORT, WORKING GROUP II, IMPACTS, ADAPTATION, AND VULNERABILITY 231 (2007).

how the climate system should respond to GHG increases from human activities and how the Earth has responded in the past (reflected in such evidence as: ice cores that have trapped air from thousands and even a few million years ago, tree rings and seabed sediments that show where sea level was thousands and even millions of years ago).<sup>132</sup> Collectively, these changes cannot be explained as the product of natural climate variability or a tilt in the Earth's axis alone.<sup>133</sup> A large human contribution provides the best explanation of observed climate changes.<sup>134</sup>

39. These well-documented and observable impacts from the changes in Earth's climate system highlight that the current level of atmospheric CO<sub>2</sub> concentration has already taken the planet into a danger zone.<sup>135</sup> The Earth will continue to warm in reaction to concentrations of CO<sub>2</sub> from past emissions as well as future emissions.<sup>136</sup> Warming already in the pipeline is mostly attributable to climate mechanisms that slowly heat the Earth's climate system in response to atmospheric CO<sub>2</sub>.<sup>137</sup>
40. The Earth's oceans play a significant role in keeping our atmospheric climate in the safe-zone.<sup>138</sup> The oceans constantly absorb CO<sub>2</sub> and release it back into the atmosphere at rates that maintain a balance.<sup>139</sup> Because we now release so much CO<sub>2</sub>, the oceans have absorbed about one-third of the CO<sub>2</sub> emitted from human activity over the past two centuries.<sup>140</sup> This capacity has slowed global warming, but at a cost: the added CO<sub>2</sub> has changed the chemistry of the oceans, causing the oceans' average surface pH (a measurement of hydrogen ions) to drop by an average of .1 units.<sup>141</sup> Although this may seem relatively small, the pH scale is logarithmic, so that a reduction of only one unit means that the solution has in fact become ten times more acidic.<sup>142</sup> A drop of .1 pH units means that the concentration of hydrogen ions in seawater has gone up by 30% in the past

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<sup>132</sup> USGCRP, *Global Climate Change Impacts* at 26.

<sup>133</sup> *Id.* at 14-16.

<sup>134</sup> Susan Solomon et al., *Irreversible climate change due to carbon dioxide emissions*, 106 PNAS 1704, 1704 – 1709 (Feb. 10, 2009), available at [www.pnas.org/cgi/doi/10.1073/pnas.0812721106](http://www.pnas.org/cgi/doi/10.1073/pnas.0812721106) (last visited November 16, 2018).

<sup>135</sup> USGCRP, *Global Climate Change Impacts* at 23.

<sup>136</sup> USGCRP, *Global Climate Change Impacts* at 14-16, 84-; see also, EPA, *TS Endangerment Findings* at 26.

<sup>137</sup> Fred Pearce, WITH SPEED AND VIOLENCE: WHY SCIENTISTS FEAR TIPPING POINTS IN CLIMATE CHANGE 101-104 (Beacon Press 2007); IPCC, *AR4* at 72.

<sup>138</sup> See EPA, *TS Endangerment Findings* at 16, 38.

<sup>139</sup> IPCC, *AR5* at 4.

<sup>140</sup> Inter-Agency Working Group on Ocean Acidification, *Strategic Plan for Federal Research and Monitoring of Ocean Acidification* (March 2014) (“Inter-Agency Report, *Impacts of Ocean Acidification*”) at 10, available at

<ftp://ftp.oar.noaa.gov/OA/IWGOA%20documents/IWGOA%20Strategic%20Plan.pdf>; see also *TS Endangerment Findings* at 38 (“[T]he total inorganic carbon content of the oceans increased by 118 ± 19 gigatonnes of carbon (GtC) between 1750 and 1994 and continues to increase.”).

<sup>141</sup> Inter-Agency Report, *Ocean Acidification* at 10; USGCRP, *Global Climate Change Impacts* at 17, EPA, *TS Endangerment Findings* at 38.

<sup>142</sup> HARVEY BLATT, *AMERICA'S ENVIRONMENTAL REPORT CARD 158* (MIT Press 2005).

two centuries.<sup>143</sup> If CO<sub>2</sub> levels continue to rise to 500 ppm, we could see a further drop of .3 pH units by 2100.<sup>144</sup>

41. Ocean acidification harms animals that use calcium to build their shells, as well as single-celled organisms that are an essential part of the marine food chain.<sup>145</sup> This is because the acidified waters affect the structural integrity and survival of shell-building marine organisms such as corals and shellfish by effectively robbing them of the key chemical (carbonate ion) they need to build their skeletons.<sup>146</sup> It also adversely impacts some kinds of algae and single-celled organisms that use calcification processes for survival.<sup>147</sup> Some of these organisms comprise magnificent natural features, such as the White Cliffs of Dover.<sup>148</sup> Coral reefs are major habitats for ocean fauna; and calcifying algae and plankton are key components of the marine food chain.<sup>149</sup>
42. About 55 million years ago, the ocean absorbed a large amount of CO<sub>2</sub>, likely due to a release of methane from the ocean floor that caused the Earth's temperatures to rise several degrees and led to the extinction of many species worldwide.<sup>150</sup> The absorption of so much CO<sub>2</sub> also led to the death of calcifying organisms on the seafloor.<sup>151</sup> It took over 100,000 years for the ocean to regain its normal alkalinity.<sup>152</sup> The current level of CO<sub>2</sub> being taken in by the ocean decreases the ability of coral and other calcium-based marine life to produce their skeletons, which affects the growing of coral and thus coral reefs.<sup>153</sup>
43. The warming of oceans contributes to the bleaching of corals.<sup>154</sup> Corals contain a tiny alga that provides them with food and that accounts for their color.<sup>155</sup> When the oceans warm, the algae give off toxins, and the corals, in order to survive the toxin, expel the

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<sup>143</sup> A. Ridgwell & D. Schmidt, *Past constraints on the vulnerability of marine calcifiers to massive carbon dioxide release*, 3 NATURE GEOSCIENCE 196, 196-200 (2010).

<sup>144</sup> IPCC, *AR5* at 12.

<sup>145</sup> EPA, *TS Endangerment Findings* at 38.

<sup>146</sup> USGCRP, *Global Climate Change Impacts* at 85.

<sup>147</sup> *Id.*

<sup>148</sup> Carl Zimmer, *An Ominous Warning on the Effects of Ocean Acidification*, Yale Environment360, (February 15, 2010), available at [http://e360.yale.edu/feature/an\\_ominous\\_warning\\_on\\_the\\_effects\\_of\\_ocean\\_acidification/2241/](http://e360.yale.edu/feature/an_ominous_warning_on_the_effects_of_ocean_acidification/2241/) (last visited November 17, 2018).

<sup>149</sup> EPA, *Coral Reef Biological Criteria: Using the Clean Water Act to Protect a National Treasure 3-1* (July 2010), available at [https://cfpub.epa.gov/si/si\\_public\\_record\\_report.cfm?Lab=NHEERL&dirEntryID=223392](https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NHEERL&dirEntryID=223392) (last visited November 17, 2018).

<sup>150</sup> James C. Zachos et al., *Rapid Acidification of the Ocean During the Paleocene-Eocene Thermal Maximum*, 308 SCIENCE 1611, 1611-1615 (June 10, 2005).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Inter-Agency Report, *Ocean Acidification* at 10.

<sup>154</sup> EPA, *TS Endangerment Findings* at 103; USGCRP, *Global Climate Change Impacts* at 148.

<sup>155</sup> USGCRP, *Global Climate Change Impacts* at 84, 151-52; See EPA, *TS Endangerment Findings* at 138.

algae, thereby bleaching the coral.<sup>156</sup> If the water temperature does not fall enough to permit algae to survive within the coral without releasing the toxin, the corals will eventually die.<sup>157</sup> There have been several severe episodes of coral bleaching in recent years.<sup>158</sup> With continued warming, the coral may not be able to survive.<sup>159</sup>

44. Changes in water supply and water quality will also impact agriculture in the US.<sup>160</sup> Additionally, increased heat and associated issues such as pests, crop diseases, and weather extremes, will all impact crop and livestock production and quality.<sup>161</sup> For example, climate change in the United States has produced warmer summers, enabling the mountain pine beetle to produce two generations of beetles in a single summer season, where it had previously only been able to produce one; in Alaska, the spruce beetle is maturing in one year when it had previously taken two years.<sup>162</sup> The expansion of the forest beetle population has killed millions of hectares of trees across the United States and Canada and resulted in millions of dollars lost from decreased timber and tourism revenues.<sup>163</sup>
45. Agriculture is extremely susceptible to climate changes and higher temperatures generally reduce yields of desirable crops while promoting pest and weed<sup>164</sup> proliferation.<sup>165</sup> Global climate change is predicted to decrease crop yields, increase crop prices, decrease worldwide calorie availability, and by 2050 increase child malnutrition by 20%.<sup>166</sup> Climate change threatens global food security and so any effort to mitigate global

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<sup>156</sup> USGCRP, *Global Climate Change Impacts* at 84, 151-52.

<sup>157</sup> *See id.*

<sup>158</sup> *Id.* at 84.

<sup>159</sup> *Id.* at 84-85.

<sup>160</sup> USGCRP, *Global Climate Change Impacts* at 126; *See* United States Department of State (USDS), *U.S. Climate Action Report 2010, Fifth National Communication of the United States of America Under the United Nations Framework Convention on Climate Change* [hereinafter *U.S. Climate Action Report*] 87 (June 2010) available at <http://www.state.gov/documents/organization/140636.pdf>.

<sup>161</sup> *Id.*

<sup>162</sup> Subcomm. on Glob. Change Res., U.S. Climate Change Sci. Program, *Weather and Climate Extreme in a Changing Climate, Regions of Focus: North America, Hawaii, Caribbean, and U.S. Pacific Islands* [hereinafter *Weather and Climate Extremes*], IN SYNTHESIS AND ASSESSMENT PRODUCT 3.3 15 (T. R. Karl et al. eds., 2008), <https://www.climatecommunication.org/wp-content/uploads/2012/01/climateextremes.pdf>.

<sup>163</sup> *Id.*

<sup>164</sup> P. Blacklund et al., Subcomm. on Glob. Change Res., U.S. Climate Change Sci. Program, USCCSP & USDA, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity in the United States*, in *Synthesis and Assessment Product 4.3* (2008) at 59, [https://www.cio.noaa.gov/services\\_programs/prplans/pdfs/ID194\\_Final\\_Peer\\_Review\\_Report.pdf](https://www.cio.noaa.gov/services_programs/prplans/pdfs/ID194_Final_Peer_Review_Report.pdf) (“Many weeds respond more positively to increasing CO<sub>2</sub> than most cash crops, . . . Recent research also suggests that glyphosate, the most widely used herbicide in the United States, loses its efficacy on weeds grown at CO<sub>2</sub> levels that likely will occur in the coming decades.”) available at [https://www.usda.gov/oce/climate\\_change/SAP4\\_3/CCSPFinalReport.pdf](https://www.usda.gov/oce/climate_change/SAP4_3/CCSPFinalReport.pdf)

<sup>165</sup> G. C. Nelson et al., Int’l Food Pol’y Res. Inst., *Food Policy Report: Climate Change- Impacts on Agriculture and Costs of Adaptation* (2009) at vii.

<sup>166</sup> *Id.*

warming is effectively promoting a secure food supply.<sup>167</sup>

46. Glacial and ice cap melting is one of the major causes of global sea level change.<sup>168</sup> When glaciers and ice caps melt, this adds water to the ocean.<sup>169</sup> Another cause is that as ocean water warms, it expands and takes up more space; therefore, ocean warming “has been observed in each of the world’s major ocean basins, and has been directly linked to human influences.”<sup>170</sup>
47. Human-caused fossil fuel burning and the resulting climate change are already contributing to an increase in asthma, cancer, cardiovascular disease, stroke, heat-related morbidity and mortality, food-borne diseases, and neurological diseases and disorders.<sup>171</sup> The World Health Organization has concluded, “the health effects of a rapidly changing climate are likely to be overwhelmingly negative”.<sup>172</sup> Climate change is not only expected to affect the basic requirements for maintaining health (clean air and water, sufficient food, and adequate shelter) but is likely to present new challenges for controlling infectious disease and even “halt or reverse the progress that the global public health community is now making against many of these diseases.”<sup>173</sup>
48. As the 2010 Russian summer heat wave graphically demonstrated, heat can destroy crops, trigger wildfires, exacerbate air pollution, and cause increased illness and deaths.<sup>174</sup> Similar impacts are occurring across the United States: the “number and frequency of forest fires and insect outbreaks are increasing in the interior West, the Southwest, and Alaska. Precipitation, streamflow, and stream temperatures are increasing in most of the continental United States. The western United States is experiencing reduced snowpack and earlier peaks in spring runoff. The growth of many crops and weeds is being stimulated. Migration of plant and animal species is changing the composition and structure of arid, polar, aquatic, coastal, and other ecosystems.”<sup>175</sup> Up to 30% of the millions of species on our planet could go extinct following just a few tenths of a degree

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<sup>167</sup> *Id.* at ix (“Climate change will pose huge challenges to food-security efforts. Hence, any activity that supports agricultural adaptation also enhances food security.”).

<sup>168</sup> M. Sharp et al., *Mountain Glaciers and Ice Caps (Outside Greenland)*, in ARCTIC REPORT CARD 2010 at 107 (2010) available at

[https://www.cio.noaa.gov/services\\_programs/prplans/pdfs/ID194\\_Final\\_Peer\\_Review\\_Report.pdf](https://www.cio.noaa.gov/services_programs/prplans/pdfs/ID194_Final_Peer_Review_Report.pdf).

<sup>169</sup> USGCRP, *Global Climate Change Impacts supra* note 2 at 18.

<sup>170</sup> *Id.*

<sup>171</sup> See Ctr. for Health and the Glob. Env’t, Harv. Med. Sch., *Climate Change Futures: Health, Ecological, and Economic Dimensions* (November 2005) available at [eetd.lbl.gov/emills/pubs/pdf/climate-change-futures.pdf](http://eetd.lbl.gov/emills/pubs/pdf/climate-change-futures.pdf); see also USGCRP, *Global Climate Change Impacts supra* note 2 at 96-8.

<sup>172</sup> WHO, *Climate Change and Health* (2018), available at <http://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.

<sup>173</sup> WHO, *Protecting Health from Climate Change: Connecting Science, Policy, and People* (2009) at 2, available at <http://www.who.int/globalchange/publications/reports/9789241598880/en/index.html>.

<sup>174</sup> R.M. Dole et al, *Was There a Basis for Anticipating the 2010 Russian Heat Wave?* GEOPHYS. RES. LETT., VOL.38(6) (Am. Geophys. Assoc. eds. 2011).

<sup>175</sup> EPA, *Terminology Services Document* at 41.

warming above present.<sup>176</sup> Large wildfires in the Western US have quadrupled in recent years, a result of hotter temperatures and earlier snowmelt that contributes to dryer soils and vegetation.<sup>177</sup>

49. Similarly, climate change is already causing, and will continue to result in, more frequent, extreme, and costly weather events (such as hurricanes).<sup>178</sup> The annual number of major tropical storms and hurricanes has increased over the past 100 years in North America, coinciding with increasing temperatures in the Atlantic sea surface.<sup>179</sup>
50. The changing climate also raises national security concerns, as “climate change will add to tensions even in stable regions of the world.”<sup>180</sup> The United States may experience an additional need to accept immigrant and refugee populations as droughts increase and food production declines in other countries.<sup>181</sup> Increased extreme weather events (such as hurricanes) will also present an increased strain on foreign aid and call for military forces.<sup>182</sup> For instance, by 2025, 40% of the world’s population will be living in countries experiencing significant water shortages, while sea-level rise could cause displacement of tens, or even hundreds, of millions of people.<sup>183</sup>
51. Paleoclimate data provides sobering evidence that major climate change can occur in decades, and that the consequences would be much more severe, and even disastrous, if a 2°C (3.6°F) change occurs over decades rather than hundreds of years.<sup>184</sup>
52. There are at least three reasons that the present, human-induced global warming is particularly significant. First, past global warming and cooling of a similar magnitude occurred before human civilization existed.<sup>185</sup> Second, global warming is happening far more rapidly than in past occurrences<sup>186</sup>, giving both humans and other forms of life only a short time to adapt to the changes. Human civilization and the crops and foods on which

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<sup>176</sup> IPCC, *AR4, Working Group II: Impacts, Adaptation and Vulnerability- Magnitudes of Impact*, available (2007) at [http://www.ipcc.ch/publications\\_and\\_data/ar4/wg2/en/spmssp-c-15-magnitudes-of.html](http://www.ipcc.ch/publications_and_data/ar4/wg2/en/spmssp-c-15-magnitudes-of.html).

<sup>177</sup> *Global Climate Change Impacts supra* note 2 at 95.

<sup>178</sup> *Id.* at 27 (“Many types of extreme weather events, such as heat waves and regional droughts, have become more frequent and intense during the past 40 to 50 years.”).

<sup>179</sup> *Scientific Assessment supra* note 27 at 7.

<sup>180</sup> The CNA Corporation, Mil. Advisory Bd., *National Security and the Threat of Climate Change* (2007) at 7, available at [http://securityandclimate.cna.org/report/SecurityandClimate\\_Final.pdf](http://securityandclimate.cna.org/report/SecurityandClimate_Final.pdf).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 16.

<sup>184</sup> See J.E. Hansen & M. Sato, *Paleoclimate Implications for Human-Made Climate Change in Climate Change: Inferences from Paleoclimate and Regional Aspects*, (Springer eds., 2012) at 21-48, available at [http://www.columbia.edu/~jeh1/mailings/2011/20110118\\_MilankovicPaper.pdf](http://www.columbia.edu/~jeh1/mailings/2011/20110118_MilankovicPaper.pdf).

<sup>185</sup> See J.E. Hansen et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?*, OPEN ATMOS. SCI. 217, 217-231 (2008).

<sup>186</sup> *Id.*

it depends have developed within a very narrow set of climatic conditions.<sup>187</sup> With the human population so large, with civilization so complex, centered around coastal cities, and dependent on water supplies fed by distant ice and snow melt, and with the great disparities in wealth between and within countries and regions, it will be nearly impossible to adapt to all of the climate change impacts in the quick time-frame in which they will occur.<sup>188</sup> The deadliest fire in California history, the Camp Fire, was exacerbated by drought and wind conditions associated with climate change.<sup>189</sup>

53. Third, and perhaps most importantly, the climate change we are now experiencing is caused largely by human activity.<sup>190</sup> This means that unlike with respect to past climate change events, by changing our activities humans can mitigate or even halt this warming before it causes catastrophic and irreversible effects.<sup>191</sup> Stopping, or at least greatly curtailing, the activities that discharge greenhouse gases into the air, such as the burning of fossil fuels and deforestation, and encouraging activities that remove CO<sub>2</sub> from the atmosphere, can greatly reduce and even end global warming and its accompanying consequences within the lifetimes of today's children.<sup>192</sup>
54. To protect Earth's climate for present and future generations, we must restore Earth's energy balance. The best available science shows that if the planet once again sends as much energy into space as it absorbs from the sun, this will restore the planet's climate equilibrium.<sup>193</sup> Scientists have accurately calculated how Earth's energy balance will change if we reduce long-lived greenhouse gases such as carbon dioxide.<sup>194</sup> Humans have

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<sup>187</sup> J. Abatzoglou et al., *A Primer on Global Climate Change and Its Likely Impacts* 15, in CLIMATE CHANGE: WHAT IT MEANS FOR US, OUR CHILDREN, AND OUR GRANDCHILDREN (Joseph F. DiMento & Pamela Doughman eds., MIT Press 2007).

<sup>188</sup> See generally U.S. Agency Int'l Dev. (USAID), *Adapting to Climate Variability and Change: A Guidance Manual for Development Planning* (2007) (discussing difficulty of adapting to climate change), available at [http://pdf.usaid.gov/pdf\\_docs/PNADJ990.pdf](http://pdf.usaid.gov/pdf_docs/PNADJ990.pdf); see also *Global Climate Change Impacts*, *supra* note 2 at 12 ("Climate change will combine with pollution, population growth, overuse of resources, urbanization, and other social, economic, and environmental stresses to create larger impacts than from any of these factors alone.").

<sup>189</sup> Matt Simon, *The Terrifying Science Behind California's Massive Camp Fire*, *Wired* (Nov. 9, 2018), available at <https://www.wired.com/story/the-terrifying-science-behind-californias-massive-camp-fire/>.

<sup>190</sup> See *Global Climate Change Impacts*, *supra* note 2 at 20; see also EPA, *TS Endangerment Findings* 47-51; IPCC, *AR4* at 39.

<sup>191</sup> *Global Climate Change Impacts*, *supra* note 2 at 107 ("By mid-century and beyond, however, today's emissions choices would generate starkly different climate futures: the lower the emissions, the smaller the climatic changes and resulting impacts.").

<sup>192</sup> *Id.* at 12 ("Future climate change and its impacts depend on choices made today.").

<sup>193</sup> J. Abatzoglou et al., *supra* note 190, at 15-22.

<sup>194</sup> J. Hansen, *STORMS OF MY GRANDCHILDREN: THE TRUTH ABOUT THE COMING CLIMATE CATASTROPHE AND OUR LAST CHANCE TO SAVE HUMANITY* 166 (Bloomsbury USA eds. 2009) ("Also our best current estimate for the planet's mean energy imbalance over the past decade, thus averaged over the solar cycle, is about +0.5 watt per square meter. Reducing carbon dioxide to 350 ppm would increase emission to space 0.5 watt per square meter, restoring the planet's energy balance, to first approximation.").

altered Earth's energy balance<sup>195</sup> and are currently causing a planetary energy imbalance of approximately one-half watt<sup>196</sup>. We would need to reduce atmospheric carbon dioxide concentrations by about 40 ppm, in order to increase Earth's heat radiation into space by one-half watt, if other long-lived gases stay the same as today.<sup>197</sup> We must reduce atmospheric carbon dioxide concentration to 350 ppm to avoid the threats contained herein.<sup>198</sup>

55. In a statement by the 21 Academies of Sciences of British Commonwealth, those Academies stated:

“The world's climate is changing, and the impacts are already being observed. Changing agricultural conditions, ocean warming and acidification, rising sea levels, and increased frequency and intensity of many extreme weather events are impacting infrastructure, environmental assets and human health.

Impacts such as higher rainfall and increased plant growth will be beneficial in some cases.

However, others will be detrimental and felt more widely, changing ecosystems and weather patterns, and disrupting industries, economies, food supplies and livelihoods.

The consensus view of the global climate science community based on current evidence is that avoiding the worst impacts of climate change will require concerted global action to reduce atmospheric carbon.

A target to limit warming to below 2°C above pre-industrial levels was recognized by 160 nations that ratified the 2015 Paris Agreement on Climate Change; a bold and vital step towards addressing climate change.

Meeting this target will require achieving net-zero global greenhouse gas emissions in the second half of the Century followed by active decarbonisation of the atmosphere.

Our work towards this objective has only just begun.

Even if all countries meet their current commitments to greenhouse gas emission reductions, a global temperature rise of more than 3°C above pre-industrial levels is projected by 2100 according to current data.

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<sup>195</sup> IPCC, *AR4* at 37 (“[T]he global average net effect of human activities since 1750 has been one of warming, with a radiative forcing of +1.6 [+0.6 to +2.4] W/m<sup>2</sup>.”).

<sup>196</sup> D.M. Murphy et al., *An observationally based energy balance for the Earth since 1950* 114 J. Geophysical Res. Letters D17107 (2009).

<sup>197</sup> J. Hansen *supra* note 196 at 166; *see also* J. Hansen et al., *Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?*, 2 OPEN ATMOS. SCI. 217, 217-231 (2008).

<sup>198</sup> *Id.* at 217 (“If humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted, Paleoclimate evidence and ongoing climate change suggest that CO<sub>2</sub> will need to be reduced from its current 385 ppm to at most 350 ppm.”).

This would lead to profound impacts affecting billions of people throughout the world.

This challenge needs to be addressed now, and the efforts required will bring enduring social, environmental and economic benefits and opportunities.”<sup>199</sup>

56. The best available science also shows that to protect Earth’s natural systems, average global surface heating must not exceed 1° C this century.<sup>200</sup> To prevent global heating greater than 1° C, concentrations of atmospheric CO<sub>2</sub> must decline to less than 350 ppm this century.<sup>201</sup> However, today’s atmospheric CO<sub>2</sub> levels are about 408 ppm<sup>202</sup> and are rising.
57. Atmospheric CO<sub>2</sub> levels are currently on a path to reach a climatic tipping point.<sup>203</sup> Absent immediate action to reduce CO<sub>2</sub> emissions, atmospheric CO<sub>2</sub> may reach levels as high as about 1000 ppm<sup>204</sup> and a temperature increase of up to 5° C by 2100.<sup>205</sup> Life on Earth as we know it, is unsustainable at these levels.
58. The Board has the present ability to curtail the environmental harms detailed above. Atmospheric CO<sub>2</sub> concentrations will decrease if people stop (or greatly reduce) their burning of fossil fuels.<sup>206</sup> The environmental harms and threat to human health and safety as described above can only be avoided if atmospheric CO<sub>2</sub> concentrations are immediately reduced. Any more delay risks irreversible and unacceptable consequences for youth and future generations.
59. Fossil fuel emissions must decrease rapidly if atmospheric CO<sub>2</sub> is to be returned to a safe level in this century.<sup>207</sup> Improved forestry and agricultural practices can provide a net drawdown of atmospheric CO<sub>2</sub>, primarily via reforestation of degraded lands that are of little or no value for agricultural purposes, returning us to 350 ppm somewhat sooner.<sup>208</sup>

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<sup>199</sup> Commonwealth Acads. Of Sci. Consensus Statement on Climate Change (2018), *available at* <https://royalsociety.org/~media/news/2018/commonwealth-academies-consensus-statement-on-climate-change-12-march-2018.pdf>.

<sup>200</sup> See J.E. Hansen & M. Sato, *supra* note 187; See also IPCC, *AR4* at 48 (“For increases in global average temperature exceeding 1.5 to 2.5°C and in concomitant atmospheric CO<sub>2</sub> concentrations, there are projected to be major changes in ecosystem structure and function, species’ ecological interactions and shifts in species’ geographical ranges, with predominantly negative consequences for biodiversity and ecosystem goods and services, e.g. water and food supply.”).

<sup>201</sup> See J. Hansen et al., *supra* note 196 at 217.

<sup>202</sup> *Atmospheric CO<sub>2</sub> for March 2011*, CO<sub>2</sub>NOW, <http://co2now.org/> (last visited November 17, 2018).

<sup>203</sup> J. Hansen, *supra* note 196 at 260.

<sup>204</sup> IPCC, *AR4* at 66-7.

<sup>205</sup> IPCC, *AR4* at 46.

<sup>206</sup> HARVEY BLATT, *AMERICA’S ENVIRONMENTAL REPORT CARD – ARE WE MAKING THE GRADE?* xiii (MIT Press 2d ed. 2011) (“How can we stop this change in our climate? The answer is clear. Stop burning coal and oil, the sources of nearly all the carbon dioxide increase.”).

<sup>207</sup> See J. Hansen et al., *supra* note 197 at 217 (discussing the need to reduce atmospheric carbon dioxide concentration to 350 ppm).

<sup>208</sup> *Id.* at 227.

However, the potential of these measures is limited. Immediate and substantial reductions in carbon dioxide emissions are required in order to conserve Pennsylvania's public natural resources and to ensure that the youth and future generations of children inherit a planet that is habitable.<sup>209</sup>

60. Because most fossil fuel CO<sub>2</sub> emissions will remain in the surface carbon reservoirs for millennia, it is imperative that fossil fuel CO<sub>2</sub> emissions be rapidly terminated. Global CO<sub>2</sub> emissions must be reduced by 45% from 2010 levels by 2030 and must reach net neutrality by "around 2050."<sup>210</sup> The failure to act promptly will not only increase the costs of future reductions, it will have irreversible adverse effects on the youth and all future generations, as detailed above.
61. There are more than 1,000 legal and policy tools that can be used to achieve the deep decarbonization necessary to conserve Pennsylvania's public natural resources. An economy-wide GHG auction-cap-and-trade program with a cap declining to zero is a fundamental aspect of many of those. Without a uniform cap, intersectoral leakage that will undermine the effectiveness of other programs will be inevitable.<sup>211</sup>

**B. Climate change is already occurring in the State of Pennsylvania and is projected to significantly impact the State in the future.**

62. Since 1970, annual average temperatures in the Northeast region of the United States have increased by 2 degrees (Fahrenheit) in the summer, and by twice as much in the winter. Temperatures are expected to continue warming, with projected additional increases of approximately 3 degrees in the spring and 4 degrees in the summer, fall and winter months by the middle of the current century.<sup>212</sup>
63. By the end of the current century, without significant world-wide decreases in carbon dioxide emissions, it is projected that summer temperatures in the northeastern U.S. could rise by as much as 6-14 degrees above historic averages, and as much as 8-12 degrees in the winter.<sup>213</sup>
64. Temperatures in Harrisburg, Pennsylvania have increased 1.2 degrees in the last century,

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<sup>209</sup> *IPCC 2018 Report*

<sup>210</sup> *Id.* at 14, ;Hansen et al., at 211.

<sup>211</sup> Michael B. Gerrard & John C. Dernbach eds., *Legal Pathways to Deep Decarbonization in the United States* (ELI 2018).

<sup>212</sup> See U.S. Glob. Change Res. Program, *Global Climate Change Impacts on the United States: Regional Climate Impacts on the Northeast* (Washington, D.C., 2000); Northeast Climate Impacts Synthesis Team, Union of Concerned Scientists, *Confronting Climate Change in the United States: Northeast Science, Impacts and Solutions* (2007), available at [https://www.ucsusa.org/sites/default/files/legacy/assets/documents/global\\_warming/pdf/confronting-climate-change-in-the-u-s-northeast.pdf](https://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/pdf/confronting-climate-change-in-the-u-s-northeast.pdf).

<sup>213</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215; Union of Concerned Scientists, *Climate Change in Pennsylvania: Impacts and Solutions in the Keystone State* (2008), available at [https://www.ucsusa.org/sites/default/files/legacy/assets/documents/global\\_warming/Climate-Change-in-Pennsylvania\\_Impacts-and-Solutions.pdf](https://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/Climate-Change-in-Pennsylvania_Impacts-and-Solutions.pdf).

and precipitation has increased as much as 20% in many parts of the Commonwealth. In the next century, it is predicted that temperature at this location will increase a further 4 degrees, with seasonal increases in precipitation between 10-50%.<sup>214</sup>

65. An increase in frequency of summer temperatures exceeding “extreme heat” (conditions of over 90 degrees) is expected as a result of continued climate change. By the year 2050, it is estimated that southern and eastern Pennsylvania will receive as many as 50 days per year exceeding 90 degrees, and as many as 70 days per year by the end of the century.<sup>215</sup>
66. The number of days below 32 degrees (freezing) is expected to decrease by half in the next several decades, and disappear in all but the highest altitudes of Pennsylvania by the end of the current century.<sup>216</sup>
67. It is predicted that warming will lead to an increased growing season in the northeast United States. This resulting lengthening will cause spring to begin three weeks earlier and winter to arrive three weeks later by the end of the current century.<sup>217</sup>
68. Precipitation has increased by 10% in the last century, and further increases in precipitation by an additional 10-30% are expected within the next century.<sup>218</sup>
69. As average winter temperatures increase, more precipitation will fall in the form of rain instead of snow, which will reduce snowpack and increase the likelihood of flooding during the winter and spring months.<sup>219</sup>
70. In general, the amount of rainfall received during extremely wet days of the summer and fall months is expected to increase. It is also expected that an increase in the frequency and intensity of summer thunderstorms may occur.<sup>220</sup>
71. Increases in winter and spring precipitation (combined with the early melting of snowpack) are expected to shift the timing of peak surface water flows earlier in the spring and cause low-flows in the late summer and early fall. This is of special concern for the

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<sup>214</sup> See EPA, Office of Pol’y, Plan., and Evaluation, *Climate Change and Pennsylvania*, Pub. No. 230-F-97-00811 (1997); Ctr. for Integrative Env’tl. Res., U. Md., *Economic Impacts of Climate Change on Pennsylvania* (2008) available at <http://40w95614sn5m1jd0sb353zli.wpengine.netdna-cdn.com/pittsburgh/files/2016/12/Pennsylvania-Economic-Impacts-of-Climate-Change-Full-Report.pdf>; Ctr. for Health and the Global Env’t., Harv. Med. Sch., *Climate Change and Health in Pennsylvania* (2011).

<sup>215</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215.

<sup>216</sup> Union of Concerned Scientists, *supra* note 215; Ctr. for Health and the Global Env’t., *supra* note 217.

<sup>217</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215.

<sup>218</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Union of Concerned Scientists, *supra* note 215; Ctr. for Integrative Env’tl. Res., *supra* note 217.

<sup>219</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; Ctr. for Integrative Env’tl. Res., *supra* note 217.

<sup>220</sup> See EPA, *supra* note 217; Ctr. for Integrative Env’tl. Res., *supra* note 217.

tributaries to the Ohio River, where peak flows in the spring are expected to arrive several weeks earlier with a 4-degree increase in average annual temperature.<sup>221</sup>

72. Climate change and winter warming are correlated with the earlier break-up of ice on lakes and rivers, which increases the influx of early spring waters into surface flows.<sup>222</sup>
73. Groundwater recharge could be adversely affected by declines in groundwater supply during the late summer and early fall. Precipitation events during these months are expected to be intense, but with greater length of time between events.<sup>223</sup>
74. Some of the most extreme flood events on record in the United States occurred in Pennsylvania. Increases in winter and spring runoff are expected to increase the incidence of flooding. Flood events may also increase the amount of pollution, erosion, and nutrient inputs moving from urban, agricultural, and industrial lands, into wetland ecosystems.<sup>224</sup>
75. Warmer ambient temperatures will warm surface and groundwater supplies, potentially compromising the quality of these resources.<sup>225</sup>
76. The increased frequency and intensity of flooding, drought, wildfires and invasion of non-native plant species are all anticipated to cause, and accelerate, a rapid transformation of Pennsylvania's current landscape and its ecosystems.<sup>226</sup>
77. A significant increase in summer drying is expected to change tree species composition in forested regions of the State and lead to an overall decrease in forested land. With warmer conditions, it is also expected that forested lands will shift northward, and grasslands and pasture will replace many forested areas. A 15-20% overall loss of forestlands is projected.<sup>227</sup> This will have particularly adverse impacts on the Allegheny plateau, which currently produces 80% of the world's cherry supply, and which will be converted from
78. A change in climate has the ability to increase the occurrence of wildfires by increasing drought conditions, increasing insect pest and disease pressure with a longer growing season, and also cause tree-community shifts to accommodate more fire-prone species.

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<sup>221</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; Pa. Dep't. of Env'tl. Protection, *Pennsylvania Climate Adaptation Planning Report: Risks and Practical Recommendations* (2014) available at <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=6636&DocName=2700-RE-DEP4303%20Combined.pdf>; EPA, *supra* note 217.

<sup>222</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215.

<sup>223</sup> See Pa. Dep't. of Env'tl. Protection, *supra* note 224; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215.

<sup>224</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Pa. Dep't. of Env'tl Protection, *supra* note 224; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215; Ctr. for Integrative Env'tl. Res., *supra* note 217.

<sup>225</sup> See Pa. Dep't. of Env'tl Protection, *supra* note 224.

<sup>226</sup> See Pa. Dep't. of Env'tl Protection, *supra* note 224; EPA, *supra* note 217.

<sup>227</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215; Pa. Dep't. of Env'tl Protection, *supra* note 224; EPA, *supra* note 217.

Increased wildfire events will increase the rate at which invasive plant species will be able to encroach on forested lands.<sup>228</sup>

79. Initial increases in forest growth may be observed in response to elevated levels of atmospheric CO<sub>2</sub>, but within a short amount of time forests will begin to be adversely affected by high amounts of ground-level ozone. Ground-level ozone is damaging to trees and plants.<sup>229</sup>
80. With forest habitat losses, it is expected that the area's Bald Eagles will also face decline, as they migrate north with shifting climate patterns and resources. This event is predicted to coincide with a 25% overall decline in the biodiversity of bird species.<sup>230</sup>
81. The Pocono Mountains and the Two Mile Run wetlands in Pennsylvania are home to many rare and valuable species of trees and wildlife, as well as several acres of public wilderness. The flora and fauna could have difficulty adapting to climate change, and with only a few corridors allowing for migration, it is possible that there could be a significant reduction in biodiversity, causing local extinctions.<sup>231</sup>
82. With lengthened growing seasons and warmer temperatures, the growth, reproductive capability, and geographical range of forest insect pests, such as the Hemlock Woolly Adelgid, will all be increased.<sup>232</sup>
83. The Erie National Wildlife Refuge provides aquatic resources vital to the preservation of approximately 70 species of fish and 25 species of freshwater mussels, many of which are already endangered. Further pressure to this ecosystem from climate change puts the aquatic wildlife at increased risk for extirpation.<sup>233</sup>
84. Brook trout and other coldwater fish are expected to decline in population due to warmer water temperatures in the rivers and lakes of Pennsylvania.<sup>234</sup>
85. Invasive plant and wildlife species better adapted to hotter and drier conditions (like those predicted by climate change models) have a higher chance of successfully overtaking native species (which are expected to experience decreases in geographic range due to stress from climate change). These stresses include seasonal drying of wetland habitat, increase in the frequency and severity of extreme weather events, and changes in atmospheric chemical composition.<sup>235</sup>

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<sup>228</sup> See *id.*

<sup>229</sup> See EPA, *supra* note 217; Ctr. For Integrative Env'tl. Res., *supra* note 217; Ctr. For Health and the Global Env't., *supra* note 217.

<sup>230</sup> See EPA, *supra* note 217.

<sup>231</sup> See Pa. Dep't. of Env'tl. Protection, *supra* note 224; EPA, *supra* note 217.

<sup>232</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215; Pa. Dep't. of Env'tl. Protection, *supra* note 224; Union of Concerned Scientists, *supra* note 215.

<sup>233</sup> See EPA, *supra* note 217.

<sup>234</sup> See Union of Concerned Scientists, *supra* note 215.

<sup>235</sup> See Pa. Dep't. of Env'tl. Protection, *supra* note 224.

86. Heat waves are predicted to become much more common, which will pose increased risks to human health. An increase in average temperatures is expected to increase the number of heat-related illnesses and deaths, especially in cities. One study has predicted that the number of heat related deaths could increase by as much as 90% by the year 2050, increasing from 130 per year to over 240.<sup>236</sup>
87. Increase in flooding is of high concern, as the increase in the frequency and magnitude of flooding events will increase the incidence of related morbidity and mortality.<sup>237</sup>
88. Increased emissions combined with higher temperatures will cause an increase in levels of ground-level ozone. Ozone is a toxic component of smog with the potential to cause serious long-term and permanent damage to lung tissues with repeat exposure. A 4-degree increase in average temperature near Pittsburgh could increase concentration of ground-level ozone by 8%.<sup>238</sup>
89. Increases in temperature and humidity levels (thought to increase mold) can aggravate symptoms of respiratory allergies and asthma by stimulating plant pollen production. This problem will be further exacerbated by high availability of atmospheric CO<sub>2</sub>, which is also predicted to stimulate plant growth early in the season.<sup>239</sup>
90. Due to “Island Heat” effects in urban areas, the effects of climate change will be much more extreme in cities, which may be as much as 7-10 degrees warmer than surrounding suburban areas.<sup>240</sup>
91. With milder, shorter winters and longer growing seasons, insects and other disease vectors are expected to increase. Risk of increase in West Nile Virus, malaria, and dengue transmission are all of special concern.<sup>241</sup>
92. Many waterborne diseases (such as cholera) thrive in warm water conditions, and will present an increased risk to public health as temperatures and flood frequency both increase. There is also increased risk of sewage and septic system overflows during times of flooding.<sup>242</sup>

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<sup>236</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Pa. Dep’t. of Env’tl. Protection, *supra* note 224; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215; Ctr. For Health and the Global Env’t., *supra* note 217.

<sup>237</sup> See Pa. Dep’t. of Env’tl. Protection, *supra* note 224; Ctr. For Integrative Env’tl. Res., *supra* note 217.

<sup>238</sup> See U.S. Glob. Change Res. Program, *supra* note 215; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215; Ctr. For Health and the Global Env’t., *supra* note 217.

<sup>239</sup> See Pa. Dep’t. of Env’tl. Protection, *supra* note 224; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215; Ctr. For Integrative Env’tl. Res., *supra* note 217; Ctr. For Health and the Global Env’t., *supra* note 217.

<sup>240</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Ctr. For Health and the Global Env’t., *supra* note 217.

<sup>241</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215; Pa. Dep’t. of Env’tl. Protection, *supra* note 224; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215; Ctr. For Health and the Global Env’t., *supra* note 217.

<sup>242</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Pa. Dep’t. of Env’tl. Protection, *supra* note 224; Union of Concerned Scientists, *supra* note 215; Ctr. For Integrative Env’tl. Res., *supra* note 217.

93. Warmer temperatures and increased seasonal precipitation could increase low-lying vegetation. This may lead to an increase in the population of ticks (and their rodent hosts) possibly carrying Lyme's and other tick-borne diseases.<sup>243</sup>
94. Changes to forest tree species include shifts from the current maple-dominated community composition to a community dominated by species better adapted to warmer climates, such as pines and oak. The additional risk from more frequent and severe forest fires will increase as the region experiences a hotter and drier climate. An overall loss of forested lands between 15-25% is projected by the end of the current century.<sup>244</sup>
95. Climate changes and a shift in plant and animal communities will lead to a loss of wildlife and habitat. This reality threatens the \$181 million annual industry that is received by the state in the form of hunting, fishing, and wildlife-viewing tourism.<sup>245</sup>
96. Agricultural crop yields are heavily reliant on temperature, moisture and day-to-day weather. They are also especially vulnerable to climate change. Major, regional shifts are expected to occur and it will be difficult to maintain current production rates, and quality, of food commodities. It is predicted that crop production will shift northward, which will make adaptation for farmers difficult.<sup>246</sup>
97. Initial increases in forest and crop growth may be observed in response to elevated levels of atmospheric CO<sub>2</sub>, but within a short amount of time plants will begin to be adversely affected by high amounts of ground-level ozone. Ground-level ozone is damaging to trees and plants.<sup>247</sup>
98. Milder winters increase the likelihood that weeds (such as kudzu), pests, and pathogens, previously unable to survive New England's lower temperatures will be able to successfully invade. This will lead to increased costs for pest control and is likely to result in other costly damages.<sup>248</sup>
99. Overall crop yield for hay and corn is expected to decrease by as much as 39% by the year 2100, leading to large changes in the number of acres farmed and the subsequent production rates.<sup>249</sup>
100. As winters become milder, the number of freezing days available for certain crops (such as Concord grapes) will be more infrequent, with an estimated projection of harvests only every other year by 2050, and only 3 out of every 5 years by the end of the century. Apple

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<sup>243</sup> See Pa. Dep't of Env'tl. Protection, *supra* note 224; EPA, *supra* note 217; Ctr. For Health and the Global Env't, *supra* note 215.

<sup>244</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; EPA, *supra* note 217; Union of Concerned Scientists, *supra* note 215.

<sup>245</sup> See Ctr. For Integrative Env'tl. Res., *supra* note 217.

<sup>246</sup> See U.S. Glob. Change Res. Program, *supra* note 215.

<sup>247</sup> See *id.*

<sup>248</sup> See Northeast Climate Impacts Synthesis Team, *supra* note 215.

<sup>249</sup> See EPA, *supra* note 217; Ctr. For Integrative Env'tl. Res., *supra* note 217.

orchards will also decline in yield with decreased winter freezing.<sup>250</sup>

101. Livestock production is expected to decline as the cost of feed and ventilation for indoor animals increases, and as decreased crop production is expected to limit forage resources. Increased temperatures may also cause direct stress to animals, causing decreases in growth and a projected 20% or more decrease in milk production.<sup>251</sup>
102. Increasing precipitation received during downpours is expected to increase flooding, increase damages to infrastructure, and cause human health problems. This is especially so in cities, where heavy rains can overwhelm drainage systems and water treatment facilities, increasing the likelihood of waterborne diseases and therefore increasing associated health care costs.<sup>252</sup>
103. Increased flooding poses a serious risk to transportation agencies. More frequent and severe storm events coupled with flooding and structural failures resulting from high-heat conditions are expected to cause damage to roadways, bridges, railways, and other utility systems.<sup>253</sup>
104. Decreased water levels could cause several economic issues for all of the states bordering the Great Lakes. Low water levels lead to a decrease in depth of navigation channels and will cause damage to vessels and increase repair expenses, as well as require the rebuilding of docks and harbors. These transformations are expected to require between \$85 and \$142 million dollars annually.<sup>254</sup>
105. If the Commonwealth of Pennsylvania had begun reducing carbon emissions in 2005, it would have done its part by protecting a stable livable atmosphere by 2100 with only a 3% annual reduction in emissions. Because we have waited, reaching a safe atmosphere by the end of the century will require a 6% annual reduction in emissions beginning in 2013. If we delay until 2020 to reduce our greenhouse gas emissions we would have to reduce emissions by 15% every year until the end of this century to ensure a livable atmosphere for our generation and the next.<sup>255</sup>

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<sup>250</sup> See Union of Concerned Scientists, *supra* note 215.

<sup>251</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; Union of Concerned Scientists, *supra* note 215; Ctr. For Health and the Global Env't., *supra* note 217.

<sup>252</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Northeast Climate Impacts Synthesis Team, *supra* note 215; Pa. Dep't. of Env'tl. Protection, *supra* note 224; EPA, *supra* note 217; Ctr. for Integrative Env'tl. Res., *supra* note 217.

<sup>253</sup> See U.S. Glob. Change Res. Program, *supra* note 215; Pa. Dep't. of Env'tl. Protection, *supra* note 224; Ctr. for Integrative Env'tl. Res., *supra* note 217.

<sup>254</sup> See Ctr. for Integrative Env'tl. Res., *supra* note 217.

<sup>255</sup> J. Hansen et al., *Assessing "Dangerous Climate Change": Required Reduction of Carbon Emissions to Protect Young People, Future Generations and Nature*, PLOS ONE, 8(12), (2013)

<http://pubs.giss.nasa.gov/abs/ha08510t.html>. ("these scenarios assume a massive 100 GtC reforestation program").



### III. Legal Basis for the Proposed Regulation.

The legal mandate imposed upon the Commonwealth by Article I, § 27 of the Pennsylvania Constitution to take meaningful action to limit GHG emissions and the legal authorization to adopt the proposed regulation under the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001 *et seq.* is described in Robert B. McKinstry, Jr. & John C. Dernbach, *Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption*, 10 Mich. J. Env't'l & Admin. L 102 (201\_), attached hereto and incorporated herein as Exhibit C. Without limiting the foregoing, Petitioners allege:

1. Article I, § 27 of the Pennsylvania Constitution provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Its first clause creates individual rights to environmental attributes; the second creates additional rights by making Pennsylvania's public natural resources the property of all the people, including future generations; and the third makes the Commonwealth, and its constituent units, trustees for the environment.

2. The rights provided by the first and second clauses of the ERA represent fundamental, individual rights akin to free speech, freedom of religion and other rights enumerated in Article I of the Pennsylvania Constitution, and they should be interpreted as such. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 953-54, 976 (Pa. 2013) (plurality) ("*Robinson Township*"); *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 930-31 (Pa. 2017) ("*PEDF*").
3. The first clause "affirms a limitation on the state's power to act contrary" to the people's right to "clean air, pure water, and the preservation of the natural, scenic, historic, and esthetic values of the environment." As a result, "laws of the Commonwealth that unreasonably impair the right are unconstitutional." *Robinson Township, supra*, 83 A.3d at 951; *PEDF*, 161 A.3d at 930-36.
4. "The drafters seemingly signaled an intent that the concept of public natural resources would be flexible to capture the full array of resources implicating the public interest, as these may be defined by statute or at common law." *Robinson Township, supra*, 83 A.3d at 955; *PEDF*, 161 A.3d at 931.
5. The public natural resources that are made the property of all the people by the second clause and the subject of the Commonwealth's duty as a trustee include "not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property." *Robinson Township, supra*, 83 A.3d at 955; *PEDF*, 161 A.3d at 931. The constitutional rights

created by the second clause of the ERA include the right to enforce the duty of a trustee created by the third clause. *Robinson Township, supra*, 83 A.3d at 955-956; *PEDF*, 161 A.3d at 930-36.

6. The public trust provisions of the ERA are self-executing, as they create constitutional duties that bind all three branches of state government, and they can be applied and enforced by the judicial branch without further legislative action. *Robinson Township, supra*, 83 A.3d at 966-67; *PEDF*, 161 A.3d at 936-37.
7. The Commonwealth's duties as a trustee should be governed by the established law applicable to trusts and trustees, including the legal principles articulated in the Restatement of Trusts. *Robinson Township, supra*, 83 A.3d at 955-57; *PEDF*, 161 A.3d at 916-21, 28. These trustee duties include prudence ("exercise[ing] ordinary skill, prudence and caution in managing corpus of trust"), loyalty (administering the trust "solely in beneficiary's" interest), and impartiality ("treat[ing] all [beneficiaries] equitably in light of the purposes of the trust"). *Robinson Township, supra*, 83 A.3d at 957, 959; *PEDF*, 161 A.3d at 930-37.
8. Although the climate is not expressly protected under the ERA, the ERA's language and legislative history, as well as the reasoning of both *Robinson Township* and *PEDF*, compel the conclusion that a climate free of human disruption is protected by Article I, § 27.
9. The right to a natural climate unaffected by climate disruption is included within the ERA's first clause, which protects the people of Pennsylvania's right to "clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment" because greenhouse gas pollution and the climate disruption that it will cause will both adversely affect air and water quality.
10. Levels of carbon dioxide in the atmosphere causing climate disruption also violates the people's right to clean air, because pollution is a relative concept. Levels of naturally occurring substances that disrupt the natural functioning of natural ecosystems constitutes pollution. The ERA's right to "clean air," as applied to carbon dioxide, means levels necessary to support plant life and ecosystems, among other things, but not so high as to disrupt ecosystems, as will occur in climate disruption. Similarly, "pure water" means water with levels of carbon dioxide that support the normal functioning of aquatic ecosystems, and that conserves and maintains public natural resources, but not so high as to acidify the water and disrupt those natural systems
11. A stable climate not disrupted by excessive concentrations of GHGs also provides critical natural and historic values of the environment.
12. The right to a natural climate unaffected by human-caused climate disruption is included within the ERA second clause's protection of the public's right to the conservation and maintenance of public natural resources. The *Robinson Township* plurality emphasized

that the concept of public natural resources encompassed a wide range of values of the natural environment:

At present, the concept of public natural resources includes not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property.

*Robinson Twp. v. Commonwealth*, 83 A.3d 901, 955 (Pa. 2013) (plurality); *accord* Pa. *Envtl. Def. Found. v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017).

13. Catastrophic climate disruption would radically impair and possibly eliminate the “wild flora, and fauna (including fish),” public forests and their ecosystems, and game and wildlife that the plurality in *Robinson Township* expressly recognized as falling within the public trust obligations of the second and third clauses of Article I, § 27. *Robinson Twp.*, 83 A.3d at 955.
14. A stable climate, not disrupted by the types of changes caused by human emissions of GHGs in the atmosphere, should be understood as a public natural resource to which the people have a right and which the Commonwealth has a trustee’s duty to conserve and maintain. The climate is not a private resource. Rather, the climate represents the seasonal average ranges of temperature, precipitation and other atmospheric conditions in a particular area over a long period of time. Climate determines the nature of wild and other naturally occurring vegetation, fish and other wildlife; the amount and quality of ground and surface water; the characteristics of soils; the flow and extent of streams, rivers and wetlands; air quality; and most other characteristics of naturally occurring ecosystems and natural communities.
15. The public trust rights under Article I, § 27 inhere in “all the people including generations yet to come.” Thus, the virtual certainty that effects of climate disruption will be inequitably distributed and will have greater impacts on generations yet to come implicates Article I, § 27 even if only some people are adversely affected.
16. The Commonwealth has the following overall duties under Article I, § 27 concerning climate disruption. (1) Under the first clause, the Commonwealth may not act contrary to the people’s right to a natural climate unaffected by climate disruption; “laws of the Commonwealth that unreasonably impair the right are unconstitutional.” Under the second and third clauses of the public trust provisions of Article I, § 27, the Commonwealth has two duties. One is “to prohibit the degradation, diminution, and depletion” of a natural climate unaffected by human-caused climate disruption, whether harm to the climate results “from direct state action or from the actions of private parties.” The other is “to act affirmatively via legislative action” to conserve the natural climate and prevent undue disruption. A third duty, which stems from the duty of private trust law duty of prudence, is that the Commonwealth must analyze the effect of its decisions on the public’s right to be protected against climate change prior to making them.

17. A judicially ascertainable standard for determining the emissions reductions required to conserve and maintain the climate is provided by an international treaty ratified by the United States, the United Nations Framework Convention on Climate Change (UNFCCC), 1771 U.N.T.S. 107, [http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf), the Paris Agreement, Dec. 12, 2015, [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php), adopted pursuant to that Convention, and the body of internationally-accepted scientific evidence endorsed by the nations of the world pursuant to the UNFCCC and the Paris Agreement. Pennsylvania's share of the reductions is governed by the federal Clean Air Act.
18. The objective of the UNFCCC is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." UNFCCC, art. 2. Reflecting the evolving scientific consensus on the temperature rise at which serious climate disruption will occur, the Paris Agreement interprets the objective to the UNFCCC to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and to "to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change." *Paris Agreement*, art. 2, § 1.
19. Also reflecting the scientific consensus of the nations of the world, the Paris Agreement further defines the emissions reductions required to keep temperatures below those thresholds by requiring that the Parties "achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century." *Paris Agreement*, art. 4 § 1.
20. If the entire world needs to reach a point where emissions of GHGs are no greater than their removal by GHG sinks by the second half of this century, Pennsylvania will also need to achieve that balance by that time. Therefore, at a minimum, Pennsylvania must develop an emissions reduction trajectory that reduces net emissions to zero, meaning the elimination of all GHG emissions other than those geologically or biologically returned to sinks (*i.e.* sequestered) by the second half of the 21<sup>st</sup> century.
21. This is consistent with the UNFCCC requirement that the developed nations take the lead in reducing emissions, enacting policies to limit emissions, and enhance carbon sinks. UNFCCC, art. 3, § 1; art. 3 § 3; art. 4, § 2(a); *Paris Agreement*, art. 4, § 4. These policies are to be precautionary, comprehensive and "cost-effective so as to ensure global benefits at the lowest possible cost . . . and comprise all economic sectors." UNFCCC, art. 3 §§ 2, 3; art. 4, § 2.
22. The proposed regulation will implement the goals of the UNFCCC and the Paris Agreement consistent with the above referenced principles.
23. The provisions of the federal Clean Air Act governing the obligations of states support the proposition that Pennsylvania should consider these treaty obligations in construing its obligations as a trustee under Article I, § 27. Section 115 of the Clean Air Act is triggered

whenever the EPA finds air pollution originating within a state “cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country.” 42 U.S.C. § 7415 (a). When that happens, the EPA must require the state to submit an amendment to the “good neighbor” provision of its state implementation plan, *id.*, § 7410(a)(2)(H)(ii), that will “prevent or eliminate the endangerment.” *Id.* §7415(b). These requirements exist because EPA has found that emissions of GHGs within the United States endanger health and the environment in other nations and virtually all other nations of the world are parties to the UNFCCC and the Paris Agreement, which provides the United States reciprocal rights with respect to the prevention and control of greenhouse gases.<sup>256</sup>

24. A regulatory program that is designed to take all measures reasonably necessary to conserve the corpus of the environmental trust resource for the benefit of the trust’s beneficiaries will most closely hew to the intent and text of the ERA as interpreted in *PEDF* and the *Robinson Township* plurality. That program should therefore employ all measures reasonably necessary to conserve a stable climate and the public environmental resources it supports. This can be best accomplished by putting a price on emissions of GHGs and by recovering the value of that emissions price as income for the beneficiaries of the trust. The proposed regulation will satisfy these Constitutional requirements.
25. The Board is required to adopt the proposed regulation in substantially the form that has been proposed pursuant to its duty as a trustee under Article I, §27 of the Pennsylvania Constitution under the Supreme Court’s reasoning in *PEDF* and the *Robinson Township* plurality. First, allowing emissions to continue unabated will increase the damage to the corpus of the trust. If a price is put on the emissions consistent with the social cost of carbon, or emitters are otherwise required to implement all emissions reductions up to that cost, the damage to the corpus of the trust will be avoided consistent with the duty to “conserve and maintain” the trust corpus. Second, the social cost of carbon provides a way of measuring the cost of damage from climate change, including damage to public natural resources, through state actions allowing unregulated emissions of GHGs. Third, the Commonwealth’s duty to “act affirmatively via legislative action to protect the environment,” suggests that the state could use a mechanism like that employed in the

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256. *Her Majesty the Queen in Right of Ontario v. Envtl. Prot. Agency*, 912 F.2d 1525, 1528 (D.C. Cir. 1990); “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule,” 74 Fed. Reg. 66,496, 66,514 (Dec. 15, 2009); *Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 18886, 18903 (April 24, 2009); see *Status of Ratification of the Convention*, UNITED NATIONS, <https://unfccc.int/process/the-convention/what-is-the-convention/status-of-ratification-of-the-convention> (196 nations and 1 regional economic integration organization are Parties) (last visited April 17, 2018); *UNFCCC Status as of 17-04-2018*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg\\_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en) (last visited July 9, 2018); *Paris Agreement – Status of Ratification*, UNITED NATIONS, <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (175 Parties have ratified of 197 Parties to the Convention) (last visited Apr. 17, 2018); *Paris Agreement Status as at 17-04-2018*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en) (last visited July 4, 2018). See *The Paris Agreement* art. 2 §1 (a), art. 3, art. 4 §1; see generally Michael Burger et. al., *Legal Pathways to Reducing Greenhouse Gas Emissions Under Section 115 of the Clean Air Act*, UCLA School of Law, Public Law Research Paper No. 16-11 (Jan. 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2742366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2742366).

proposed regulation to constrain the emissions of GHGs that harm public natural resources. This result seems compelled by the text of the ERA and the trustee's duty of prudence as found by the Court in *PEDF*. See *PEDF*, 161 A.3d at 932; see also *id.* at 938 (invalidating transfer of funds because it violated the duty of prudence and the duty to use trust assets in accordance with the trust purposes).

26. The proposed regulations will satisfy the requirements Article I, § 27 and satisfy the following prerequisites:
- The proposed regulation will result in the reduction of emissions sufficient to achieve net carbon neutrality by the second half of the century, if not earlier.
  - The proposed regulation will either impose a cost on emissions consistent with the social cost of carbon or require all emissions reduction measures less than that cost. In so doing, the proposed regulation starts with a lower cost that grows steadily over time, creating consistency with other programs, generating a predictable framework for investment decisions and facilitating a transition from free emissions to emissions that incur a cost.
  - The proposed regulation structure will generate income for the beneficiaries of the trust without impairing the trust's principal.
  - The proposed regulation will cause actual emissions reductions and not result in the transfer of emissions to other unregulated economic sectors, states or nations through the process of leakage.
  - The proposed regulation is authorized by existing law and can be implemented administratively without further legislation.
27. The APCA provides DEP with the authority to regulate air pollution in accordance with the federal Clean Air Act. The APCA states that DEP "shall have the power and its duty shall be to [i]mplement the provisions of the Clean Air Act in the Commonwealth." 35 Pa. Cons. Stat. § 4004(1). The Act further provides that the EQB "[s]hall have the power and its duty shall be to [a]dopt rules and regulations to implement the provisions of the Clean Air Act," which "shall be consistent with the requirements of the Clean Air Act and the regulations adopted thereunder." 35 Pa. Cons. Stat. § 4005(a)(8).
28. GHGs are now clearly pollutants regulated under the Clean Air Act. *Coal. for Responsible Regulation, Inc. v. U.S. E envtl. Prot. Agency*, 684 F.3d 102 (D.C. Cir. 2012) *aff'd in part and rev'd in part on other grounds sub nom*; *Util. Air Regulatory Grp. v. E envtl. Prot. Agency*, 134 S. Ct. 2427 (2014); see also *Funk v. Wolf*, 144 A.3d 228, 250, n.17 (Pa. Commw. Ct. 2016), *aff'd without opinion*, 158 A.3d 642 (Pa. 2017). DEP must regulate those gases, at least to the extent required under the federal Clean Air Act. This includes the requirements under the Clean Air Act's good neighbor provision.
29. The EQB's duty to adopt regulations limiting GHG emissions goes beyond the minimum that may be required under the Clean Air Act, even without considering the

Commonwealth's duty as a trustee under the ERA. The APCA provides the EQB with the authority and the mandatory duty to:

Adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution, applicable throughout the Commonwealth or to such parts or regions or subregions thereof specifically designated in such regulation which shall be applicable to all air contamination sources regardless of whether such source is required to be under permit by this act.

35 Pa. Cons. Stat. § 4005(a)(1).

30. The APCA defines "air contaminant" to include a "gas," which therefore includes greenhouse gases. *Id.* at § 4003 (definition of "air contaminant"). The statute defines "air contamination" as the "presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution". *Id.* The EPA endangerment finding under the Clean Air Act, the 2015 DEP report under the Climate Change Act, and a wide variety of other scientific studies support the conclusion that GHGs constitute air pollution as defined in the Pennsylvania Air Pollution Control Act. *See Massachusetts v. Env'tl. Prot. Agency*, 549 U.S. 497, 528-530 (2007) (analysis of why greenhouse gases are air pollutants under the Clean Air Act).
31. DEP has authority under existing law to regulate GHGs through adoption of regulations by EQB, even in the absence of regulations under the federal Clean Air Act. The Pennsylvania Climate Change Act requires not only a report on greenhouse gas impacts every three years but also requires DEP to develop a climate change action plan for submission to the Governor identifying "cost-effective strategies for reducing and offsetting GHG emissions." 71 Pa. Cons. Stat. §§ 1361.3, 1361.7 (2018). This provision would not make sense unless the APCA allowed regulation of GHGs. The fact that the plan is submitted to the administrative branch rather than the legislative branch suggests that the General Assembly contemplated that the administrative branch could implement those strategies through rule-making and other actions already authorized by the General Assembly. Both the APCA and Article I, § 27 authorize the Department to adopt regulations more stringent than federal regulations and require more stringent regulations where necessary to protect health and conserve the Commonwealth's public natural resources. *Commonwealth, Dep't of Env'tl Res. v. Pa. Power Co.*, 384 A.2d 273, 284-85 (Pa. Commw. Ct.1978); *Eagle Env'tl. II, L.P. v. Commonwealth, Dep't of Env'tl. Prot.*, 144 A.3d 228 (2005).
32. The APCA also provides sufficient authority to support the proposed regulation in that it authorizes the regulation of emissions directly and going "upstream" and regulating fossil fuels where it is impractical to regulate the emissions source. The APCA authorizes and gives the EQB the power and the duty to adopt regulations applicable to "all air contamination sources regardless of whether such source is required to be under permit by this act" and states that these regulations may "prohibit or regulate the combustion of certain fuels." 35 Pa. Cons. Stat. § 4005(a)(1) (1992).
33. The Pennsylvania Uniform Interstate Air Pollution Agreements Act authorizes participation in interstate trading programs, encouraging DEP to coordinate and

cooperate with “State and local authorities of other states affected by air sheds or regional air masses lying partly within another state or states, or moving between or among this State and another state or states. 35 Pa. Cons. Stat. §§ 4101-4106. This authorizes the provision for interstate trading in the proposed regulation, as necessary to prevent leakage.

34. Under the *PEDF* decision, an auction with a reserve price, as provided in the proposed regulation, is constitutionally required to allow the beneficiaries of the trust to benefit from the program. Allowances may be considered to represent ecosystem services in that they represent the limited remaining ability of the atmosphere to absorb additional GHG pollution without disruption. Because the revenues would derive from efforts to preserve the environmental trust, these revenues could be considered the result of the sale of renewable ecosystem services, similar to revenue from timber sales from sustainable management of state forest land.

### III. The Impacts and Parties Affected by the Proposed Regulation.

The proposed regulation will have an impact on all sectors of Pennsylvania's economy, although the impact will vary among businesses and individuals, with some benefitting and some suffering adverse impacts. The proposed regulation is likely to have a significant positive impact on the environment as well as the overall economic and fiscal well-being of the Commonwealth. By reducing GHG emissions from a jurisdiction producing almost one percent of global emissions on the schedule necessary to limit increases in temperature to between 1.5 and 2 degrees C, there is no doubt that the proposed regulation will have a significant positive effect on the natural environment and other trust resources under Article I, § 27 of the Pennsylvania Constitution. It is also likely to have a net positive effect on the Commonwealth's economy and its fiscal health.

Experience with other auction-cap-and-trade programs has confirmed predictions in the economic literature that imposing charges on pollution emissions and returning them to the economy will have an economic stimulatory effect, producing a "double dividend" of environmental improvement and economic growth.<sup>257</sup> Thus, both modeling and analysis of the impact of the auction-cap-and-trade program implemented by the states in the Regional Greenhouse Gas Initiative ("RGGI") have shown that that program has increased the gross state product ("GSP") and created net job growth.<sup>258</sup> A 2017 study concluded that the benefits arising from air quality improvements associated with emissions reductions caused by the RGGI

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<sup>257</sup> Lawrence H. Goulder, *Environmental Taxation and the "Double Dividend:" A Reader's Guide* (Nat'l Bureau of Econ. Research, Working Paper No. 4896, 1994); Francesco Bosello et al., *The Double Dividend Issue: Modeling Strategies and Empirical Findings*, 6 *Env't & Dev. Econ.* 9 (2001); Lars G. Hansen, *Is There a Weak Double Dividend? Some Implications of Regulatory Capture and Revenue Rules for Environmental Taxes*, AKF Forlaget (Aug. 1999); Ian W.H. Parry et. al., *When Can Carbon Abate Policies Increase Welfare? The Fundamental Role of Distorted Factor Markets* (Res; for the Future 1998); see, Robert B. McKinstry, Jr., Adam Rose & Coreen Ripp, *Incentive-Based Approaches to Greenhouse Gas Mitigation in Pennsylvania: Protecting the Environment and Promoting Fiscal Reform*, 14 *Widener L. J.* 205, 220 (2003).

<sup>258</sup> Paul J. Hibbard, Susan F. Tierney, Pavel G. Darling & Sarah Cullinan, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States: Review of RGGI's Third Three-Year Compliance Period (2015-2017)* (April 17, 2018) ("RGGI 2018 Report"), [http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/analysis\\_group\\_rggi\\_report\\_april\\_2018.pdf](http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/analysis_group_rggi_report_april_2018.pdf); ICF, *RGGI Program Review: REM Modeling Results* (Dec. 2017), [https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/REMI\\_2017\\_12\\_19.pdf](https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/REMI_2017_12_19.pdf); Paul J. Hibbard, Susan F. Tierney, Andrea M. Okie, and Pavel G. Darling, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Ten Northeast and Mid-Atlantic States* (November 2011), [http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/economic\\_impact\\_rggi\\_report.pdf](http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/economic_impact_rggi_report.pdf); Paul J. Hibbard, Andrea M. Okie, Susan F. Tierney, & Pavel G. Darling, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States* (July 2015) [http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/analysis\\_group\\_rggi\\_report\\_july\\_2015.pdf](http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/analysis_group_rggi_report_july_2015.pdf). At least one study suggests that the direct investment of revenues in energy efficiency produces the highest economic growth. Environment Northeast, *Economy-Wide Benefits of RGGI: Economic Growth through Energy Efficiency*, (March 2011). However, any use of revenues that will reduce taxes on productive activity or increase investment will generate economic and job growth.

program during its first six years of operations equaled \$5.7 billion.<sup>259</sup> The Analysis Group has conducted studies and prepared reports on the economic impacts of the RGGI Program after each three year compliance period. The most recent report reached conclusions similar to those in the earlier report, concluding:

Over the last three years (2015-2017), the RGGI program led to \$1.4 billion (net present value (“NPV”)) of net positive economic activity in the nine-state region. Each RGGI state’s electricity consumers and local economy also experienced net benefits from the RGGI program. When spread across the region’s population, these economic impacts amount to nearly \$34 in net positive value added per capita.<sup>260</sup>

Although a similar level of analysis has not been applied to the California economy-wide auction-cap-and-trade program,<sup>261</sup> the initial results suggest that

the state’s climate policy is succeeding — the most recent data show California is just 3 percent above its 2020 goal of reducing emissions to 1990 levels as required by AB 32. Meeting California’s 2020 greenhouse gas emissions goal is turning out to be easier and cheaper than expected.

As California has driven emissions down, its economy has taken off: State job growth has outpaced the rest of the nation by 50 percent (PDF), showing what decoupled carbon emissions and economic growth look like.<sup>262</sup>

The proposed regulation will generate revenue from the sale of natural resource attributes that will solve Pennsylvania’s chronic budget deficits for decades to come and eliminate the continuing practices that the Pennsylvania Supreme Court found unconstitutional in *PEDF v. Commonwealth*, 161 A.3d 911 (Pa. 2017). The most recent report of the Pennsylvania Independent Fiscal Office has concluded that there is a “structural imbalance” in the

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<sup>259</sup> Abt Associates, *Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative, 2009-2014*, (January 2017), <http://abtassociates.com/AbtAssociates/files/7e/7e38e795-aba2-4756-ab72-ba7ae7f53f16.pdf>; cited in, Jonathan L. Ramseur, *The Regional Greenhouse Gas Initiative: Lessons Learned and Issues for Congress* (Congressional Research Service May 16,2017) <https://fas.org/sgp/crs/misc/R41836.pdf>

<sup>260</sup> Hibbard et al., *RGGI 1018 Report* at 4. The authors, again, attribute this to reinvestment.

<sup>261</sup> The California Air Resources Board did conduct economic modeling and determined that the current auction cap-and-trade with supplemental mechanisms was the most cost-effective means to achieve the additional reductions necessary to achieve the 2030 goal of reducing 1990 emissions by 40%, with modeling indicating that these additional measures would reduce projected growth in state GDP by a modest 0.4 to 0.6 percent. This did not model the impacts of the overall program, which has already achieved the 2020 goal of reducing 1990 emissions by 20%. The analysis also did not include a cost benefit analysis calculating the very significant health improvements arising from the air quality improvements. Because most health costs are imposed on businesses, reduced health costs should improve economic health as well as the health of the Commonwealth’s residents.

<sup>262</sup> Chris Busch, *California cap-and-trade: A success in disguise* (Aug. 10, 2016), <https://www.greenbiz.com/article/california-cap-and-trade-success-disguise>; See also Ashley Lawson, Addressing California cap and trade concerns (April 12, 2017), <https://www.c2es.org/2017/04/addressing-california-cap-and-trade-concerns/>

Pennsylvania budget.<sup>263</sup> That report predicts a budget deficit of \$1.709 billion for fiscal year 2018-2019, with the deficit ranging from a low of 1.446 billion to 1.750 billion over the next four fiscal years.<sup>264</sup> The revenue that this program will generate will alleviate and likely eliminate that structural deficit, removing the need to increase taxes on productive activities. Application of the 2020 reserve price (\$ 147.211)<sup>265</sup> and budget (91% of 2016 emissions) using the 2016 carbon dioxide emissions from the U.S. Energy Information System<sup>266</sup> would produce a maximum and inflated revenue figure of \$1.978 billion. This figure is inflated because it includes emissions from industrial sources likely to qualify for direct allocations, which emitted 45.6 million metric tons in 2016, according to EIA. If these are excluded, revenues would equal \$1.563 billion, assuming all allowances are sold and sold at the reserve price. A portion of those revenues would likely go to Philadelphia and Allegheny Counties, who are likely to expand their current air programs to include GHGs, thereby capturing auction revenues attributable to sources in those counties. Nevertheless, the revenues will likely greatly alleviate the budget deficit and, given the fact that the reserve price will increase by 10% plus inflation annually, it has the potential to eliminate the deficit in future fiscal years.

The precise macroeconomic impacts and the impacts by sector will depend upon how the General Assembly, Philadelphia and Allegheny County allocate revenues and direct allocations. Any action that eliminates the need to raise additional taxes on productive activity to balance the budget will have a stimulatory effect on the Commonwealth's economy. Measures taken by the RGGI states and California such as use of revenues to offset low income consumer effects and investment in energy efficiency and alternative energy have the potential to magnify the positive economic effects. Impacts will also differ among and within economic sectors.

In the electricity generation sector, where there will be no direct allocations, companies with low emission fleets will benefit and those with higher emission fleets will face increased costs or decreased profits. The imposition of a cost on carbon will particularly benefit renewable and nuclear generation facilities. It is likely to prevent the premature closure of all well-run existing nuclear facilities other than the most financially stressed and prevent job losses at those facilities. It will likely generate new investment in renewable generation and energy efficiency, and possibly generate new investment in increased nuclear generation capacity through uprates of existing units. A recent report by the Department set forth the Commonwealth's Solar Future Plan and established a goal of increasing in-state solar generation so to provide 10 percent of in-

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<sup>263</sup> Independent Fiscal Office, Economic & Budget Outlook: Fiscal Years 2018 -19 to 2023 -24 (November 2018) at 1, available at [file:///C:/Users/rober/Downloads/Five\\_Year\\_Outlook\\_2018%20\(1\).pdf](file:///C:/Users/rober/Downloads/Five_Year_Outlook_2018%20(1).pdf).

<sup>264</sup> *Id.*

<sup>265</sup> The Pennsylvania reserve price is based on the higher of a \$10 (in 2020 and increased by the rate of inflation plus 10%) and the highest reserve price in any program to which the Pennsylvania program is linked, which is currently likely to be California.

<sup>266</sup> EIA reported carbon dioxide emissions for 2016 217.4 million metric tons, <https://www.eia.gov/environment/emissions/state/excel/pennsylvania.xlsx>, so that the budget for 2020 (0.91) would be 197.8 million metric tons. EIA reported Pennsylvania's 2015 carbon dioxide emissions to be 233 million metric tons, making it the third largest emitter after Texas (626) and California (364). <https://www.eia.gov/state/rankings/?sid=PA#series/226> . This would include all sources but would exclude other GHGs.

state electricity consumption by 2030.<sup>267</sup> That *Solar Future Plan* report concluded that a suite of strategies would be necessary to accomplish this goal, one of which is to adopt “a carbon pricing program and invest the proceeds in renewable energy and energy efficiency measures.”<sup>268</sup> The proposed regulation would establish carbon pricing and some mechanisms, such as the Philadelphia Energy Authority,<sup>269</sup> are already in place to reinvest proceeds. The *Solar Future Plan* report further found that this investment in solar generation would produce benefits in public health, economic growth, job opportunities and cleaner air.<sup>270</sup> These conclusions apply equally to other types of renewable generation, improvement in nuclear facilities and energy efficiency, where the proposed regulation will equally encourage investment and the same benefits.

The program that will be established by the proposed regulation will also benefit efficient combined cycle natural gas plants, while, in general, having an adverse impact on coal-fired facilities and older, inefficient combustion turbines and reciprocating internal combustion engine generation units. Even the impacts on coal-fired facilities may depend upon implementation. For example, the feasibility of add-on carbon capture and sequestration at a 90% capture rate has been proven at two coal-fired facilities – the Boundary Dam facility in Saskatchewan<sup>271</sup> and the NRG Petra Nova facility in Texas;<sup>272</sup> and the owners expect a lower capital cost expenditure for future facilities. With a sufficient price on emissions,<sup>273</sup> the use of such technology, particularly if combined with partial use of biomass-based fuels, could sustain the life of existing coal-fired facilities. In addition, the proposed regulation will provide offset credits for remediation of coal waste piles, which will assist existing waste coal-fired generation units and assist the Commonwealth’s continuing efforts to address abandoned minelands.

The availability of direct allocations for industrial facilities subject to interstate or foreign competition that might result in leakage will minimize or eliminate the potential for adverse impacts on most industrial facilities. With direct allocations, companies that reduce GHG emissions through efficiency, electrification or product or fuel substitution may generate additional revenue through sales of excess allowances. Direct allocations are limited to the

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<sup>267</sup> David Althoff Jr., Robert Altenburg et al., *Pennsylvania’s Solar Future Plan: Strategies to increase electricity generation from in-state solar energy* (November 2018) (“*Solar Future Plan*”) at x, available at <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=59861&DocName=PENNSYLVANIA%26%2339%3bS%20SOLAR%20FUTURE%20PLAN.PDF%20%20%3Cspan%20style%3D%22color%3b%22%3E%28NEW%29%3C/span%3E>.

<sup>268</sup> *Id.* at 76-78.

<sup>269</sup> <http://www.philaenergy.org/>.

<sup>270</sup> *Id.* at x.

<sup>271</sup> *Brief of Amicus Curiae Saskatchewan Power Corporation, Operator of Boundary Dam Carbon Capture and Storage (CCS) Facility, In Support of Respondents* (Dec. 21, 2016), [http://blogs.edf.org/climate411/files/2016/12/2016.12.21-SaskPower-Amicus-Brief-for-EPA.pdf?\\_ga=2.99642398.1483276282.1538095651-822301884.1538095651](http://blogs.edf.org/climate411/files/2016/12/2016.12.21-SaskPower-Amicus-Brief-for-EPA.pdf?_ga=2.99642398.1483276282.1538095651-822301884.1538095651).

<sup>272</sup> EIA, Petra Nova is one of two carbon capture and sequestration power plants in the world (Oct. 31, 2017), [http://blogs.edf.org/climate411/files/2016/12/2016.12.21-SaskPower-Amicus-Brief-for-EPA.pdf?\\_ga=2.99642398.1483276282.1538095651-822301884.1538095651](http://blogs.edf.org/climate411/files/2016/12/2016.12.21-SaskPower-Amicus-Brief-for-EPA.pdf?_ga=2.99642398.1483276282.1538095651-822301884.1538095651)

<sup>273</sup> The cost per ton of removal is not public knowledge and the present Administration has failed to gather that information, despite an obligation to do so under section 111 of the Clean Air Act.

allocation rate that would be awarded to the best performing facility in an industrial category or subcategory, so that those that have acted early to reduce emissions will not be adversely affected by awarding excess allowances to more tardy competitors. If a higher emitting tardy competitor requires additional allowances per unit of production to prevent leakage, those who have acted early to reduce emissions are permitted a direct allocation based on the same emission rate as the tardy company, creating a value proposition for the early reducer. Although direct allocations must be reduced at a rate of five percent of the original allocation per year, this will provide a sufficient and sufficiently early market signal to prevent most adverse results.

The requirement for the surrender of allowances for fossil fuel distributors and electricity generation will increase prices for consumers. However, the increases will likely be far lower than normal price fluctuations. Although some of any potential price increase will be borne by fuel suppliers, in 2020, the maximum likely impact would be 8 cents per gallon of gasoline and 5.3 cents per mcf of natural gas or 0.0053 cents per cubic foot.<sup>274</sup> The spot price of one mcf of natural gas has fallen by more than two orders of magnitude times the maximum potential increase in natural gas prices over the last decade.<sup>275</sup> The maximum impact on the price of gasoline is about 5% of the variation of average *annual* gasoline prices over the last decade. And a far smaller percentage of the day to day variations.<sup>276</sup> The RGGI states and California have reduced these impacts by investing proceeds in consumer relief and funding for consumer energy efficiency investments through programs administered by Efficiency Vermont and the Delaware Sustainable Energy Utility (“SEU”). The Pennsylvania General Assembly could act to provide similar consumer relief and savings. We expect that Philadelphia and Allegheny Counties, which have approved air pollution control programs, will take advantage of the opportunity to operate their own GHG auction-cap-and-trade programs and receive income from allowance sales. These jurisdictions include the largest number of low-income residents in the Commonwealth and we expect that they will provide for consumer relief through energy efficiency and renewable energy investments similar to the RGGI jurisdictions and California. Philadelphia has already established an Energy Authority modeled on the existing SEUs. The alleviation of chronic budget shortages in the Pennsylvania General Fund should also free up funds for investment in education and public infrastructure that should benefit all consumers in the Commonwealth. Finally, as discussed in Exhibit C, environmental justice will be served by the proposed regulation because the adverse impacts of climate change will disproportionately affect low income populations.

Based on the extensive cost benefit analyses underlying the development of the federal social cost of carbon and more recent analyses, the benefits of the proposed regulation will clearly outweigh its costs. The federal interagency task force charged with developing a social cost of carbon for use by federal agencies in cost-benefit analysis calculated a variety of values representing the average and high cost of the damages caused by GHG emissions for different

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<sup>274</sup> This assumes a \$10 per metric ton carbon charge, that a gallon of E10 produces 17.6 pounds of fossil CO<sub>2</sub>, that burning one thousand cubic feet (mcf) of natural gas produces 117.10 pounds of CO<sub>2</sub>, and there are 2204.62 pounds per metric ton. A portion of any increase will be borne by suppliers in competitive markets.

<sup>275</sup> EIA, <https://www.eia.gov/dnav/ng/hist/rngwhhdD.htm>.

<sup>276</sup> Average annual prices varied by \$1.48 between a low of \$2.24 in 2016 and a high of \$3.62 in 2012. <https://www.statista.com/statistics/204740/retail-price-of-gasoline-in-the-united-states-since-1990/>

time periods and discount rates.<sup>277</sup> The agencies' 2016 report calculated that the average social cost of carbon in 2020 (using a discount rate of 3%) is \$42/ton, but that the 95<sup>th</sup> percentile (high) cost would be \$123/ton. In 2050, these figures increase to \$69/ton and \$212/ton.<sup>278</sup> As action is delayed, the social cost of carbon increases because the damage is greater.<sup>279</sup> A more recent peer-reviewed study determined that the social cost of carbon was \$48, considering damages in the United States alone.<sup>280</sup> These costs represent the marginal cost of avoiding future damage from the emission of a ton of carbon in any given year and they, therefore, do not include the damage that will already occur as a result of past emissions.<sup>281</sup> Because the cost of allowances under the proposed regulation will fall between a reserve price below the social cost of carbon and a cost containment price that approximates the social cost of carbon, the marginal value of the damages avoided by putting a price on greenhouse gas emissions under this proposed regulation will always exceed the marginal cost. Moreover, the value of most allowances will be recovered for other productive use. This will increase the proposed regulation's benefits beyond a more typical command-and-control regulation that would impose costs without recovering benefits. It is for this reason that most analysts have referred to this type of regulation as providing a "double dividend."<sup>282</sup> Thus, based on this work, the Board and the Department can readily conclude that the benefits of the proposed regulation will far outweigh its costs.

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<sup>277</sup> *Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf) [hereinafter 2016 SCC] at 4; *Interagency Working Group on Social Cost of Greenhouse Gases, Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide* (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/addendum\\_to\\_sc-ghg\\_tsd\\_august\\_2016.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf).

<sup>278</sup> 2016 SCC, *supra* note 215 at 4, Table ES-1. Bob Litterman, one of the world's leading economists on pricing risk suggests that the failure of the calculations of the social cost of carbon to incorporate high damage-low probability events results in a lower cost estimates and emphasizes that delay in mitigation by fifteen years will triple the social cost of carbon. Bob Litterman, Kent Daniel & Gernot Wagner, *Applying Asset Pricing Theory to Calibrate the Price of Climate Risk* 43 (March 15, 2017), [https://globalriskinstitute.org/wp-content/uploads/2017/05/GRI\\_Asset-Pricing-Climate-Risk\\_Mar-15-2017-Litterman.pdf](https://globalriskinstitute.org/wp-content/uploads/2017/05/GRI_Asset-Pricing-Climate-Risk_Mar-15-2017-Litterman.pdf).

<sup>279</sup> See *Env'tl. Prot. Agency, Fact Sheet, Social Cost of Carbon 2* (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social\\_cost\\_of\\_carbon\\_fact\\_sheet.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf) [hereinafter EPA SCC FACT SHEET].

<sup>280</sup> Katharine Ricke, Larent Drouet, Ken Caldeira & Massimo Tavoni, *Country-level social cost of carbon*, 8 *Nature Climate Change* 895 (2018). As discussed in Exhibit C, the UNFCCC requires that cost-benefit analysis address global damages and that treaty provision is binding on Pennsylvania under the Supremacy Clause of the United States Constitution.

<sup>281</sup> See *Env'tl. Prot. Agency, Fact Sheet, Social Cost of Carbon 2* (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social\\_cost\\_of\\_carbon\\_fact\\_sheet.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf), at 1 ("The SC-CO<sub>2</sub> is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide (CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (*i.e.*, the benefit of a CO<sub>2</sub> reduction).")

<sup>282</sup> See, Lawrence H. Goulder, *Environmental Taxation and the "Double Dividend:" A Reader's Guide* 26 (Nat'l Bureau of Econ. Research, Working Paper No. 4896, 1994); Robert B. McKinstry, Jr.,

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Adam Rose, & Coreen Ripp, *Incentive-Based Approaches to Greenhouse Gas Mitigation in Pennsylvania: Protecting the Environment and Promoting Fiscal Reform*, 14 *Widener L.J.* 205, 220-21 (2004) See, also, Marc Gunther, *Climate Converts: The Conservatives Who Are Switching Sides on Warming*, *YALEENVIRONMENT360* (Mar. 30, 2017), <http://e360.yale.edu/features/climate-converts-the-conservatives-who-are-switching-sides-on-climate-change>; Jerry Taylor, *The Conservative Case for a Carbon Tax*, *NISKANEN CTR.* (Mar. 23, 2015), <https://niskanencenter.org/wp-content/uploads/2015/03/The-Conservative-Case-for-a-Carbon-Tax1.pdf>; Bob Litterman, *What is the Right Price for Carbon Emissions*, 36 *REGULATION* 38 (2013), <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2013/6/regulation-v36n2-1-1.pdf>.

**Exhibit A**  
**Petitioners**



**Exhibit B**  
**Proposed Regulation**



**Exhibit C**

**Robert B. McKinstry, Jr. & John C. Dernbach, *Applying the Pennsylvania Environmental Rights Amendment Meaningfully to Climate Disruption*, 10 Mich. J. Env't'l & Admin. L 102 (201\_)**

# APPLYING THE PENNSYLVANIA ENVIRONMENTAL RIGHTS AMENDMENT MEANINGFULLY TO CLIMATE DISRUPTION

Robert B. McKinstry, Jr. \* and John C. Dernbach\*\*

## ABSTRACT

*The Pennsylvania Constitution contains a unique Environmental Rights Amendment (ERA), which recognizes an individual right to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” The ERA also includes a public trust element that makes “Pennsylvania’s public natural resources . . . the common property of all the people, including generations yet to come.” It makes the Commonwealth the “trustee of these resources,” requiring it to “conserve and maintain them for the benefit of all the people.” Recent decisions by the Pennsylvania Supreme Court (the Court) in *Robinson Township v. Commonwealth* and *Pennsylvania Environmental Defense Foundation v. Commonwealth* provide significant support for Pennsylvania regulations to address the threat of climate disruption posed by greenhouse gas (GHG) emissions to achieve net zero carbon emissions by the middle of this century.*

*In light of the threats that climate disruption poses to Pennsylvania’s public natural resources, the text of the ERA, and the principles articulated in those recent cases, we argue that a stable climate (a climate that has not been disrupted by anthropogenic emissions of GHGs) should be considered protected by the rights recognized by the ERA, and the public trust duties it creates. We argue that these rights and duties require Pennsylvania to employ regulatory measures to reduce GHG emissions to the level warranted by the social cost of carbon and to achieve carbon neutrality (net zero emissions) by mid-century. Further, we argue that there are judicially recognizable standards to compel the Commonwealth to exercise its existing authority to limit GHG emissions. In light of existing legislative authority, the obligations imposed by the United Nations Framework Convention on Climate Change, the Paris Agreement, and the federal Clean Air Act, we make the case that this regulatory program should take the form of an economy-wide cap-and-trade program providing for the auction of allowances with a reserve price based on the social cost of carbon and additional measures to prevent leakage and a cap reaching carbon neutrality by mid-century.*

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## INTRODUCTION

In 1971, Pennsylvania voters overwhelmingly approved a nationally unique Environmental Rights Amendment (ERA) to the Pennsylvania Constitution, creating an individual right for all Pennsylvanians to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”<sup>283</sup> The ERA further made “Pennsylvania’s public natural resources . . . the common property of all the people, including generations yet to come,”<sup>284</sup> and made the Commonwealth the “trustee of these resources,”<sup>285</sup> requiring it to “conserve and maintain them for the benefit of all the people.”<sup>286</sup> Despite the ERA’s strong and clear language, for nearly half a century Pennsylvania courts left the provision toothless, substituting a three-part balancing test for the text of the ERA—a test completely divorced from the text that required little more than compliance with existing laws, and under which environmental advocates almost never won.<sup>287</sup> In *Robinson Township v. Commonwealth (Robinson Township)* and

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283. PA. CONST. art. I, § 27.

284. *Id.*

285. *Id.*

286. *Id.*

287. See *infra* note 24 and accompanying text; *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), *aff’d* 361 A.2d 263 (Pa. 1976).

*Pennsylvania Environmental Defense Foundation v. Commonwealth (PEDF)*, the Court dramatically reversed this approach, for the first time striking down acts of the General Assembly that it found to violate the ERA.<sup>288</sup> In the *PEDF* case, the Court expressly rejected the three-part balancing test, and held that the text of the ERA itself should be the primary basis for interpreting and applying it.<sup>289</sup> These decisions also confirmed that the ERA created enforceable individual rights to environmental protection and that the Commonwealth had a judicially enforceable duty as a trustee to protect those rights and to conserve the corpus of the environmental trust.<sup>290</sup>

The *PEDF* decision, in particular, provides significant support for meaningfully pricing GHG emissions based on the social costs of GHG-caused climate disruption. In *PEDF*, the Court held that the Commonwealth's duty as a trustee under Article I, § 27 of the Pennsylvania Constitution governs the disposition of natural gas lease revenues from state forest and park lands. It therefore struck down acts of the General Assembly that it found inconsistent with that duty. That legislation transferred monies received from gas leasing of state lands—which the Court held to represent “capital” or the corpus of the constitutional trust—into the General Fund, where it could be spent for purposes other than the conservation and maintenance of public natural resources.

Because climate disruption poses an existential threat to all of Pennsylvania's environmental trust resources, the logic of the *PEDF* decision leads to the conclusion that the ERA creates a duty for the Commonwealth to address climate disruption caused by GHG emissions. That conclusion, coupled with existing legislative authority, supports arguments for putting a meaningful price on those emissions, commensurate with the social cost of carbon. The *PEDF* decision also calls into question the General Assembly's ability to block regulations implementing programs for the protection of trust resources, including regulations addressing climate disruption.<sup>291</sup> The decision's implications regarding use of revenues from allowances or fees on GHG emissions are less clear. The better arguments would allow all or substantial portions of the revenues to be used for the General Fund, as long as the revenues derive from actions that preserve, rather than deplete, the corpus of the trust.

Furthermore, the *PEDF* decision and its application to climate disruption will likely have consequences beyond Pennsylvania's borders because it provides a judicially manageable approach to implementing an environmental constitutional amendment. Although more than a third of all state constitutions include provisions regarding resource conservation and pollution, the provisions have tended to be more symbolic than legally meaningful, in no small part because courts have been unwilling or unable to find a way to enforce them.<sup>292</sup> Moreover, many states apply a public trust doctrine similar to the standard incorporated into the Pennsylvania ERA,<sup>293</sup> and a great many countries have environmental rights provisions in their constitutions.<sup>294</sup> Because *PEDF* enforces an environmental rights provision and provides a judicially manageable standard for doing so, the decision will likely be influential in the many other states and countries with comparable provisions.<sup>295</sup>

*PEDF* also can impact efforts elsewhere to use the public trust doctrine and environmental constitutional provisions to compel governments to reduce GHG pollution and prevent climate disruption. Some countries expressly

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The test bore no significant relationship to the text of Section 27. John C. Dernbach, Taking the Pennsylvania Constitution Seriously When It Protects the Environment: Part II: Environmental Rights and Public Trust, 104 DICK. L. REV. 97, 136-42 (1999). See John C. Dernbach & Marc Prokopchak, Recognition of Environmental Rights for Pennsylvania Citizens: A Tribute to Chief Justice Castille, 53 DUQ. L. REV. 335, 338-51 (2015); see *infra* discussion note 25.

288. See *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 969 (Pa. 2013) (plurality); *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 930-36 (Pa. 2017).

289. See generally *Pa. Env'tl. Def. Found.*, 161 A.3d 911 at 930-36.

290. See *Robinson Twp.*, 83 A.3d at 969; *Pa. Env'tl. Def. Found.*, 161 A.3d 911 at 930-36.

291. See *Pa. Env'tl. Def. Found.*, 161 A.3d at 934-40.

292. Barton Thompson, *Constitutionalizing the Environment: The History and Future of Montana's Environmental Provisions*, 64 MONT. L. REV. 157, 158-9 (2003).

293. See Barton Thompson, *The Public Trust Doctrine: A Conservative Reconstruction and Defense*, 15 SE. ENVTL. L.J. 47, 50-55 (2006).

294. JAMES R. MAY & ERIN DALY, *GLOBAL ENVIRONMENTAL CONSTITUTIONALISM* (2015).

295. See John C. Dernbach, Kenneth T. Kristl, & James R. May, *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania: Recognition of Environmental Rights for Pennsylvania Citizens*, RUTGERS L. REV. (forthcoming 2018) (manuscript at 39), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3137074](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3137074) (arguing that *PEDF* is a “formative case[]” which is likely to “shape shared conversation in the legal academy and elsewhere for generations to come”).

address climate change in their constitutions, and a growing number of courts have found a right to climate justice in other provisions of their constitutions.<sup>296</sup> Examples include both the Netherlands<sup>297</sup> and at least one federal District Court in the United States.<sup>298</sup> In light of the hostility of the current U.S. administration to the issue of climate change, actions by the states to limit GHG emissions and to address the problem of climate disruption have become particularly significant. We argue that the analysis in *PEDF* matters for the states with constitutional environmental protection provisions or public trust obligations by showing how a constitutional environmental provision can support a petition for rulemaking to limit GHG emissions in order to limit climate disruption, and also support a regulatory agency's authority to subsequently adopt and implement such a rulemaking.

Finally, *PEDF* is one in a series of cases in which the Pennsylvania Supreme Court has applied cogent historical and textual analysis to restore moribund state constitutional provisions to affect their original intent.<sup>299</sup> In that respect, the court is emerging as an intellectual leader among state high courts.

In order best to explain the implications of the *PEDF* decision for climate disruption, we first discuss Article I, § 27 of the Pennsylvania Constitution and *Robinson Township* (Section I), and then analyze how *Robinson Township* was applied and extended in *PEDF* (Section II). Section III discusses the threats that climate disruption poses to Pennsylvania's public natural resources. In light of those impacts and the principles articulated in *Robinson Township* and *PEDF*, we make the case that a stable climate (a climate that has not been disrupted by anthropogenic emissions of GHGs) should be considered protected by the rights provided by the first clause of Article I, § 27 of the Pennsylvania Constitution, and protected by the public trust duties created by the second and third clauses. We then make the case in Section IV that the Commonwealth's duty to prevent climate disruption requires it to undertake measures to limit GHG emissions to the levels warranted by the social cost of carbon and to achieve carbon neutrality (net zero GHG emissions) by mid-century. We also argue that there are judicially recognizable standards to compel the Commonwealth to exercise its existing legislative authority to do so. Section V discusses the elements of a regulatory structure that can mitigate climate disruption. We argue that this structure should take the form of an economy-wide cap-and-trade program with allowances that are auctioned with a reserve price based on the social cost of carbon, accompanied by measures to prevent emissions "leakage." Section VI addresses issues relating to the prevention of leakage, distribution of allowances and the use of proceeds of an emissions auction. Finally, in Section VII we address limitations on the General Assembly's power to block such a regulatory program.

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296. *Id.* at 39.

297. See *Rechtbank Den Haag* [Hague Court] 24 juni 2015, HA ZA 2015, 13-1396 m.nt. (*Urgenda/State of the Netherlands*) (Neth.) at 4.52 (holding that "a legal obligation of the State towards [Plaintiff] cannot be derived from Article 21 of the Dutch Constitution, . . . [but] these regulations still hold meaning, namely in the question . . . [of] whether the State has failed to meet its duty of care towards [Plaintiff]."); Robert B. McKinstry Jr., *Potential Implications for the United States of the Urgenda Foundation v. Netherlands Decision Holding that the UNFCCC and International Decisions Required Developed Nations to Reduce Emissions by 25 percent from 1990 Levels by 2020*, CLIMATE CHANGE, SUSTAINABLE DEVELOPMENT, AND ECOSYSTEMS COMMITTEE NEWSLETTER, July 2016, at 30, 31, [https://www.americanbar.org/content/dam/aba/publications/nr\\_newsletters/ccsde/201607\\_ccsde.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/nr_newsletters/ccsde/201607_ccsde.authcheckdam.pdf) (noting that in the same case "[u]ltimately, the court concluded that the plaintiffs' standing to sue the state upon the Dutch state's obligation to exercise 'due care' was based on Dutch constitutional law, the law of the EU, and international law.>").

298. See *Juliana v. United States*, 217 F. Supp. 3d 1224, 1241 (D. Or. 2017) (denying a motion to dismiss and holding that "[a]t its heart, this lawsuit asks this Court to determine whether defendants have violated plaintiffs' constitutional rights. That question is squarely within the purview of the judiciary."), *mandamus denied sub nom.*, *United States v. U. S. Dist. Court*, 884 F.3d 830 (9th Cir. Mar. 7, 2018), No. 17-71692.

299. The jurisprudence extends beyond the *Robinson Township* and *PEDF* decisions giving meaning to the original intent of Article I, § 27. In *William Penn School District v. Pa. Dep't of Education*, 170 A.3d 414 (Pa. 2017) the Pennsylvania Supreme Court reversed a dismissal of claims and interpreted the Education Clause in Article III, § 14 of the Pennsylvania Constitution to give meaning to its guarantee of "a thorough and efficient system of public education" in light of that clause's original intent. *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414 (2017). In *League of Women Voters v. Commonwealth*, the Court interpreted the Free and Fair Elections Clause in Article I, § 5, of the Pennsylvania Constitution to give that clause its original meaning, invalidating the invidious practice of partisan gerrymandering. See *League of Women Voters v. Commonwealth*, 178 A.3d 737, 741 (2018).

I. THE ENVIRONMENTAL RIGHTS AMENDMENT AND  
*ROBINSON TOWNSHIP*

The Environmental Rights Amendment to the Pennsylvania Constitution<sup>300</sup> was approved in 1971 by the voters by a margin of nearly four to one.<sup>301</sup> It contains three clauses. The first creates individual rights to environmental attributes.<sup>302</sup> The second creates additional rights by making Pennsylvania's public natural resources the property of all the people, including future generations.<sup>303</sup> The third makes the Commonwealth, and its constituent units, trustees for the environment.<sup>304</sup> Article I, § 27 provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.<sup>305</sup>

Shortly after the ERA was adopted, however, Pennsylvania's Commonwealth Court devised a three-part balancing test as a substitute for the text of the ERA. That test provided:

The court's role must be to test the decision under review by a threefold standard: (1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?<sup>306</sup>

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300. PA. CONST. art. I, § 27.

301. Franklin L. Kury, *The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested*, 1 VILL. ENVTL. L.J. 123, 123 (1990).

302. PA. CONST. art. I, § 27, cl. 1.

303. *Id.* cl. 2

304. *Id.* cl. 3.

305. PA. CONST. art. I, § 27.

306. *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), *aff'd* 361 A.2d 263 (Pa. 1976).

The test bore no significant relationship to the text of Section 27, which speaks of enforceable constitutional rights and duties.<sup>307</sup> Over the four decades when the test was applied, parties invoking the ERA almost never prevailed.<sup>308</sup> Until the *Robinson Township* decision in 2013, no court had used the ERA to hold a statute or regulation unconstitutional.<sup>309</sup> In that case, however, a plurality of the Court used the ERA for precisely that purpose.

The legislation challenged in *Robinson Township* addressed the regulation of natural gas resources in the Commonwealth, particularly shale gas. The legislation superseded local governments' control over land use, as well as those governments' case-by-case consideration of the impacts of gas development on the natural environment.<sup>310</sup> Chief Justice Castille's plurality opinion held that the legislative creation of uniform rules interfered with the municipalities' duties as trustees under Article I, § 27, and that the rules were therefore unconstitutional.<sup>311</sup>

The plurality in *Robinson Township* based its construction of the ERA primarily on the plain language of the provision and its legislative history.<sup>312</sup> It found that its construction was supported by consideration of "the occasion

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307. Dernbach, *supra* note 5 at 136-42 (1999).

The test's requirement for compliance with applicable statutes and regulations is meaningless with regards to a constitutional provision and certainly could not apply to actions challenging a statute on constitutional grounds. Although something like the second and third prongs of the test might conceivably be applied in some fashion where a court was balancing one constitutional right, such as a private party's property right, against the constitutional right provided by the ERA in the context of a permit decision. But it is irrelevant to evaluation of the constitutionality of a statute or the government's failure to exercise its duty as a trustee to conserve and maintain trust resources.

Even in the context of a permitting decision, the test puts a heavy, and in cases, impossibly heavy burden on the party asserting its constitutional rights under the ERA to produce evidence that the resource has been impaired. In private trust law, a trustee's duty is to gather and make available to the beneficiaries complete and accurate information as to the nature and amount of the trust property. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 983, n.60 (Pa. 2013) (plurality); *see also In re Rosenblum's Estate*, 459 Pa. 201, 328 A.2d 158, 164-65 (Pa. 1974) (citing RESTATEMENT (SECOND) OF TRUSTS § 173) (right of access to trust records is essential part of beneficiary's right to complete information concerning administration of trust; right of inspection has independent source in beneficiary's property interest in trust estate); *see also* RESTATEMENT (SECOND) OF TRUSTS § 173 *cm. c* ("[B]eneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust."). This is consistent with § 83 of the RESTATEMENT (THIRD) OF TRUSTS, which states "A trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust property and the administration of the trust, and, at reasonable intervals on request, to provide beneficiaries with reports or accountings."

This disparate burden also violates the rule of impartiality, favoring the developer over the rights of the parties invoking the ERA. RESTATEMENT (SECOND) OF TRUSTS § 183 ("When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them"). RESTATEMENT (SECOND) OF TRUSTS § 183 (1959); *see also* RESTATEMENT (THIRD) OF TRUSTS § 79(1) (2005). This principle is illustrated in *Estate of Sewell*, where the Pennsylvania Supreme Court found that the trustee had violated its fiduciary duty by benefiting one beneficiary at the expense of another. 487 Pa. 379, 383, 409 A.2d 401, 402 (1979) (holding against the trustee where they failed to confirm the existence of an additional beneficiary while continuing to give all benefits to the known beneficiary).

308. *See* John C. Dernbach & Marc Prokopchak, *Recognition of Environmental Rights for Pennsylvania Citizens: A Tribute to Chief Justice Castille*, 53 DUQ. L. REV. 335, 344-51 (2015).

309. *See id.* (explaining that the ERA was invoked to challenge decisions by state agencies and local governments, but not identifying any cases in which the ERA was invoked to challenge the constitutionality of a statute).

310. *Robinson Twp.*, 83 A.3d at 979 ("[the statute's] 'new regulatory regime permitting industrial uses as a matter of right in every type of pre-existing zoning district is incapable of conserving or maintaining the constitutionally-protected aspects of the public environment and of a certain quality of life. In Pennsylvania, terrain and natural conditions frequently differ throughout a municipality, and from municipality to municipality. As a result, the impact on the quality, quantity, and well-being of our natural resources cannot reasonably be assessed on the basis of a statewide average. Protection of environmental values, in this respect, is a quintessential local issue that must be tailored to local conditions."), 984 ("Section 3215(d) marginalizes participation by residents, business owners, and their elected representatives with environmental and habitability concerns, whose interests Section 3215 ostensibly protects. *See* 58 Pa.C.S. § 3202 (Declaration of purpose of chapter). The result is that Section 3215 fosters decisions regarding the environment and habitability that are non-responsive to local concerns; and, as with the uniformity requirement of Section 3304, the effect of failing to account for local conditions causes a disparate impact upon beneficiaries of the trust. Moreover, insofar as the Department of Environmental Protection is not required, but is merely permitted, to account for local concerns in its permit decisions, Section 3215(d) fails to ensure that any disparate effects are attenuated. Again, inequitable treatment of trust beneficiaries is irreconcilable with the trustee duty of impartiality.")

311. *Id.*

312. *See Robinson Twp.*, 83 A.3d at 950-959. For a complete legislative history, *see* John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Showing Source Documents* (2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2474660](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474660). A companion version that does not show photocopies of pages of source documents is John C. Dernbach & Edmund J. Sonnenberg, *Legislative History: Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania*, 24 WIDENER L.J. 181 (2015).

and necessity for the constitutional provision, . . . the circumstances of enactment and ratification, the mischief to be remedied and the object to be attained.”<sup>313</sup> The plurality discussed at length Pennsylvania’s long history of environmental abuse in connection with coal mining, deforestation, pollution, and wildlife eradication.<sup>314</sup> These abuses provided the impetus for the ERA’s adoption.<sup>315</sup> The opinion noted that the challenged law was written to encourage a gas extraction boom that posed the risk of causing similar environmental degradation.<sup>316</sup> In striking down the portions of the law that limited the power of local governments and state agencies to exercise their obligation as trustees to prevent degradation, diminution, and depletion of constitutionally protected natural resources, the plurality opinion articulated the following key legal principles:

The rights provided by the first and second clauses of the ERA represent fundamental, individual rights akin to free speech, freedom of religion and other rights enumerated in Article I of the Pennsylvania Constitution, and they should be interpreted as such.<sup>317</sup>

The first clause “affirms a limitation on the state’s power to act contrary” to the people’s right to “clean air, pure water, and the preservation of the natural, scenic, historic, and esthetic values of the environment.” As a result, “laws of the Commonwealth that unreasonably impair the right are unconstitutional.”<sup>318</sup>

“The drafters seemingly signaled an intent that the concept of public natural resources would be flexible to capture the full array of resources implicating the public interest, as these may be defined by statute or at common law.”<sup>319</sup>

The public natural resources that are made the property of all the people by the second clause and the subject of the Commonwealth’s duty as a trustee include “not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property.”<sup>320</sup> The constitutional rights created by the second clause of the ERA include the right to enforce the duty of a trustee created by the third clause.<sup>321</sup>

The public trust provisions of the ERA are self-executing, as they create constitutional duties that bind all three branches of state government, and they can be applied and enforced by the judicial branch without further legislative action.<sup>322</sup>

The Commonwealth’s duties as a trustee should be governed by the established law applicable to trusts and trustees, including the legal principles articulated in the Restatement of Trusts.<sup>323</sup> These trustee duties include prudence (“exercise[ing] ordinary skill, prudence and caution in managing corpus of trust”), loyalty (administering the trust “solely in beneficiary’s” interest), and impartiality (“treat[ing] all [beneficiaries] equitably in light of the purposes of the trust”).<sup>324</sup>

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313. *Robinson Twp.*, 83 A.3d at 960.

314. *Id.* at 960-963.

315. *Id.* at 961 (“With these events in the recent collective memory of the General Assembly, the proposed Environmental Rights Amendment received the unanimous assent of both chambers during both the 1969–1970 and 1971–1972 legislative sessions”).

316. *Id.* at 976.

317. *Id.* at 953-54, 976.

318. *Id.* at 951.

319. *Id.* at 955.

320. *Id.*

321. *Id.* at 955-56 (“The third clause of Section 27 establishes the Commonwealth’s duties with respect to Pennsylvania’s commonly-owned public natural resources, which are both negative (*i.e.*, prohibitory) and affirmative (*i.e.*, implicating enactment of legislation and regulations). The provision establishes the public trust doctrine with respect to these natural resources (the corpus of the trust) and designates ‘the Commonwealth’ as trustee and the people as the named beneficiaries.”).

322. *See id.* at 966-67.

323. *Id.* at 955-57.

324. *Id.* at 957, 959.

The plurality opinion, however, received votes from only three of the Court’s seven justices.<sup>325</sup> Justice Baer supported the plurality’s decision on a separate basis—substantive due process.<sup>326</sup> While the *Robinson Township* decision sketched a view of what Article I, § 27 could ultimately mean, it did not enshrine these principles as law.

## II. THE DECISION IN *PEDF*

In *PEDF*, the Court reaffirmed the *Robinson Township* principles and made them the applicable law of Article I, § 27. The plaintiff in *PEDF* challenged a series of legislative enactments that eliminated requirements that revenues from gas development leases on state forest and park lands be used for conservation purposes; these enactments transferred oil and gas leasing revenues to the general fund.<sup>327</sup> The challenged legislation thus significantly changed the disposition of revenues dedicated to the Oil and Gas Lease Fund, administered by the Department of Conservation and Natural Resources (DCNR).<sup>328</sup> The Fund was created by a 1955 Act<sup>329</sup> requiring “[a]ll rents and royalties from oil and gas leases of any” Commonwealth land to be deposited in the fund and “exclusively used for conservation, recreation, dams, or flood control.”<sup>330</sup> The challenged legislation transferred much of the money that would have been deposited in the Lease Fund to the General Fund, where it could be used for any purpose authorized by the General Assembly.<sup>331</sup> The challenged legislation also created a cap on revenues committed to DCNR under the Lease Fund, rather than requiring *all* moneys received from gas leasing to be used for conservation and maintenance of environmental trust resources.<sup>332</sup>

The plaintiff challenged these enactments in Commonwealth Court as violative of the public trust clauses of Article I, § 27.<sup>333</sup> The Commonwealth Court granted summary judgment to the Commonwealth, holding that there was no violation of the constitutional public trust.<sup>334</sup> In reversing the Commonwealth Court, a majority of the Court reaffirmed the breadth of the *Robinson Township* decision and Article I, § 27 rights and duties, and it quoted extensively from *Robinson Township*.<sup>335</sup> The Court held:

Because state parks and forests, including the oil and gas minerals therein, are part of the corpus of Pennsylvania’s environmental public trust, we hold that the Commonwealth, as trustee, must manage them according to the plain language of Section 27, which imposes fiduciary duties consistent with Pennsylvania trust law. We further find that the constitutional language controls how the Commonwealth may dispose of any proceeds generated from the sale of its public natural resources.<sup>336</sup>

The Court’s recitation of the facts suggests that the Court viewed the General Assembly’s actions as looting a fund (the Lease Fund) dedicated to conservation of state forests and parks in order to fund a budget deficit in a way

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325. *Id.* at 1000.

326. *Id.* at 1000-1001.

327. Pa. Envtl. Def. Found. v. Commonwealth, 161 A.3d 911, 916, 921-25 (Pa. 2017) (“ ‘Three legislative amendments to the state fiscal code between 2008 and 2014 redirected a total of \$335 million that would have been used for conservation purposes under the [Lease Fund Act] to the general fund, where it is appropriated for a variety of state government purposes. In addition, the Legislature prevented DCNR from spending any [Lease Fund Act] royalties without prior legislative authorization. Finally, the Legislature began using [Lease Fund] revenue to support the overall budget of DCNR, rather than obtaining that budget money from the general fund and using [Lease Fund] money for conservation purposes related to oil and gas extraction.’ ”, quoting John C. Dernbach, *The Potential Meanings of a Constitutional Public Trust*, 45 ENVTL. L. 463, 488 (2015) (footnotes omitted)).

328. *Id.*

329. Oil and Gas Lease Fund Act, 71 PA. CONS. STAT. § 1331 (2017).

330. *Id.*

331. *PEDF*, 161 A.3d at 921-24.

332. *Id.*

333. *Id.* at 925-926, 928

334. *Id.* at 928.

335. *Id.* at 916-921 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 960-63 (Pa. 2013) (plurality)), 929-933, 936, 938.

336. *PEDF*, 161 A.3d at 916.

that would interfere with maintenance of those lands.<sup>337</sup> The Court found this change significant because “DCNR had anticipated receiving the full amount of the rents and royalties to allow it to oversee the rapid expansion of drilling on state land when it decided to enter into the 2008 Leases.”<sup>338</sup> The legislation further restricted the environmental purposes for which the now-limited revenues going into the Lease Fund could be used.<sup>339</sup> The Court characterized the challenged actions as “transfers of capital.”<sup>340</sup>

The portions of the opinion of greatest significance for regulation of GHGs relate to the standard of review under Article I, § 27 and the contours of the ERA.<sup>341</sup> The Court began by rejecting outright the three-part balancing test that had been used as a substitute for the text of the ERA, saying that the test “strips the constitutional provision of its meaning.”<sup>342</sup> The Court then stated that the first two clauses of the ERA created rights that were “excepted out of the general powers of government” and that those rights, like all other rights articulated in Article I of the Pennsylvania Constitution, “shall forever remain inviolate.”<sup>343</sup> It noted that the “public natural resources”<sup>344</sup> that were made the property of the people included both the state forest and park lands and “the oil and gas themselves.”<sup>345</sup> The Court explained that the original draft of the second sentence of the ERA provided that the property of the people (including future generations) extended to “ ‘Pennsylvania’s natural resources, including the air, waters, fish, wildlife, and the public lands and property of the Commonwealth . . . .’ ” The Court further explained that this language was revised to remove the enumerated list and thereby discourage courts from limiting the scope of natural resources covered.” Because there was no stated problem with the list of natural resources contained in the original draft, the list in the original draft of the second sentence represents a minimum list of the public natural resources protected by the ERA.<sup>346</sup> The items on this list are therefore the property of all the people.<sup>347</sup>

The Court then elaborated on the trustee duties created by the third clause of the ERA, adopting the *Robinson Township* interpretation of that clause as imposing upon the Commonwealth a fiduciary duty equivalent to that imposed upon trustees by existing trust law, with that duty extending to the public, including future generations.<sup>348</sup> The Court discussed the applicable duties imposed on trustees as set forth in the Restatement (Second) of Trusts, noting that these duties include the requirement that a trustee “manage the trust so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust.”<sup>349</sup> The Court summarized the duties created by Article I, § 27, as follows:

Pennsylvania’s environmental trust thus imposes two basic duties on the Commonwealth as the trustee. First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. Second, the Commonwealth must act affirmatively via legislative action to protect the environment.

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337. See *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 955-56 (Pa. 2013) (plurality) (“The third clause of Section 27 establishes the Commonwealth’s duties with respect to Pennsylvania’s commonly-owned public natural resources, which are both negative (*i.e.*, prohibitory) and affirmative (*i.e.*, implicating enactment of legislation and regulations). The provision establishes the public trust doctrine with respect to these natural resources (the corpus of the trust) and designates ‘the Commonwealth’ as trustee and the people as the named beneficiaries.”).

338. *PEDF*, 161 A.3d at 922.

339. *Id.*

340. *Id.* at 924.

341. *Id.* at 930-36.

342. *Id.* at 930.

343. *Id.* at 930-31 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 948 (Pa. 2013) (plurality), quoting PA. CONST. art. I, § 25).

344. *Id.* at 931.

345. *Id.*

346. *Id.*

347. *Id.* (citing PA. L. JOURNAL, 154th General Assembly, No. 118, Reg. Sess., 2274 (1970) (Broughton Analysis).) In a footnote, the Court explained that the word “public” was added to modify “natural resources” to indicate that the public’s rights and the trust obligations did not extend to “purely private property rights.” The Court also noted that the ERA’s author and principal advocate opined that that this limitation did not apply to resources, such as those originally enumerated, that “involve a public interest.” *Id.*, n.22 (quoting PA. L. JOURNAL, 154th General Assembly, No. 118, Reg. Sess., 2271-72 (1970) (statement by Rep. Kury)).

348. *Pa. Env’tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 932 (Pa. 2017).

349. *Id.* at 933.

Although a trustee is empowered to exercise discretion with respect to the proper treatment of the corpus of the trust, that discretion is limited by the purpose of the trust and the trustee’s fiduciary duties, and does not equate “to mere subjective judgment.” The trustee may use the assets of the trust “only for purposes authorized by the trust or necessary for the preservation of the trust; other uses are beyond the scope of the discretion conferred, even where the trustee claims to be acting solely to advance other discrete interests of the beneficiaries.”<sup>350</sup>

In a footnote, the Court expressly rejected the dissent’s contention that its holding would cordon off hundreds of millions of dollars for other budgetary uses, noting that this question was never raised and was not before the Court.<sup>351</sup>

Consequently, the Court held that if the trustee was disposing of the assets of the trust, it was bound to use the proceeds in ways necessary and appropriate for carrying out the purposes of the trust, which in the case of the ERA was the maintenance and conservation of public natural resources.<sup>352</sup> The Court rejected the plaintiff’s argument that “all revenues generated by oil and gas leases [needed to] remain in the corpus of the trust.”<sup>353</sup> It held that the royalties arose from the sale of principal and were therefore in the trust.<sup>354</sup> The Court said it was less clear how to categorize other revenue streams from gas leasing, and that additional advocacy was required to determine whether those revenues constituted principal or income.<sup>355</sup>

Reaffirming the plurality opinion in *Robinson Township*, the Court rejected an argument raised by the Republican Caucus of the General Assembly that the public trust provisions of Article I, § 27 were not self-executing but instead required implementing legislation.<sup>356</sup> It also reaffirmed the *Robinson Township* plurality opinion “that the Commonwealth’s obligations as trustee ‘create a right in the people to seek to enforce the obligations.’”<sup>357</sup>

Applying its explanation of Article I, § 27 to the legislation at issue, the Court concluded that in transferring royalties from a restricted fund to the unrestricted General Fund, the Commonwealth did not “contemplate, let alone reasonably exercise, its duties as the trustee of the environmental public trust created by the” ERA.<sup>358</sup> The Court thus invalidated the provisions relating to the transfer of royalties,<sup>359</sup> which meant that the prior statutory dedication of the Lease Fund resources to DCNR applied.<sup>360</sup> The Court emphasized that its holding did not require that the revenues constituting the corpus of the trust be included in the restricted fund or even be dedicated to DCNR, as long as the funds were used for the purpose of the trust, *viz.* “maintenance and conservation” of Article I, § 27 resources.<sup>361</sup> The matter was remanded to the Commonwealth Court to make a determination with respect to other revenues.<sup>362</sup>

### III. ARTICLE I, §27 APPLIES TO CLIMATE DISRUPTION

Climate disruption already adversely affects Pennsylvania, and these adverse effects will increase over time. The severity of future impacts depends to a great extent on what actions are taken to reduce greenhouse gas emissions and even remove carbon dioxide from the atmosphere.<sup>363</sup> Yet under Article I, §27, the people of the Commonwealth have

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350. *Id.* (internal citations omitted).

351. *Id.* at n.25.

352. *Id.* at 933-35.

353. *Id.* at 935.

354. *Id.*

355. *Id.* at 935-36.

356. *Id.* at 936-37.

357. *Id.* at 937.

358. *See id.*

359. *Id.* at 937-38.

360. *Id.* at 939.

361. *Id.* at 939.

362. *Id.*

363. TIM FLANNERY, *THE WEATHER MAKERS* 167-202 (2005); RICHARD B. ALLEY, *THE TWO -MILE TIME MACHINE* 181-192 (2000), <https://muse.jhu.edu/book/36460>.

a right to a natural climate that is not disrupted by excessive concentrations of GHGs in the atmosphere. In addition, the Commonwealth has a commensurate duty to limit emissions to prevent climate disruption.

### A. *The Impact of Climate Disruption on Pennsylvania*

The existing and projected adverse effects of climate change on the nation and the world have been well documented and explained. Sources include the U.S. Environmental Protection Agency's 2009 finding under the Clean Air Act that emissions of greenhouse gases from motor vehicles may reasonably be expected to endanger public health and welfare, which was upheld on judicial review.<sup>364</sup> They also include multiple reports of the U.S. Global Change Research Program, including its 2017 report;<sup>365</sup> multiple reports of the National Research Council (NRC) of the National Academy of Sciences;<sup>366</sup> the reports of the Intergovernmental Panel on Climate Change;<sup>367</sup> numerous reports of other national academies of science;<sup>368</sup> and even judicial decisions.<sup>369</sup>

State-specific information also exists for Pennsylvania. The Pennsylvania Climate Change Act requires the Department of Environmental Protection (DEP) to produce a report every three years on the actual and projected impacts of climate change on the state.<sup>370</sup> DEP's 2015 report on the impacts of climate change in Pennsylvania<sup>371</sup> makes clear that the effects of climate disruption on Pennsylvania's public natural resources are likely to exceed the impacts of uncontrolled coal mining, deforestation, and industrial development that motivated Section 27's adoption. These historical effects are described in *Robinson Township* and *PEDF* at length.<sup>372</sup> The 2015 Pennsylvania report explains that GHGs in the atmosphere are already reaching the point that will cause an increase in temperature from pre-industrial levels, and their continued emissions will cause an increase much higher than 2°C above pre-industrial levels by mid-century.<sup>373</sup> According to that report, "Pennsylvania has undergone a long-term warming of more than 1°C (1.8°F) over the past 110 years."<sup>374</sup> It also projects an increase of about 3°C (5.4°F) between 2000 and 2050, which means that the "current warming trend is expected to continue at an accelerated rate."<sup>375</sup> As discussed below, it

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364. "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule," 74 Fed. Reg. 66,496, 66,497-66,514 (Dec. 15, 2009) [hereinafter *Endangerment Finding*], *aff'd* *Coal. for Responsible Regulation, Inc. v. U.S. Envtl. Prot. Agency*, 684 F.3d 102 (D.C. Cir. 2012), *aff'd in part and rev'd in part on other grounds sub nom. Utility Air Regulatory Grp. v. Envtl. Prot. Agency*, 134 S. Ct. 2427 (2014) ("*UARG*").

365. See, e.g., U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I (2017), [https://science2017.globalchange.gov/downloads/CSSR2017\\_FullReport.pdf](https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf). See also John C. Dernbach & Robert Altenburg, *Evolution of U.S. Climate Policy*, in GLOBAL CLIMATE CHANGE AND U.S. LAW 84-87 (Michael B. Gerrard & Jody Freeman eds. 2014) (explaining authorizing legislation for U.S. Global Change Research Program and describing some earlier reports).

366. See, e.g., NATIONAL RESEARCH COUNCIL, CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS (2013), <http://www.ipcc.ch/report/ar5/wg1/>; NATIONAL RESEARCH COUNCIL, CLIMATE STABILIZATION TARGETS: EMISSIONS, CONCENTRATIONS, AND IMPACTS OVER DECADES TO MILLENNIA (2011), <https://www.nap.edu/catalog/12877/climate-stabilization-targets-emissions-concentrations-and-impacts-over-decades-to-millennia>; NATIONAL RESEARCH COUNCIL, ABRUPT IMPACTS OF CLIMATE CHANGE: ANTICIPATING SURPRISES (2013), <https://www.nap.edu/catalog/18373/abrupt-impacts-of-climate-change-anticipating-surprises>.

367. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, FIFTH ASSESSMENT REPORT (AR5) (2014), <http://www.ipcc.ch/report/ar5/index.shtml>.

368. See, e.g., ROYAL SOCIETY, CLIMATE CHANGE: A SUMMARY OF THE SCIENCE (2010), <https://royalsociety.org/topics-policy/publications/2010/climate-change-summary-science/>.

369. See *Coal. for Responsible Regulation, Inc.*, 684 F.3d 102; see also *Green Mt. Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 295, 307-310 (D. Vt. 2007).

370. Pennsylvania Climate Change Act, 71 Pa. C.S. § 1361.3.

371. JAMES SHORTLE, ET AL., PENNSYLVANIA CLIMATE IMPACTS ASSESSMENT UPDATE (May 2015) [hereinafter *PA CLIMATE IMPACTS*]. The report was required by the Pennsylvania Climate Change Act, 71 Pa. C.S. § 1361.3.

372. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 960-63 (Pa. 2013) (plurality), *quoted in* *Pa. Envtl. Def. Found. v. Commonwealth*, 161 A.3d 911, 916-21 (Pa. 2017).

373. See generally *PA CLIMATE IMPACTS*, *supra* note 89.

374. *Id.* at 6 ("Changes in Pennsylvania's temperature are reflected in other metrics, such as heating degree days (which have increased) and cooling degree days (which have decreased).").

375. *Id.* at 7.

will be necessary to keep temperature increases well below 2°C and desirable to keep them below 1.5°C to prevent serious climate disruption.<sup>376</sup>

This warming is, and will continue to be, accompanied by a parallel trend in increasing precipitation.<sup>377</sup> “The corresponding annual precipitation increase is expected to be 8%, with a winter increase of 14%.”<sup>378</sup> The report does not say—and could not say—that warming and precipitation trends will stabilize in 2050.<sup>379</sup>

Climate change, the report says, will also increase air pollution and will likely make water pollution worse. On air pollution, the report states:

Climate change will worsen air quality relative to what it would otherwise be, causing increased respiratory and cardiac illness. The linkage between climate change and air quality is most strongly established for ground-level ozone creation during summer, but there is some evidence that higher temperatures and higher precipitation will result in increased allergen (pollen and mold) levels as well.<sup>380</sup>

Climate change will also likely increase water pollution:

Climate change can potentially also worsen water quality, affecting health through drinking water and through contact during outdoor recreation. The two primary mechanisms through which climate change could affect surface water quality are 1) increased pathogen loads due to increased surface runoff from livestock farms, sewer overflows, and resuspension of pathogens in river sediments during heavy rainstorms, and 2) increased risk of harmful algal blooms in eutrophied lakes and reservoirs.<sup>381</sup>

Although there may be some beneficial impacts from these changes, the Pennsylvania climate impacts report indicates that the adverse effects on Pennsylvania’s public natural resources will dwarf any positive impacts.<sup>382</sup> Higher temperatures will stress the dairy industry and require increased energy use.<sup>383</sup> It will also cause forest types to change, lead to increased mortality in the forests, and interfere with forest regeneration.<sup>384</sup> Increased temperatures may increase the prevalence of vector-borne diseases.<sup>385</sup> Climate change will have “a severe, negative impact on winter recreation,” so that “Pennsylvania’s downhill ski and snowboard resorts are not expected to remain economically viable past mid-century.”<sup>386</sup> Some areas will no longer be able to support trout.<sup>387</sup> Flood risks will increase throughout the Commonwealth.<sup>388</sup> Moreover, sea level rise will affect the Delaware estuary, inundating some areas and causing an increase in salinity.<sup>389</sup>

Reports published since 2015 have determined that the adverse impacts of climate disruption on public natural resources will be more severe than those identified in the Pennsylvania climate impacts report. One more recent report indicates that sea level rise due to melting glaciers will be more extensive, such that some parts of Tinicum National Wildlife Refuge and Philadelphia International Airport will be inundated before the end of the century.<sup>390</sup> Another

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376. See *infra* Section V.A.

377. PA CLIMATE IMPACTS, *supra* note 89, at 6-7.

378. *Id.* at 7.

379. See *id.*

380. *Id.* at 11.

381. *Id.* at 11, 14. In addition, “climate change will worsen the currently substandard water quality in the tidal freshwater region of the Delaware Estuary.”

382. See *id.*

383. *Id.* at 8.

384. *Id.* at 9-10.

385. *Id.* at 11.

386. *Id.*

387. *Id.* at 12.

388. *Id.*

389. *Id.* at 14.

390. A study published in 2018 based on 25 years of satellite data showed accelerated rates of sea level rise driven by the melting of the Greenland and Antarctic ice sheets and predicted that, if these rates continue, sea levels would rise by 65 centimeters, or 26 inches, by 2100 compared to past estimates. R. S. Nerem et al, *Climate-change-driven Accelerated Sea-Level rise Detected in the Altimeter Era*, 115 PROC. NAT’L

indicates that adverse impacts on plants and wildlife will be particularly severe, even with the emissions reductions that will be achieved under the current pledges in the Paris Agreement on climate change.<sup>391</sup> That study concluded that with the current pledges, temperatures would increase by approximated 3.2°C, reducing the ranges by more than 50% for approximately 49% of insect species, 44% of plant species and 26% of vertebrate species, and dramatically increasing their risk of extinction.<sup>392</sup> With greater GHG emission reductions that would limit temperature increases to the Paris Agreement’s goals of 2°C and 1.5°C, the damage will be substantially less.<sup>393</sup> These species, of course, include species in Pennsylvania.

Nor will the impacts of climate disruption be evenly distributed. Low income and minority communities are likely to be more severely affected because of “lack of air conditioning, greater prevalence of pre-existing health conditions, location and condition of housing, inadequate access to transportation, relatively greater rates of under-insurance, and concentrations in strenuous occupations.”<sup>394</sup> In addition, because climate change will likely increase the price of water, food, and even energy, it will also disproportionately affect households with lower incomes.<sup>395</sup>

Three additional points need to be made about this information, and they all suggest that these impacts will be greater than indicated in the Pennsylvania report, the EPA’s endangerment finding, and other reports. Most obviously, perhaps, these analyses are mostly silent on impacts after 2050 or any other future date. There is no scientific reason to believe that warming will stabilize by those dates; indeed, in business-as-usual scenarios, warming continues after those dates.<sup>396</sup>

Second, it is very likely that the impacts of climate disruption will increase over time, and that any damages occurring after 2050 will be far greater than those discussed in the Pennsylvania report and other sources. Yet many cost-benefit analyses discount costs to future generations, thus reducing these calculated future costs to an insignificant number.<sup>397</sup>

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ACAD. SCI. 2022, 2022 (Feb. 2018), <https://doi.org/10.1073/pnas.1717312115>; The last IPCC assessment estimated that sea levels could rise from between 44 cm and 74 cm by 2100, so that the 2018 study suggests that sea level rise will be approximately two times that estimate or 109 to 139 cm, or approximately four feet. John A. Church et al., Intergovernmental Panel on Climate Change, *Sea Level Change*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS, Chapter 13, at 1182, Table 13.5 (2013), <http://www.ipcc.ch/report/ar5/wg1/>. Because Tinicum marsh and the airport are located in tidal areas of the Delaware Estuary, significant portions would be inundated.

391. R. Warren et. al., *The Projected Effects on Insects, Vertebrates, and Plants of Limiting Global Warming to 1.5°C Rather Than 2°C*, 360 SCIENCE 791, 791 (May 18, 2018).

392. *Id.*

393. At 2°C these numbers fall to 18% of insects, 16% of plants, and 26% of vertebrates, and at 1.5°C they fall further to 6% of insects, 8% of plants and 4% of vertebrates. *Id.*

394. Shelley Welton, *Clean Electrification*, 88 U. COLO. L. REV. 571, 627-28 (2017) (citing IPCC and other studies).

395. *Id.* at 628-29.

396. Nebojsa Nakicenovic & Rob Swart (eds.), *Emissions Scenarios*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, <http://www.ipcc.ch/ipccreports/sres/emission/index.php?idp=115>, (last visited April 15, 2018); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014 SYNTHESIS REPORT SUMMARY FOR POLICYMAKERS 11 (2014).

397. Many ethicists question whether the cost of future climate disruption affecting future unborn generations should be discounted at all. In one of the first assessments of the ethical implications of climate change, a group of ethicists noted:

Proponents of discounting in CBA urge that the value of future environmental benefits be determined in the same way that the market applies value to future events—that is by understanding the present value of future benefits. When such discounting occurs, benefits from climate change policy options that will accrue far in the future are given little present value. Such an approach makes current investors’ interests, not future generations’ welfare, the focus of concern (Banuri et al., 1996).

Donald Brown et al., White Paper on the Ethical Dimensions of Climate Change 29, (2006) (“Ethical White Paper”). These ethicists further concluded:

Because discounting benefits in CBA assumes only contemporary investor-individuals’ interests count in determining worth, discounting techniques in CBA can violate interests of future generations to have a global climate system that has not been degraded by human activities. Since nations agreed in the adopting the UNFCCC to protect the interests of future generations, discounting benefits and harms in CBAs can violate the duty of nations to keep promises made in treaties.

*Id.* at 32. These concerns were more recently echoed by Pope Francis in his encyclical letter, which, without addressing discounting per se, condemned placing short term current interests ahead of the interest of future generations. See POPE FRANCIS, ENCYCLICAL LETTER, LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME 1118-1120 (2015).

Third, the damage estimates in the Pennsylvania assessment and other reports tend not to account for the possibility of catastrophic climate disruption. There are potentially significant risks of catastrophic results if GHG emissions are not reduced and eliminated in a sufficiently timely manner.<sup>398</sup> The end Permian mass extinction presents an extreme example of the potential high risk; 90% or more of all life on Earth died following a rapid (in geological terms) increase in carbon dioxide that occurred when volcanic action burned significant coal-bearing strata.<sup>399</sup> Most analyses of the social cost of carbon, which as discussed below measures the cost of the future damages caused by emitting a ton of carbon dioxide today, fail to account for the risk of catastrophic results. For climate disruption, the probabilistic curve plotting likelihood versus damage is unusual in that it has a very long tail, representing low probability catastrophic cost possibilities.<sup>400</sup> In markets, the risk of such catastrophic events suggests that, rather than discounting, we should pay a premium to prevent them, just as we pay a premium for riskier stocks over safer bonds.<sup>401</sup> A model incorporating consideration of risk of catastrophic results far less significant than the end Permian mass extinction has calculated that in 2015 carbon dioxide should have been priced or taxed at about \$125 per ton.<sup>402</sup> The same model shows that each year that action is delayed will increase damages by \$700 billion per year “and a 15 year delay would cost roughly \$180 trillion, about six times current annual global consumption.”<sup>403</sup>

## B. *Both the First and Second Clauses of Article I, § 27 Extend to the Natural Climate Unaffected by Climate Disruption*

### 1. Scope of Article I, § 27

Although the climate is not expressly protected under the ERA, the ERA’s language and legislative history, as well as the reasoning of both *Robinson Township* and *PEDF*, all compel the conclusion that a climate free of human disruption is protected by Article I, § 27.

The right to a natural climate unaffected by climate disruption is included within the ERA’s first clause, which protects the people of Pennsylvania’s right to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”<sup>404</sup> The Pennsylvania report indicates that a warming climate will adversely affect air quality, thus compromising the people’s right to clean air.<sup>405</sup> The report also indicates that a

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398. *Massachusetts v. Envtl. Prot. Agency*, 549 U.S. 497, 521-22 (2007) (“According to the climate scientist Michael MacCracken, “qualified scientific experts involved in climate change research” have reached a “strong consensus” that global warming threatens (among other things) a precipitate rise in sea levels by the end of the century, MacCracken Decl. ¶ 15, Stdg.App. 207, “severe and irreversible changes to natural ecosystems,” *id.*, ¶ 5(d), at 209, a “significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences,” *id.*, and an increase in the spread of disease, *id.*, ¶ 28, at 218-219. He also observes that rising ocean temperatures may contribute to the ferocity of hurricanes. *Id.*, ¶¶ 23-25, at 216-217”). *See, e.g.*, R. B. Alley et. al., *Abrupt Climate Change*, 299 SCIENCE 2005, 2008 (2016); James Hansen, et. al., *Icemelt, Sea Level Rise and Superstorms: Evidence from Paleoclimate Data, Climate Modeling, and Modern Observations that 2° C Global Warming Could Be Dangerous*, 16 ATMOSPHERIC CHEM. AND PHYSICS 3761, 3762 (2016) [hereinafter Hansen et al., *Ice Melt*]; James Hansen et. al., *Global Temperature Change*, 103 PROC. NAT’L ACAD. SCI. 14288, 14292-93 (2006); T.M.L. Wigley, *The Climate Change Commitment*, 307 SCIENCE 1766, 1767-68 (2005).

399. Raymond B. Huey & Peter D. Ward, *Hypoxia, Global Warming and Terrestrial Late Permian Extinctions*, 308 SCIENCE 398 (2005); FLANNERY, *supra* note 81 at 200-201; JAMES HANSEN, STORMS OF MY GRANDCHILDREN: THE TRUTH ABOUT THE COMING CLIMATE CATASTROPHE AND OUR LAST CHANCE TO SAVE HUMANITY 144-50 (2009) [hereinafter STORMS].

400. *See* Matthew Collins et. al., *Long Term Climate Change: Projections, Commitments, and Irreversibility*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS, CONTRIBUTION OF WORKING GROUP I TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL REPORT ON CLIMATE CHANGE 1029, 1114-19 (Sylvie Joussame, Abdalah Mokssit, Karl Taylor, Simon Tett eds. 2013).

401. JERRY TAYLOR, THE CONSERVATIVE CASE FOR A CARBON TAX 13-15 (2015), <http://niskanencenter.org/wp-content/uploads/2015/03/The-Conservative-Case-for-a-Carbon-Tax1.pdf>.

402. KENT D. DANIEL, ROBERT B. LITTERMAN, & GERNOT WAGNER, APPLYING ASSET PRICING THEORY TO CALIBRATE THE PRICE OF CLIMATE RISK 25 (Nov. 13, 2017) (revised draft), <https://gwagner.com/wp-content/uploads/DLW-Asset-Pricing-Climate-Risk-171113.pdf>.

403. *Id.* at 41.

404. PA CONST. art I, § 27, cl. 1.

405. PA CLIMATE IMPACTS, *supra* note 89, at 132.

warming climate will likely lead to greater water pollution, increased flooding, and sea level rise, thus compromising the people's right to clean water.<sup>406</sup>

The *Robinson Township* plurality “recognize[d] that, as a practical matter, air and water quality have relative rather than absolute attributes.”<sup>407</sup> As is the case with most other conventional water and air pollutants, carbon dioxide is a naturally occurring substance necessary for life and the maintenance of the climate, and it is only when the concentration of the pollutant becomes too high that natural processes are disrupted. For example, when the ERA recognizes a right to “pure water,” this means water with levels of nutrients that support the normal functioning of aquatic ecosystems, and that conserves and maintains public natural resources, but not so high as to cause eutrophication.<sup>408</sup> Likewise, when the ERA recognizes a right to “clean air,” it means, as applied to carbon dioxide, levels necessary to support plant life and ecosystems, among other things, but not so high as to disrupt ecosystems, as will occur in climate disruption. Similarly, “pure water” means water with levels of carbon dioxide that support the normal functioning of aquatic ecosystems, and that conserves and maintains public natural resources, but not so high as to acidify the water and disrupt those natural systems.

In addition to clean air and water, a stable climate also provides critical natural and historic values of the environment. There can be little doubt that the relatively stable climate that has persisted since the end of the last Ice Age facilitated the rise of civilization.<sup>409</sup> As the reports described above indicate, a stable climate also prevents the increasing incidence of vector-borne diseases and adverse effects from air pollution<sup>410</sup> and protects winter recreation.<sup>411</sup> The assessments discussed above also establish that climate disruption will impair scenic and esthetic values of the environment by causing dramatic changes in forests and agriculture and by reducing or eliminating key species like trout.<sup>412</sup>

In addition, the right to a natural climate unaffected by human-caused climate disruption is included within the second clause's protection of the public's right to the conservation and maintenance of public natural resources. The *Robinson Township* plurality emphasized that the concept of public natural resources encompassed a wide range of values of the natural environment:

At present, the concept of public natural resources includes not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish) that are outside the scope of purely private property.<sup>413</sup>

Catastrophic climate disruption would radically impair and possibly eliminate the “wild flora, and fauna (including fish),”<sup>414</sup> public forests and their ecosystems, and game and wildlife<sup>415</sup> that the plurality in *Robinson Township* expressly recognized as falling within the public trust obligations of the second and third clauses of Article I, § 27.<sup>416</sup>

The Court in *PEDF* and the *Robinson Township* plurality both cite the ERA's legislative history as supporting a broad construction of the public natural resources that are made the property of all the people. As indicated earlier, the *Robinson Township* plurality noted:

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406. *Id.*

407. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 953 (Pa. 2013) (plurality).

408. Nitrogen compounds and phosphorus in water are necessary for supporting the plant life that supports the aquatic ecosystem, but when levels of these substances become too high eutrophication occurs and depletes oxygen, killing aquatic organisms and disrupting aquatic ecosystems are disrupted. Likewise, chromium is a heavy metal essential to life that we include in vitamin pills, but at too high a level it becomes a poison.

409. See RICHARD ALLEY, *THE TWO-MILE TIME MACHINE: ICE CORES, ABRUPT CLIMATE CHANGE, AND OUR FUTURE* (Princeton Univ. Press 2000); STORMS, *supra* note 117, 39-40.

410. PA CLIMATE IMPACTS, *supra* note 89, at 11.

411. *Id.* at 11-12.

412. *Id.* at 8-10 (agriculture and forestry), 12 (trout),

413. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 955 (Pa. 2013) (plurality); *accord* Pa. Env'tl. Def. Found. v. Commonwealth, 161 A.3d 911, 931 (Pa. 2017).

414. *Robinson Twp.*, 83 A.3d at 955.

415. *Id.*; see also Huey & Ward, *supra* note 117 (such catastrophic climate disruption has harmed forests in the past); Alley et. al, *supra* note 116; see Warren et al., *supra* note 109.

416. *Robinson Twp.*, 83 A.3d at 955.

[A]fter members of the General Assembly expressed disquietude that the enumeration of resources would be interpreted “to limit, rather than expand, [the] basic concept” of public natural resources, Section 27 was amended and subsequently adopted in its existing, unrestricted, form. The drafters seemingly signaled an intent that the concept of public natural resources would be flexible to capture the full array of resources implicating the public interest, as these may be defined by statute or at common law.<sup>417</sup>

The Court in *PEDF* similarly explained that the removal of the specific list and its replacement with more general language was intended to “discourage courts from limiting the scope of natural resources covered.”<sup>418</sup>

The climate is not a private resource. Rather, the climate represents the seasonal average ranges of temperature, precipitation and other atmospheric conditions in a particular area over a long period of time.<sup>419</sup> Climate determines the nature of wild and other naturally occurring vegetation, fish and other wildlife; the amount and quality of ground and surface water; the characteristics of soils; the flow and extent of streams, rivers and wetlands; air quality; and most other characteristics of naturally occurring ecosystems and natural communities. These considerations all compel the conclusion that a stable climate, not disrupted by the types of changes caused by human emissions of GHGs in the atmosphere, should be understood as a public natural resource to which the people have a right and which the Commonwealth has a trustee’s duty to conserve and maintain.<sup>420</sup>

However, under the express words of the ERA, the Commonwealth does not have a duty to “preserve” Pennsylvania’s climate unchanged.<sup>421</sup> Indeed, it would be impossible for the Commonwealth to do so, given the international nature of the problem and the fact that many future changes will occur because of the current levels of greenhouse gases in the atmosphere. However, as noted by the *Robinson Township* plurality, the constitutional provision uses the words “conserve and maintain,” rather than “preserve.”<sup>422</sup> This means that “the duties to conserve and maintain are tempered by legitimate development tending to improve upon the lot of Pennsylvania’s citizenry, with the evident goal of promoting sustainable development.”<sup>423</sup> In further support of this proposition, the plurality cited the Montana Supreme Court’s holding that a constitutional provision providing an “inalienable . . . right to a clean and healthful environment”<sup>424</sup> did “not protect merely against type[s] of environmental degradation ‘conclusively linked’ to ill health or physical endangerment and animal death, but could be invoked to provide anticipatory and preventative protection against unreasonable degradation of natural resources.”<sup>425</sup>

Finally, the public trust rights under Article I, § 27 inhere in “all the people including generations yet to come.”<sup>426</sup> Thus, the virtual certainty that effects of climate disruption will be inequitably distributed and will have greater impacts on generations yet to come<sup>427</sup> implicates Article I, § 27 even if only some people are adversely affected. As

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417. *Id.* (citing 1970 Pa. Legislative Journal–House at 2271–75).

418. *PEDF*, 161 A.3d at 931.

419. *Climate*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/climate> (last visited Apr. 26, 2018); *see also* FLANNERY, *supra* note 81 at 19-26.

420. *Cf. In re Application of Maui Elec. Co.*, 141 P.3d. 1 (Haw. 2017). The case involved a challenge by citizens to a power purchase agreement with a fossil-fuel-fired power plant. The Hawai’i Constitution guarantees each person “the right to a clean and healthful environment, as defined by laws relating to environmental quality.” HAW. CONST. art. XI, § 9. The court held that the petitioners demonstrated “a threatened injury to the[ir] right to a clean and healthful environment from the effect of greenhouse gas emissions,” and thus had a right to a hearing on their claims. In other words, the right to a “clean and healthful environment” in Hawai’i includes a right to be protected against human-caused climate change.

421. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 948 (Pa. 2013) (plurality).

422. *Id.*

423. *Id.*

424. *Id.* at 953 (citations omitted).

425. *Id.*

426. PA. CONST. art. I, § 27, cl. 2.

427. *See, e.g.*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014 SYNTHESIS REPORT SUMMARY FOR POLICYMAKERS 17 (2014) (“Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally (high confidence). Mitigation involves some level of co-benefits and of risks due to adverse side effects, but these risks do not involve the same possibility of severe, widespread and irreversible impacts as risks from climate change, increasing the benefits from near-term mitigation efforts.”); *see also* Richard L. Revesz & Matthew R. Shahabian, *Climate Change and Future Generations*, 84 S. CAL. L. REV. 1097 (2010-2011); Kevin Clarke, *How Will Climate Change*

the *Robinson Township* plurality explained, disparate effects are “irreconcilable with the express command that the trustee will manage the corpus of the trust for the benefit of ‘all the people.’”<sup>428</sup> The Commonwealth’s obligation also derives from the trustee responsibility of impartiality. “Dealing impartially with all beneficiaries means that the trustee must treat all equitably in light of the purposes of the trust.”<sup>429</sup> For many reasons, the right to a natural climate unaffected by human-caused climate disruption is protected under both parts of Article I, § 27.

## 2. Commonwealth Duties Concerning Climate Disruption

The Commonwealth has several overall duties under Article I, § 27 concerning climate disruption. Under the first clause, the Commonwealth may not act contrary to the people’s right to a natural climate unaffected by climate disruption; “laws of the Commonwealth that unreasonably impair the right are unconstitutional.”<sup>430</sup> Under the second and third clauses of the public trust provisions of Article I, § 27, the Commonwealth has two duties. One is “to prohibit the degradation, diminution, and depletion”<sup>431</sup> of a natural climate unaffected by human-caused climate disruption, whether harm to the climate results “from direct state action or from the actions of private parties.”<sup>432</sup> The other is “to act affirmatively via legislative action”<sup>433</sup> to conserve the natural climate and prevent undue disruption.<sup>434</sup> A third duty, which stems from the duty of private trust law duty of prudence, is that the Commonwealth must analyze the effect of its decisions on the public’s right to be protected against climate change prior to making them.<sup>435</sup>

The inclusion of a right to a natural climate not disrupted by GHG pollution has three additional consequences for the Commonwealth as it interprets and applies existing statutes, regulations, and other laws. These consequences, in which Article I, § 27 plays more of a supporting role in the implementation of existing law, are based on cases decided before *Robinson Township* and *PEDF*.<sup>436</sup> The first of these involves the scope of the police power exercised by the state and local governments.<sup>437</sup> As a consequence of *PEDF*, state and local police power is constrained by a duty not to violate Article I, § 27 and an obligation to properly implement the public trust responsibilities.<sup>438</sup> These constraints and obligations apply to human-caused climate disruption. In addition, the Commonwealth has an obligation to interpret that law in a way that furthers constitutional rights when the meaning of a statute, regulation, or other law is unclear.<sup>439</sup> As a result, the Commonwealth has an obligation to interpret ambiguous laws in a way that furthers the constitutional right of people to be protected against human-caused climate change. Finally, Pennsylvania courts have previously used Article I, § 27 to support the constitutionality of laws that have been challenged on other grounds, including challenges to executive action based on claims that the action lacked sufficient statutory authorization.<sup>440</sup> It follows that legal challenges to Commonwealth actions to protect against climate disruption could be defended on the grounds that they are implementing Article I, § 27.

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*Affect the Next Generation?* U.S. CATHOLIC (Oct. 2013) at 39, <http://www.uscatholic.org/articles/201309/how-will-climate-change-affect-next-generation-27900>.

428. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 980 (Pa. 2013) (plurality).

429. *Id.* at 959. Thus, legislative decisions under which “some properties and communities will carry much heavier environmental and habitability burdens than others” are inconsistent with the obligation that the trustee act for the benefit of “all the people.” *Id.* at 1007 (using this argument to justify its decision that Section 3304 of Act 13 violates Article I, § 27).

430. *Robinson Twp.*, 83 A.3d at 951; Pa. Env’tl. Def. Found. v. Commonwealth, 161 A.3d 911, 931 (Pa. 2017).

431. *PEDF*, 161 A.3d at 933.

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.* at 937 (quoting *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Commw. Ct. 1973), *aff’d* 361 A.2d 263 (Pa. 1976)).

436. *Dernbach*, *supra* note 5 at 150-61.

437. *Id.* at 150-56; John C. Dernbach, *The Potential Meanings of a Constitutional Public Trust*, 45 ENVTL. L. 463, 515-16 (2015).

438. Pa. Env’tl. Def. Found. v. Commonwealth, 161 A.3d 911, 938 (Pa. 2017).

439. *Dernbach*, *supra* note 5, at 156-58; 1 PA. CONS. STAT. § 1922 (1970) (“In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: . . . 3. That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.”).

440. *Dernbach*, *supra* note 5, at 158-61; *see, e.g.*, *Eagle Env’tl. II, L.P. v. Commonwealth*, Dep’t of Env’tl. Prot., 584 Pa. 494 (2005).

### 3. *Funk v. Wolf*

In *Funk v. Wolf*,<sup>441</sup> the plaintiffs asserted that the ERA imposed an affirmative duty on the Commonwealth to adopt and implement regulations to protect future generations from climate disruption, and that the court should grant mandamus requiring this.<sup>442</sup> The Commonwealth Court, affirmed by the Court, avoided deciding that issue. However, the Commonwealth Court appears to have assumed that prevention of climate disruption falls within the scope of Article 1, §27's rights and duties and that the Commonwealth had a duty to promulgate regulations "to reduce CO<sub>2</sub> and GHG emissions" pursuant to Pennsylvania Air Pollution Control Act (APCA).<sup>443</sup> The Court further acknowledged that petitioners had a right to submit a rulemaking petition to the Pennsylvania Environmental Quality Board (EQB) seeking the adoption of a specific regulation under the APCA limiting GHG emissions, and that the EQB's action with respect to that petition would be subject to judicial review.<sup>444</sup> The EQB is the Pennsylvania entity that adopts or modifies regulations that are implemented by DEP; DEP does not have authority to adopt its own regulations.<sup>445</sup> As we discuss further in this article, the APCA authorizes the adoption of a regulation establishing an economy-wide cap-and-trade program with allowances distributed by auction with a reserve price. The EQB's refusal to consider such a regulation, or its adoption of an insufficiently protective regulation, could then be subject to judicial review and overturned.

The plaintiffs in *Funk* initially filed a petition with the EQB seeking the adoption of a regulation limiting GHG emissions to prevent undue climate disruption, without proposing a specific regulation or even a specific regulatory approach.<sup>446</sup> Based on DEP's representation that it was already responding to climate disruption, the EQB denied the petition.<sup>447</sup> In fact, DEP's actions were largely token efforts<sup>448</sup> falling far short of the emissions reductions necessary to prevent climate disruption.<sup>449</sup> Instead of appealing, the plaintiffs brought a mandamus action in the Commonwealth Court against the Commonwealth, the Governor of Pennsylvania, DEP and other agencies. The complaint sought declaratory relief regarding the plaintiffs' rights and the Commonwealth's duties under the ERA.<sup>450</sup> It further sought injunctive relief that would require the Commonwealth to conduct various studies.<sup>451</sup> The complaint also sought a court order requiring DEP to study, and to prepare and implement:

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441. *Funk v. Wolf*, 144 A.3d 228 (Pa. Commw. Ct. 2016) *aff'd without opinion*, 158 A.3d 642 (Pa. 2017).

442. *Id.* at 232-33.

443. *Id.* at 250.

444. *Id.* at 243.

445. 71 PA. CONS. STAT. § 510-20 (2018).

446. Acceptance of Rulemaking Petition for Study, 43 Pa. Bull. 7095 (Dec. 7, 2013); *Funk v. Wolf*, 144 A.3d 228, 243 (Pa. Commw. Ct. 2016) *aff'd without opinion*, 158 A.3d 642 (Pa. 2017).

447. Acceptance of Recommendation, 44 Pa. Bull. 5679 (Aug. 30, 2014).

448. PADEP's report upon which the EQB relied in denying the petition cited a number of actions in the Department's 2009 climate plan that the Department projected would decrease emissions between the base year 2005 and 2020 by under 10 million metric tons, or less than 3.6 percent over a fifteen-year period. See Pennsylvania Department of Environmental Protection Recommendation to the Pennsylvania Environmental Quality Board on the Ashley Funk Petition for Rulemaking to Reduce Carbon Dioxide Emissions (July 31, 2014), Figure 1 at 13, <http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2014/August%202019,%202014%20EQB%20meeting/Ashley%20Funk/1%20-%20DEP%20Recommendation.pdf>. While the Paris Agreement calls for reaching climate neutrality by the second half of this century to limit climate disruption, the rate of reduction from the 2009 Plan measures described in the Department's report would not achieve climate neutrality for over four centuries, well into the 25<sup>th</sup> Century. Indeed, the Department concedes that not all of the measures in the 2009 plan had been implemented. *Id.* at 30. That report also cited a number of other actions described in the 2013 climate plan update with no projection of emissions reductions. Many of these actions were federal actions undertaken by the Obama Administration, such as the Clean Power Plan and others constituted measures to reduce increased methane emissions from the shale gas expansion in Pennsylvania. The Petitioner described these reductions as "modest" and "self-congratulatory" "falling short of the Department's 'constitutional obligation.'" *Id.* at 25. The Department's report fails to provide any correlation between the emissions reductions it cites and the goal of keeping temperature increases below 2 degrees C. *Id.* at 28. In fact, that report specifically rejects the Petitioner's position that emissions should be reduced to zero by 2050. *Id.* at 38.

449. See discussion *supra* note 166.

450. *Funk v. Wolf*, 144 A.3d 228, 237 (Pa. Commw. Ct. 2016) *aff'd without opinion*, 158 A.3d 642 (Pa. 2017).

451. *Id.*

comprehensive regulations, in accordance with the current science, designed to account for embedded emissions and reduce carbon dioxide and other greenhouse gas emissions to safe levels and thereby reach the concentrations that must be achieved to satisfy [the Commonwealth defendants’] constitutional obligations as public trustees of the air and atmosphere.<sup>452</sup>

The Commonwealth Court held that it had jurisdiction to review the decision.<sup>453</sup> In so holding, it reasoned, *inter alia*, that “we would have appellate jurisdiction over a final order of the EQB denying a rulemaking petition . . . , and a final order of the Environmental Hearing Board (EHB) denying an appeal of a DEP decision to not submit a rulemaking petition to the EQB . . . .”<sup>454</sup> The Court also concluded that the plaintiffs had standing to bring the action.<sup>455</sup>

However, the Commonwealth Court ultimately dismissed the action because it found that there was not a sufficiently express mandatory duty that would trigger the remedy of mandamus.<sup>456</sup> The Court’s decision was not premised upon an interpretation of Article I, §27, but on the narrow scope of the remedy of mandamus:

Mandamus is an extraordinary remedy “designed to compel the performance of a ministerial act or mandatory duty, as opposed to a discretionary act. . . .” Mandamus cannot be used to direct the exercise of judgment or discretion in any particular way. . . . Nor will it issue to establish legal rights. . . .”We may issue a writ of mandamus only where the petitioner has a clear legal right to enforce the performance of a ministerial act or mandatory duty, the defendant has a corresponding duty to perform the act[,] and the petitioner has no other adequate or appropriate remedy. . . .”<sup>457</sup>

In this regard, the Court found that the question presented in considering a writ of mandamus was not “whether the ERA imposes mandatory duties in the general sense, but whether the ERA provides . . . a clear right to the performance of the specific acts” requested and “whether the[ir] performance . . . is mandatory.”<sup>458</sup> The Court reasoned that the remedy of mandamus could not be invoked to expand the authority of executive agencies. It also explained that a judicially enforceable mandatory duty required legislation creating such a mandate, which the Court found lacking.<sup>459</sup>

Although the Court’s ultimate decision was premised upon the scope of relief that could be awarded by a court under the narrow equitable writ of mandamus, the decision also relied upon the application of the three-part balancing test that unduly limited the scope of the ERA, and which the *PEDF* Court expressly rejected.<sup>460</sup> Consequently, the Commonwealth Court in *Funk* appears to have overstated the discretion afforded to both the General Assembly and the executive branch and to have understated the scope of the duties imposed by the ERA and the role of the judicial branch in enforcing those duties. It did so by effectively saying that compliance with the ERA requires executive agencies only to follow the law prescribed by the General Assembly.<sup>461</sup>

Even under the unduly circumscribed three-part balancing test employed in *Funk*, the decision can be read to support the proposition that there is an enforceable duty to adopt a GHG emission regulation under the APCA, if the regulation is presented to the EQB in a detailed petition. The Commonwealth Court noted that “Respondents further acknowledge that the General Assembly, through the APCA, bestowed upon them a duty to promulgate and implement rules and regulations to reduce CO<sub>2</sub> and GHG emissions.”<sup>462</sup>

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452. *Id.* at 238.

453. *Id.* at 241-243.

454. *Id.* at 243.

455. *Id.* at 248.

456. *Id.* at 251-52.

457. *Id.* at 248 (citations omitted).

458. *Id.*

459. *Id.* at 248-250.

460. *Pa. Env’tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 930 (Pa. 2017) (rejecting three-part test because it “strips the constitutional provision of its meaning.”); *see Funk v. Wolf*, 144 A.3d 228, 234 (Pa. Commw. Ct. 2016) *aff’d without opinion*, 158 A.3d 642 (Pa. 2017).

461. *See, e.g., Funk*, 144 A.3d at 235 (“[T]he balance between environmental and other societal concerns is primarily struck by the General Assembly, as the elected representatives of the people, through legislative action.”).

462. *Id.* at 250. In a footnote, the Court elaborated on the source of this duty, noting that the Commonwealth’s

Consequently, even in applying the unduly constrained test rejected by the Court in *PEDF*, the Commonwealth Court in *Funk* appears to conclude that the ERA creates rights and general duties, that there are specific duties for the EQB to consider a petition with an attached rule, and that there is a duty to adopt regulations addressing climate change under the APCA. The Commonwealth Court noted that if a proposal for a specific rule to address GHG emissions had been submitted to the EQB, the EHB would have had jurisdiction to review the EQB's final action denying the petition and the Commonwealth Court would have had jurisdiction to review the order of the EHB:

While we agree that we would have appellate jurisdiction over a final order of the EQB denying a rulemaking petition. . . , and a final order of the Environmental Hearing Board (EHB) denying an appeal of a DEP decision to not submit a rulemaking petition to the EQB. . . , we would not have appellate jurisdiction over the instant matter.<sup>463</sup>

EQB regulations prescribe a process for filing such a petition with the EQB and the EQB's consideration of the petition.<sup>464</sup> Following any denial of such a petition, a petitioner could bring an action for declaratory and injunctive relief.<sup>465</sup> Consequently, a petitioner could ask the EQB to promulgate a rulemaking to address greenhouse gases, and any denial of such a petition would be subject to judicial review. The Court's analysis in *PEDF* only reinforces the conclusion that the Commonwealth's duty to adopt such a regulation is both mandatory and judicially enforceable.

#### IV. THE COMMONWEALTH'S DUTY TO PREVENT AND MITIGATE HUMAN-CAUSED CLIMATE DISRUPTION REQUIRES THAT PENNSYLVANIA UNDERTAKE MEASURES TO REDUCE GHG EMISSIONS TO THE LEVEL WARRANTED BY THE SOCIAL COST OF CARBON AND TO ACHIEVE CARBON NEUTRALITY BY MID-CENTURY

Because a stable climate not disrupted by human caused GHG emissions is a right protected under the ERA's first clause and a public natural resource for which the Commonwealth is a trustee, the ERA's text directs that the Commonwealth shall "conserve and maintain" that stable climate for "all the people, including generations yet to come."<sup>466</sup> Neither the text of the ERA nor the law of trusts provides additional guidance on concentrations of GHGs in the atmosphere that will conserve the climate, the trajectory of emissions reductions necessary to avoid exceeding that concentration, or Pennsylvania's responsibility *vis-à-vis* the rest of the world. Pennsylvania's contribution to GHG emissions exceeds that of most nations.<sup>467</sup> If states were counted as nations, Pennsylvania would have ranked as the

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duties to this end derive, in part, from Section 5(a)(8) of the APCA, 35 P.S. § 4004(1), which requires the EQB to adopt rules and regulations to implement the federal Clean Air Act, 42 U.S.C. §§ 7401–7671q. The United States Supreme Court, in *Massachusetts v. Env'tl. Prot. Agency*, 549 U.S. 497, 528-29 (2007), had "little trouble" concluding that GHGs are "air pollutants" as defined by the Act and that the Environmental Protection Agency may regulate GHGs.

*Id.* at 250, n.17.

463. *Id.* at 243.

464. See 25 PA. CODE §§ 23.1-8 (2000).

465. See *Marcellus Shale Coal. v. Dep't of Env'tl. Prot.*, 2016 Pa. Commw. Unpub. LEXIS 830 \*62-63; 46 ELR 20179 (2016) (granting petition for review in part, in industry's action for declaratory and injunctive relief with respect to newly proposed oil and gas regulations). There would be no adequate remedy requiring such a petitioner to wait for PADEP to take some action that would be appealable to the Environmental Hearing Board. See *Arsenal Coal Co. v. Commonwealth*, 505 Pa. 198, 209-10 (1984) (Commonwealth Court erred in declining to exercise equitable jurisdiction over industry's petition to enjoin the Department of Environmental Resources from implementing or enforcing regulations promulgated by the EQB, where the internal administrative process would subject the industry to litigation and regulatory uncertainty). *A fortiori*, if there is no adequate remedy for an industry that must undertake litigation and experience regulatory uncertainty during a post-enforcement proceeding by PADEP, there is no adequate remedy for a petitioner seeking a rulemaking to address GHG emissions that is never even promulgated in the first place.

466. PA. CONST. art. I, §27.

467. See Robert B. McKinstry, Jr., Adam Rose, & Coreen Ripp, *Incentive-Based Approaches to Greenhouse Gas Mitigation in Pennsylvania: Protecting the Environment and Promoting Fiscal Reform*, 14 WIDENER L.J. 205, 217 (2004) (citation omitted).

sixteenth highest emitter in 2003.<sup>468</sup> Nevertheless, its actions alone will be insufficient to “conserve and maintain” the climate.<sup>469</sup>

Finally, the ERA does not tell us how Pennsylvania should exercise its duty to prevent climate disruption. At a minimum, one might argue that the constitutional standard requires Pennsylvania to do as much as it can, using existing authority. One can look to other sources of authority defining what is required to “conserve and maintain” a stable climate, Pennsylvania’s share of responsibility, and the means that can be employed. Specifically, as we discuss below, binding treaty law and other federal law define the temperature and concentration goals and Pennsylvania’s share. As recognized by the *Funk* decision, the APCA provides available tools for limiting emissions.<sup>470</sup> Those tools can be defined in a properly framed regulation presented by way of a petition to the EQB.<sup>471</sup> The EQB’s action on that petition can be subject to judicial review under the equitable writ of *certiorari* rather than *mandamus*.<sup>472</sup> As further described below, whether framed as the “as much as it can” standard or a standard incorporating these other sources of authority, at a minimum the mechanism should include a trading program that reduces emissions to the level warranted by the social cost of carbon and ultimately to achieve carbon neutrality by mid-century.

#### A. *The United Nations Framework Convention on Climate Change and the Federal Clean Air Act Provide Judicially Ascertainable Standards Governing the Extent of Reductions Required to Conserve and Maintain a Stable Climate and Pennsylvania’s Relative Responsibility*

A judicially ascertainable standard for determining the emissions reductions required to conserve and maintain the climate is provided by an international treaty ratified by the United States, the United Nations Framework Convention on Climate Change (UNFCCC),<sup>473</sup> the Paris Agreement<sup>474</sup> adopted pursuant to that Convention, and the body of internationally-accepted scientific evidence endorsed by the nations of the world pursuant to the UNFCCC

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468. *Id.*

469. Pennsylvania’s gross GHG emissions in 2013 totaled 305.75 million metric tons. See PA. DEP’T OF ENVTL. PROT., PENNSYLVANIA GREENHOUSE GAS INVENTORY 2016 4 (2016), [http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/Docs/Inventory-2016\\_1-18-17\\_\(final\).pdf](http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Advisory%20Committees/CCAC/Docs/Inventory-2016_1-18-17_(final).pdf). See also *Massachusetts v. Env’tl. Prot. Agency*, 549 U.S. 497, 524-25 (2007). The Supreme Court rejected EPA’s argument that regulation of automobile emissions in the United States, which then totaled 1.7 billion metric tons of carbon dioxide and represented “more than 6% of worldwide carbon dioxide emissions” would fail to meet the “causation” element of standing. The Court reasoned that the fact “[t]hat a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law.” The Court further reasoned that “[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence, according to petitioners, to global warming.” *Id.* at 525.

470. *Funk v. Wolf*, 144 A.3d 228, 250 n.17 (Pa. Commw. Ct. 2016), *aff’d without opinion*, 158 A.3d 642 (Pa. 2017).

471. 25 PA. CODE § 23.1.

472. *Funk*, 144 A.3d at 242-43.

473. United Nations Framework Convention on Climate Change, June 4, 1992, 1771 U.N.T.S. 107, [http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf). (providing a general framework for the international reduction of GHG emissions).

474. United Nations Framework Convention on Climate Change, *The Paris Agreement*, Dec. 12, 2015, [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php) [hereinafter *The Paris Agreement*]. President Trump announced his intent to withdraw the United States from the Paris Agreement. Donald J. Trump, *Statement by President Trump on the Paris Climate Accord.*, THE WHITE HOUSE (June 1, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/>. However, that announcement will be ineffective with respect to Pennsylvania’s interpretation of the ERA and likely will also be ineffective with respect to federal law. First, no withdrawal can take effect until November 2020, because parties are not entitled to withdraw until three years after the Agreement entered into force and withdrawal does not take effect until one year after the withdrawal. *The Paris Agreement*, art. 28. Second, the Paris Agreement merely interprets the UNFCCC, from which the United States has not withdrawn, and which remains therefore binding law under Article III of the Constitution. Finally, the pertinent requirements of the UNFCCC as interpreted by the UNFCCC are likely now customary international law that will be binding on the United States and its states notwithstanding the United States’ withdrawal. Robert B. McKinstry, Jr., Thomas D. Peterson & Steven Chester, *Unlocking Willpower Part Two*, 47 ENVTL. L. REP. (Env’tl. Law Inst.) 10135, 10137-10138 (2017); see also Robert B. McKinstry, Jr., *What Really Happened? Implications of President Trump’s Announcement on U.S. Withdrawal From the Paris Agreement and the Law of Unintended Consequences*, BALLARD SPAHR at 1-2 (July, 2017), [https://response.ballardspahr.com/email\\_handler.aspx?sid=5427bed1-f563-45e1-8cb1-74758039dace&redirect=http%3a%2f%2fwww.ballardspahr.com%2f%2e%2fmedia%2ffiles%2fArticles%2fWhat\\_Really\\_Happened](https://response.ballardspahr.com/email_handler.aspx?sid=5427bed1-f563-45e1-8cb1-74758039dace&redirect=http%3a%2f%2fwww.ballardspahr.com%2f%2e%2fmedia%2ffiles%2fArticles%2fWhat_Really_Happened) (It is important to note that even if the Paris Agreement’s definition of the intent of the UNFCCC to prevent “dangerous anthropogenic interference with the climate system” should not be considered binding law, the international scientific consensus reflected in the Paris Agreement can equally define the emissions reductions required to fulfill the Commonwealth’s duty as a trustee to conserve and maintain a stable climate.).

and the Paris Agreement. Pennsylvania's share of the reductions is governed by the federal Clean Air Act.<sup>475</sup> Under the Supremacy Clause of the United States Constitution, Pennsylvania is bound to interpret its constitution consistent with treaties which, along with the United States Constitution and federal laws, constitute the "supreme Law of the Land" that binds state courts.<sup>476</sup>

The objective of the UNFCCC is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."<sup>477</sup> While the Convention does not further identify what that level is, the 2015 Paris Agreement does.<sup>478</sup> In the run-up to the Paris Conference, the Conference of the Parties translated the Framework Convention's stabilization objective into a maximum permissible surface temperature increase. The most frequently stated goal was 2°C (or 3.6 degrees Fahrenheit) above preindustrial levels.<sup>479</sup> Reflecting the evolving scientific consensus on the temperature rise at which serious climate disruption will occur, the Paris Agreement aims to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels."<sup>480</sup> The parties also agreed "to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."<sup>481</sup>

Also reflecting the scientific consensus of the nations of the world, the Paris Agreement further defines the emissions reductions required to keep temperatures below those thresholds by requiring that the Parties "achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century."<sup>482</sup> If the entire world needs to reach a point where emissions of GHGs are no greater than their removal by GHG sinks by the second half of this century, Pennsylvania will also need to achieve that balance by that time. Therefore, at a minimum, Pennsylvania must develop an emissions reduction trajectory that reduces net emissions to zero, meaning the elimination of all GHG emissions other than those geologically or biologically returned to sinks (*i.e.* sequestered) by the second half of the 21<sup>st</sup> century. Because Pennsylvania's GHG emissions are disproportionately higher than most of the rest of the world, Pennsylvania should achieve that goal by mid-century.

This goal furthers the UNFCCC requirement that the developed nations take the lead in reducing emissions, enacting policies to limit emissions, and enhance carbon sinks.<sup>483</sup> These policies are to be precautionary, comprehensive and "cost-effective so as to ensure global benefits at the lowest possible cost . . . and comprise all economic sectors."<sup>484</sup> There is a scientific consensus, reflected in a growing number of state and local emissions

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475. See generally Clean Air Act 42 U.S.C. § 7401-7671.

476. See U.S. CONST. art. VI, cl.2. The *Charming Betsy* doctrine, requiring that federal law be construed consistent with the "law of nations," should be equally binding with respect to the interpretation of state constitutional law. *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804).

477. UNFCCC, *supra* note 191, art. 2.

478. *The Paris Agreement*, *supra* note 192, art. 2, § 1 (This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: . . . (a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."); see also *id.* at art. 4 § 1 ("In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century").

479. See, e.g., United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010*, ¶ 4, U.N. Doc. 1/CP.16, FCCC/CP/2010/7/Add.1 (Mar. 15, 2011), <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

480. United Nations Framework Convention on Climate Change, *Conference of the Parties*, Decision 1/CP.21, art. 2.1(a), U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (2015), <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>.

481. *Id.*

482. *Id.* art. 4, § 1.

483. UNFCCC, *supra* note 191, art. 3, § 1; art. 3 § 3; art. 4, § 2(a); *The Paris Agreement*, *supra* note 192, art. 4, § 4.

484. UNFCCC, *supra* note 191, art. 3, § 3; see *The Paris Agreement*, *supra* note 192, art. 4, § 4 (requiring the United States and other developed country parties to take the lead in achieving the necessary reductions); UNFCCC, *supra* note 191, art. 4, § 2(a)(calling for the adoption of "policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs"); UNFCCC, *supra* note 191, art. 3, § 2 (requiring each nation to consider impacts beyond those within its borders, considering "the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change").

reduction goals, that developed nations need to reduce their total economy-wide emissions by at least 80% from 1990 levels by 2050.<sup>485</sup> Moreover, a growing number of studies, including a study by the World Bank, have concluded that this goal is achievable.<sup>486</sup>

The provisions of the federal Clean Air Act governing the obligations of states support the proposition that Pennsylvania should consider these treaty obligations in construing its obligations as a trustee under Article I, § 27. Section 115 of the Clean Air Act is triggered whenever the EPA finds air pollution originating within a state “cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country.”<sup>487</sup> When that happens, the EPA must require the state to submit an amendment to the “good neighbor” provision of its state implementation plan<sup>488</sup> that will “prevent or eliminate the endangerment.”<sup>489</sup> In its endangerment finding, EPA found that emissions of GHGs within the United States endanger health and the environment in other nations.<sup>490</sup> Virtually all other nations of the world are parties to the UNFCCC and the Paris Agreement, which provides the United States reciprocal rights with respect to the prevention and control of greenhouse gases.<sup>491</sup> These facts trigger

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485. Cal. Exec. Order No. B-30-15 (Apr. 29, 2015), <https://www.gov.ca.gov/2015/04/29/news18938/>; Conn. Exec. Order No. 46 P1 (2015); Colo. Exec. Order No. D 004 08 §1 (Apr. 22, 2008); MASS. GEN. LAWS ch. 21N, § 3(b)(4); Mich. Exec. Dir. 2009-4 Section II; 2015 Minn. Laws 216H.02 subd 1; N.J. STAT. ANN. § 26:2C-38 (West 2009); N.Y. Exec. Order No. 24 (2009), <https://www.dec.ny.gov/energy/71394.html>; 42 R.I. GEN. LAWS §42-6.2-2(a)(C) (2014).

486. MARIANNE FAY ET AL., INT’L BANK FOR RECONSTRUCTION AND DEV./THE WORLD BANK, DECARBONIZING DEVELOPMENT: THREE STEPS TO A ZERO-CARBON FUTURE 96 (2015), <http://www.worldbank.org/content/dam/Worldbank/document/Climate/dd/decarbonizing-development-report.pdf>; JEFFREY SACH, ET AL., SUSTAINABLE DEVELOPMENT SOLUTIONS NETWORK AND THE INST. FOR SUSTAINABLE DEV. AND INT’L RELATIONS, PATHWAYS TO DEEP DECARBONIZATION IX (Emmanuel Guérin, et al. eds. 2014), [http://unsdsn.org/wp-content/uploads/2014/09/DDPP\\_Digit\\_updated.pdf](http://unsdsn.org/wp-content/uploads/2014/09/DDPP_Digit_updated.pdf); see also John C. Dernbach, *Creating Legal Pathways to a Zero Carbon Future*, in CONTEMPORARY ISSUES IN CLIMATE CHANGE LAW AND POLICY: ESSAYS INSPIRED BY THE IPCC 21 (Robin Kundis Craig & Stephen R. Miller eds., Environmental Law Institute, 2016).

Because the endpoint will be carbon neutrality, this will be required of Pennsylvania under any scenario.

487. 42 U.S.C. § 7415 (a) (2016).

488. 42 U.S.C. § 7410(a)(2)(H)(ii) (2016).

489. *Id.* §7415(b) (2015).

490. Endangerment Finding, *supra* note 82 at 66,514 (The EPA made the finding in connection with its determination that the impacts of climate change in foreign nations would, in turn, endanger health and welfare within the United States:

EPA is not considering international effects to determine whether the health and welfare of the public in a foreign country is endangered. Instead, EPA’s consideration of international effects for purposes of determining endangerment is limited to how those international effects impact the health and welfare of the U.S. population);

*Id.* The precise nature of the Administrator’s finding regarding international effects is set forth in the proposed finding, which the Administrator adopted in the final action:

On a global basis, according to the IPCC, projected climate change-related impacts are likely to affect the health of millions of people, particularly those with low adaptive capacity, as a result of a number of factors including increased cardio respiratory diseases due to higher concentrations of ground level ozone brought on by higher temperatures, and by more frequent and intense heat waves. Food production is expected to be much more vulnerable to climate change in poorer regions of the world compared to food production in the U.S. The IPCC also identified that the coasts around the world are experiencing the adverse consequences of hazards related to climate and sea level. Coastal settlements are highly vulnerable to extreme events, such as storms which impose substantial costs on coastal societies. Ecosystems and species around the world are very likely to show a wide range of vulnerabilities to climate change, depending on the extent to which climate change alters conditions that could cross critical thresholds. The most vulnerable ecosystems include coral reefs, sea-ice ecosystems, high-latitude boreal forests, and mountain ecosystems where there is no possibility of migrating to adapt to climate change.

Climate change impacts in certain regions of the world may exacerbate problems that raise humanitarian, trade and national security issues for the U.S. Climate change has been described as a potential threat multiplier regarding national security issues. This is because, as noted above, climate change can aggravate existing problems in certain regions of the world such as poverty, social tensions, general environmental degradation, and conflict over increasingly scarce water resources.

*Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 18886, 18903 (April 24, 2009). Although the Administrator stated that she was not making a foreign endangerment finding, these factual determinations regarding effects in foreign nations underlying her determination that these effects would cause endangerment in the United States effectively constitute a finding that GHG emissions in the United States cause or contribute to endangerment in other nations.

491. See *Status of Ratification of the Convention*, UNITED NATIONS, <https://unfccc.int/process/the-convention/what-is-the-convention/status-of-ratification-of-the-convention> (196 nations and 1 regional economic integration organization are Parties) (last visited April 17, 2018); UNFCCC

the obligation to reduce GHG emissions to prevent endangerment in other nations within the meaning of section 115.<sup>492</sup> Further, the Clean Air Act’s good neighbor provision requires that each state implementation plan include “adequate provisions . . . insuring compliance with the requirements of section. . . [115] of this title (relating to. . . international air pollution).”<sup>493</sup> Although EPA has not issued a call for states to submit state implementation plans (SIPs) to reduce GHG emissions under section 115, the predicates triggering the mandatory obligation to do so exist. Thus, Pennsylvania’s obligations under the Clean Air Act’s good neighbor provision also exist. These create an obligation for Pennsylvania, as a fiduciary under the ERA, to take action to reduce emissions to prevent endangerment of foreign nations from GHG pollution consistent with the good neighbor provision.

## B. *Pennsylvania’s Obligation as a Trustee Should Require that GHG Emissions Be Limited to the Extent Consistent with the Social Cost of Carbon and to Achieve Carbon Neutrality by Mid-Century*

A regulatory program that is designed to take all measures reasonably necessary to conserve the corpus of the environmental trust resource for the benefit of the trust’s beneficiaries will most closely hew to the intent and text of the ERA as interpreted in *PEDF* and the *Robinson Township* plurality. That program should therefore employ all measures reasonably necessary to conserve a stable climate and the public environmental resources it supports. As explained further below, this can be best accomplished by putting a price on emissions of GHGs at least equal to the social cost of carbon and by recovering the value of that emissions price as income for the beneficiaries of the trust. We will explain below the derivation of this “social cost of carbon” and its relevance to Pennsylvania’s constitutional obligations as a trustee under the ERA.

### 1. The Relationship of the Social Cost of Carbon to Pennsylvania’s Obligations as a Trustee

In economic theory, the impacts of climate disruption represent “externalities” of the emissions of GHGs that are not reflected in the market price of the products whose manufacture produces those emissions.<sup>494</sup> Under that theory, those who emit GHGs are appropriating the resources they damage without paying for the damage. Principles of economic efficiency, as well as equity, require that those responsible for the damage pay for it and that the damage be reflected in the price of the goods whose manufacture will cause the damage. If the cost of reducing emissions is less than the cost of the damages avoided, the emitter will reduce the emissions, creating a net increase in social welfare; the market will therefore favor activities that do not emit the GHGs that cause the damage.<sup>495</sup> The “social cost of carbon” is a measure of the future estimated cost or damage resulting from the emission of a metric ton of carbon

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*Status as of 17-04-2018*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg\\_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en) (last visited July 9, 2018); *Paris Agreement – Status of Ratification*, UNITED NATIONS, <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (175 Parties have ratified of 197 Parties to the Convention) (last visited Apr. 17, 2018); *Paris Agreement Status as at 17-04-2018*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en) (last visited July 4, 2018). See *The Paris Agreement* art. 2 §1 (a), art. 3, art. 4 §1 (Article 3 of the Paris Agreement calls for all Parties “to undertake and communicate ambitious efforts” as defined further in the Agreement “with the view to achieving the purpose of the Agreement as set out in Article 2,” viz. limiting GHG emissions to hold “the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels” by achieving net emissions neutrality by the second half of the century. Thus, there are reciprocal rights and obligations to reduce emissions among the 175 parties to the Agreement.). See generally Michael Burger et. al., *Legal Pathways to Reducing Greenhouse Gas Emissions Under Section 115 of the Clean Air Act*, UCLA School of Law, Public Law Research Paper No. 16-11 (Jan. 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2742366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2742366).

492. See *Her Majesty the Queen in Right of Ontario v. Env’tl. Prot. Agency*, 912 F.2d 1525, 1528 (D.C. Cir. 1990); see also McKinstry, Peterson & Chester, *supra* note 192, at 10142.

493. 42 U.S.C. §7410(a)(2)(D)(ii) (2012).

494. NAT’L RESEARCH COUNCIL, HIDDEN COSTS OF ENERGY: UNPRICED CONSEQUENCES OF ENERGY PRODUCTION AND USE 28-29 (2010).

495. *Id.* at 32; see McKinstry, Rose, & Ripp, *supra* note 185, at 214-221; see also SAMUEL A. NEWELL ET. AL., N.Y. DEP’T. OF PUB. SERV., N.Y. INDEP. SYS. OPERATOR, PRICING CARBON INTO NYISO’S WHOLESALE ENERGY MARKET TO SUPPORT NEW YORK’S DECARBONIZATION GOALS 3 (2017), [https://www.energymarketers.com/Documents/Brattle\\_study\\_carbon\\_pricing.pdf](https://www.energymarketers.com/Documents/Brattle_study_carbon_pricing.pdf).

today; imposing that cost on carbon emissions today will shift economic activity to other activities that do not result in that cost or damage.<sup>496</sup>

There have been a number of efforts to calculate this “social cost of carbon.” Because a series of Executive Orders required that federal agencies prepare cost-benefit analyses to assess the impact of regulatory actions, the United States convened an interagency task force to determine this “social cost of carbon,” producing reports in 2010 and 2016.<sup>497</sup> Based on updated data on the damages caused by climate disruption, the 2016 report calculated a variety of values representing the average and high cost of GHG emissions for different time periods and discount rates.<sup>498</sup> As action is delayed, the social cost of carbon increases because the damage is greater, more imminent, discounted less.<sup>499</sup> The 2016 report calculated that the average social cost of carbon in 2020 (using a discount rate of 3%) is \$42/ton, but that the 95<sup>th</sup> percentile (high) cost would be \$123/ton. In 2050, these figures increase to \$69/ton and \$212/ton.<sup>500</sup> These costs represent the marginal cost of avoiding future damage from the emission of a ton of carbon in any given year and they, therefore, do not include the damage that will already occur as a result of past emissions.<sup>501</sup>

Federal agencies, states, and federal courts have relied upon the social cost of carbon in determining which measures should be employed to prevent GHG emissions. Prior to 2017, federal agencies routinely relied upon the social cost of carbon developed by the expert panel in cost-benefit analyses.<sup>502</sup> The Seventh Circuit specifically

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496. NAT’L RESEARCH COUNCIL, *supra* note 212, at 60.

497. See Regulatory Planning & Review, 58 Fed. Reg. 51735 (Sept. 30, 1993) (requiring agencies, to the extent permitted by law, “to assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs”); INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12866 (2010), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc\\_csd\\_2010.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc_csd_2010.pdf); INTERAGENCY WORKING GROUP ON SOCIAL COST OF GREENHOUSE GASES, TECHNICAL SUPPORT DOCUMENT: TECHNICAL UPDATE OF THE SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12866 (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf) [hereinafter 2016 SCC]; INTERAGENCY WORKING GROUP ON SOCIAL COST OF GREENHOUSE GASES, ADDENDUM TO TECHNICAL SUPPORT DOCUMENT ON SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12866: APPLICATION OF THE METHODOLOGY TO ESTIMATE THE SOCIAL COST OF METHANE AND THE SOCIAL COST OF NITROUS OXIDE (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/addendum\\_to\\_sc-ghg\\_tsd\\_august\\_2016.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf). See *Presidential Order on Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16093 (March 31, 2017). President Trump has issued an Executive Order directing the withdrawal of the social cost of carbon guidance. However, that Order has no binding legal effect standing alone and there are cogent reasons to believe that, if it were applied, that application would not withstand judicial review. The guidance represented the peer-reviewed consensus of a group of scientific and economic experts. The conclusions can no more be undone by unilateral executive fiat than can the conclusions of any other expert report.

498. 2016 SCC, *supra* note 215 at 4.

499. See ENVTL. PROT. AGENCY, FACT SHEET, SOCIAL COST OF CARBON 2 (2016), [https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social\\_cost\\_of\\_carbon\\_fact\\_sheet.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf) [hereinafter EPA SCC FACT SHEET].

500. 2016 SCC, *supra* note 215 at 4, Table ES-1.

Bob Litterman, one of the world’s leading economists on pricing risk suggests that the failure of the calculations of the social cost of carbon to incorporate high damage-low probability events results in a lower cost estimates and emphasizes that delay in mitigation by fifteen years will triple the social cost of carbon. Bob Litterman, Kent Daniel & Gernot Wagner, *Applying Asset Pricing Theory to Calibrate the Price of Climate Risk* 43 (March 15, 2017), [https://globalriskinstitute.org/wp-content/uploads/2017/05/GRI\\_Asset-Pricing-Climate-Risk\\_Mar-15-2017-Litterman.pdf](https://globalriskinstitute.org/wp-content/uploads/2017/05/GRI_Asset-Pricing-Climate-Risk_Mar-15-2017-Litterman.pdf).

501. EPA SCC FACT SHEET, *supra* note 217 at 1 (“The SC-CO<sub>2</sub> is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide (CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (*i.e.*, the benefit of a CO<sub>2</sub> reduction).”)

502. For example, the EPA SCC Fact Sheet that accompanied the release of the 2016 SCC gave the following examples of EPA’s use of the SCC in rulemakings:

EPA has used the interagency group recommended estimates of the SC-CO<sub>2</sub> to analyze the carbon dioxide impacts of various rulemakings since 2010. Examples of these rulemakings include:

- The Joint EPA/Department of Transportation Rulemaking to establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (2012-2016)
- Amendments to the National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards (NSPS) for the Portland Cement Manufacturing Industry
- Regulatory Impact Results for the Reconsideration Proposal for National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Sources

approved this use of that social cost of carbon in promulgating energy efficiency regulations in *Zero Zone v. Department of Energy*.<sup>503</sup> Both Illinois and New York relied upon the federally-determined social cost of carbon in the development of zero emissions credit (ZEC) programs to “encourage the preservation of the environmental values or attributes of zero-emissions nuclear-powered electric generating facilities for the benefit of the electric system, its customers and environment.”<sup>504</sup> These programs provide assurances that the electricity generators will receive value equivalent to the avoided cost of carbon emissions calculated using the federal social cost of carbon.<sup>505</sup> Both programs have been survived a variety of challenges.<sup>506</sup>

Although President Trump has issued an Executive Order withdrawing the federal social cost of carbon,<sup>507</sup> that action should not preclude state reliance on the expert determinations underlying that metric. It is also doubtful that the President can reverse the determination of a panel of scientific experts by administrative fiat, particularly where regulations based on the scientific determination have been upheld on judicial review and the derivation of the metric is consistent with principles of international law.<sup>508</sup>

The social cost of carbon has several implications with respect to the Commonwealth’s duties as a trustee under the reasoning of *Robinson Township* and *PEDF*. First, allowing emissions to continue unabated will increase the damage to the corpus of the trust.<sup>509</sup> If a price is put on the emissions equal to the social cost of carbon, or emitters are otherwise required to implement all emissions reductions up to that cost, the damage to the corpus of the trust will be avoided consistent with the duty to “conserve and maintain” the trust corpus. Second, the social cost of carbon provides a way of measuring the cost of damage from climate change, including damage to public natural resources, through state actions allowing unregulated emissions of GHGs. Third, the Commonwealth’s duty to “act affirmatively via legislative action to protect the environment,”<sup>510</sup> suggests that the state could use a mechanism like the social cost of

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- Proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury Emissions from Mercury Cell Chlor Alkali Plants
  - Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units Standards
  - Final Mercury and Air Toxics Standards
  - Joint EPA/Department of Transportation Rulemaking to establish Medium- and Heavy - Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards
  - Proposed Carbon Pollution Standard for Future Power Plants
  - Joint EPA/Department of Transportation Rulemaking to establish 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards.

EPA SCC FACT SHEET, *supra* note 217 at 4-5

503. *Zero Zone v. Dep’t of Energy*, 832 F.3d 654, 677 (7th Cir. 2016).

504. *Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554, 561 (S.D.N.Y. 2017), *aff’d* No. 17-2654-cv (2d Cir. Sept. 27, 2018) (quoting CES Order, App’x E, at 1).

505. *Id.* at 562. Specifically, “the price of each ZEC is the social cost of carbon less the generator’s putative value of avoided greenhouse gas emissions less the amount of the forecast energy price.”

506. *Village of Old Mill Creek v. Star*, 2017 WL 3008289, No. 17 CV 1163 and 1164 (N.D. Ill. July 14, 2017), *aff’d* sub nom *Electric Power Supply Ass’n v. Star*, Nos. 17-2433 & 17-2445 (7<sup>th</sup> Cir. Sept. 13, 2018) (upholding Illinois program); *Zibelman*, 272 F. Supp. at 561, *aff’d* No. 17-2654-cv (2d Cir. Sept. 27, 2018) (upholding New York program). Although both programs are under appeal, the use of the federal social cost of carbon is not an issue in those appeals.

507. *See* Exec. Order No. 13,783, 82 Fed. Reg. 16093 (Mar. 31, 2017).

508. The action is reminiscent of apocryphal story King Canute’s attempt to hold back the tides cited in *Diamond v. Chakrabarty*, 447 U.S. 303, 317 (1980). The Regulatory Impact Statement supporting EPA’s proposal to withdraw the Clean Power Plan uses a much lower social cost of carbon based on a limitation of consideration of damages to those that will occur only within the United States. This appears to be directly contrary to the UNFCCC’s principle applicable to all parties set forth in Article 3, section 3 directing that rules “should be cost-effective so as to ensure global benefits at the lowest possible cost.” In other words, cost-effectiveness should consider global benefits in the form of reduced global damages rather than limiting that consideration to the benefits accruing to an individual nation or, in the case of Pennsylvania, state. A recent peer-reviewed study calculated a social cost of carbon based on U.S. damages alone to approach \$48/ton. Katharine Ricke, Larent Drouet, Ken Caldeira & Massimo Tavoni, 8 *Nature Climate Change* 895 (2018).

509. *See* Section III.A.

510. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 958 (Pa. 2013) (plurality); *Pa. Evtl. Def. Found. v. Commonwealth*, 161 A.3d 911, 933 (Pa. 2017).

carbon to constrain the emissions of GHGs that harm public natural resources. This result seems compelled by the text of the ERA and the trustee's duty of prudence as found by the Court in *PEDF*.<sup>511</sup>

While the social cost of carbon is based on the marginal cost of greenhouse gas emissions based on global damages, the ERA relates to the public natural resources of the Commonwealth of Pennsylvania. The most relevant public natural resource, a stable climate not disrupted by human GHG pollution, is both a global resource and a Pennsylvania public resource. If a cost is put on GHG emissions, as contemplated by the derivation of the social cost of carbon, parties will implement all control measures that cost less than the social cost of carbon, so that the social cost of carbon represents the cost that should be imposed to prevent "unreasonable degradation of natural resources."<sup>512</sup> A lower cost will be insufficient to conserve the global resource, and if the global climate is disrupted, Pennsylvania's climate will be equally disrupted.<sup>513</sup> Because GHGs are global pollutants, if Pennsylvania does not implement all measures costing less than the social cost of carbon, but instead uses some lesser value based on the damage within Pennsylvania itself, the global climate will be disrupted, and Pennsylvania trust resources will neither be conserved nor maintained.

There is a second legal reason for employing a measure based on the marginal global cost associated with a ton of GHGs. The UNFCCC requires that developed nations implement policies and measures to deal with climate change that "should be cost-effective so as to ensure global benefits at the lowest possible cost."<sup>514</sup> In this case, the "global benefits" are the avoided global damages measured by the social cost of carbon. For this reason, the social cost of carbon appears to be the best measure to determine both the value of the undisrupted climate resources and the scope of measures required under the ERA to prevent unreasonable degradation of those resources.

## 2. Support for a Meaningful Price on GHG Emissions

The APCA authorizes the EQB to adopt a regulation putting a price on GHG emissions commensurate with the social cost of carbon and establishing a descending cap that achieves carbon neutrality by mid-century. The *PEDF* decision provides additional support for such a regulation through two overlapping rationales. First, there is a significant argument that allowing private parties to emit GHGs is the equivalent of allowing them to appropriate ecosystem services for free even though the Commonwealth has a fiduciary duty to assure that the beneficiaries of the trust obtain a fair price. Allowing the use of these resources without requiring payment would arguably loot public trust resources in an even more egregious way than the General Assembly's looting in *PEDF*. Second, putting a price on emissions commensurate with the social cost of carbon and establishing a descending cap that achieves carbon neutrality by mid-century is necessary to sufficiently maintain and conserve the ERA trust resources.<sup>515</sup> Both rationales would support either the imposition of a fee or capping emissions and auctioning allowances with a reserve price that is adequate both to (1) assure the conservation of the trust resources by limiting the risk to those resources and (2) compensate the Commonwealth for the damage to public resources that will occur. In either case, the required price would be at least as great as the social cost of carbon, which, as discussed above, is based on the marginal cost of the future damage avoided by each ton of carbon dioxide emitted.<sup>516</sup>

Putting a price on carbon consistent with the social cost of carbon under each of the foregoing rationales is arguably mandated by the fiduciary duties cited by the Court in *PEDF*. These duties include the duty of prudence,

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511. See *PEDF*, 161 A.3d at 932 (citation omitted); see also *id.* at 938 (invalidating transfer of funds because it violated the duty of prudence and the duty to use trust assets in accordance with the trust purposes). Whether the Commonwealth's failure as a trustee to preserve the corpus of the trust resources after damage may have created liability for damage is beyond the scope of this article.

512. See *Robinson Twp.*, 83 A.3d at 953 (quoting *Mont. Env'tl Info. Ctr. v. Dep't of Env'tl. Quality*, 988 P.2d 1236, 1249 (1999)).

513. An argument premised on the proposition that one should ignore the global marginal cost of the emissions of a ton of GHGs in calculating the social cost of carbon would be the equivalent of arguing that one should ignore global demand and cost considerations in valuing the price of oil.

514. UNFCCC, *supra* note 191, art. 3, § 3.

515. Because, as discussed above, the social cost of carbon should be set at a level reflecting the damages avoided by not emitting an additional ton of carbon dioxide, with a premium reflecting the risk of catastrophic results and uncertainty, emissions will be avoided as long as the value from emitting the carbon dioxide is greater than the damage with the risk premium.

516. See EPA SCC FACT SHEET, *supra* note 217, at 1.

which “requires a trustee to ‘exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property.’ ”<sup>517</sup> A prudent trustee would seek to use an effective means of protecting the trust corpus; the effectiveness of a carbon price for this purpose is supported by both theory and experience. Putting this price on carbon emissions is also consistent with the text of the ERA, which directs the Commonwealth, as trustee, to “conserve and maintain” the trust corpus in furtherance of the people’s enumerated rights. Requiring polluters to purchase at auction their right to pollute the air, subject to a reserve price equal to the avoided damage as represented by the social cost of carbon, is more consistent with the Commonwealth’s duties as a trustee for its natural resources than allowing those polluters to appropriate those public resources free of charge and, as a result, deplete or damage the corpus of the trust.

#### V. A REGULATORY STRUCTURE AUTHORIZED BY EXISTING LAW CAN ACHIEVE CARBON NEUTRALITY BY MID-CENTURY AND IMPOSE THE SOCIAL COST OF CARBON ON GHG EMISSIONS

As suggested by *Funk v. Wolf*,<sup>518</sup> individuals adversely affected by climate disruption could assert their right under Article I, § 27 to have the Commonwealth perform its duty as a trustee to prevent climate disruption by submitting a petition to the EQB seeking the promulgation of specific regulations limiting GHG emissions pursuant to the APCA.<sup>519</sup> The petition must include a proposed regulation or regulatory structure consistent with existing statutory authority.<sup>520</sup> That authority would need to support a court order compelling the regulation’s adoption should the EQB fail to act, and withstand judicial review if the regulation were adopted by the EQB. To accomplish this, the structure should satisfy the following criteria:

First, as discussed above, the regulatory structure should result in the reduction of emissions sufficient to achieve net carbon neutrality by the second half of the century, if not earlier.

Second, as also discussed above, the regulatory structure should either impose a cost on emissions equal to the social cost of carbon or require all emissions reduction measures less than that cost. The structure could start with a lower cost that grows steadily over time, creating consistency with other programs, generating a predictable framework for investment decisions and facilitating a transition from free emissions to emissions that incur a cost.

Third, as also discussed above, the structure should generate income for the beneficiaries of the trust without impairing the trust’s principal.

Fourth, as discussed below, the regulatory structure should result in actual emissions reductions and not result in the transfer of emissions to other unregulated economic sectors, states or nations through the process of leakage.

Finally, as suggested in *Funk*, the regulatory structure should be authorized by existing law, or it should be authorized by law that can be implemented administratively without further legislation.<sup>521</sup>

For the reasons discussed below, other measures may be warranted to reduce the cost and effectiveness of a program. However, these criteria support and arguably require the adoption of an economy-wide cap-and-trade program with an auction and reserve price, similar to the program established under the California Global Warming

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517. *PEDF*, 161 A.3d at 932 (quoting *In re Mendenhall*, 398 A.2d 951, 953 (Pa. 1979) (quoting RESTATEMENT (SECOND) OF TRUSTS § 174)); *see also id.* at 938.

518. *Funk v. Wolf*, 144 A.3d 228, 243 (Pa. Commw. Ct. 2016), *aff’d without opinion* 158 A.3d 642 (Pa. 2017).

519. 35 PA. CODE §§ 4001-4015 (West 2011).

520. *See* 25 PA. CODE §§ 23.1(a)(2)(i), 2(2).

521. *See Funk v. Wolf*, 144 A.3d at 250 (noting that “[b]ecause the ERA does not authorize Respondents to disturb the legislative scheme, we must assess whether the actions requested are otherwise made mandatory by the climate change legislative scheme. “). This assumes that the General Assembly remains unwilling to enact new legislation and that it will be necessary to induce or judicially compel administrative action. The State of New York has been proceeding to implement its program for reducing GHGs administratively, using executive authority. *See Thrun v. Cuomo*, 976 N.Y.S.2d 320, 323 (N.Y. App. Div. 2013) (dismissing claims against New York Governor’s climate change action on jurisdictional grounds, limiting claims to challenges to regulations); *Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554, 559 (S.D.N.Y. 2017), *aff’d No. 17-2654-cv (2d Cir. Sept. 27, 2018)* (quoting CES Order, App’x E, at 1).

Solutions Act.<sup>522</sup> The regulation should prevent intersectoral “leakage” as well as leakage to other states and nations. The requirements of the ERA support distribution of the tradable allowances through an auction with a reserve price set at the social cost of carbon, except in instances where the award of free allowances or low-cost allowances may be warranted to prevent leakage. The program should be designed to effectively prevent leakage and inefficiencies by allowing interstate and international trading with jurisdictions with similar programs.

Existing Pennsylvania statutes authorize both the regulation of GHG emissions and participation in regional cap-and-trade programs, such as the nine-state Regional Greenhouse Gas Initiative (RGGI) or the California-Quebec-Ontario trading program. “RGGI is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce CO<sub>2</sub> emissions from the power sector.”<sup>523</sup> New Jersey is preparing to rejoin RGGI and Virginia has proposed regulations that would allow trading with RGGI states.<sup>524</sup> The RGGI program has put a descending cap on GHG emissions from the power sector, provides for trading of allowances, and distributes the bulk of allowances through an auction with a reserve price.<sup>525</sup> The California-Quebec-Ontario program creates an economy-wide cap and trade program that covers all major GHG emission sources and further requires that distributors of fossil fuels and electricity importers surrender allowances equal to the emissions created by combustion of the fuels or generation of the imported electricity.<sup>526</sup> That program also distributes many allowances by auction with a reserve price.<sup>527</sup> If a rulemaking petition that would facilitate trading in these programs were presented to the EQB, the EQB would have a judicially enforceable constitutional duty to adopt that regulation. As discussed above, such a petition would rely on existing Pennsylvania authority and would describe a reasonably specific rule, thus overcoming the obstacles to mandamus that existed in *Funk*.

#### A. *An Effective Regulatory Program Will Require Economy-Wide Coverage Under a Cap-and-Trade Program with Additional Measures to Prevent Leakage*

Many legal models would achieve GHG emissions reduction using existing Pennsylvania law. These include a cap-and-trade program with a variety of mechanisms to distribute allowances, an emissions tax, and traditional regulatory techniques (such as technology-based emissions standards and permits that establish limits based on technology or other criteria). Not all of these mechanisms are authorized by current law. Although a mix of other authorized mechanisms can and should be employed as part of an effective program, as discussed below, none can achieve what will be required to meet the constitutional objectives without an economy-wide cap-and-trade program with an auction and reserve price.

An economy-wide GHG emissions tax set at the social cost of carbon and coupled with the leakage prevention measures discussed below could equally satisfy the constitutional prerequisites. However, a tax requires additional legislative action. By contrast, as also discussed below, a cap-and-trade program with an auction and a reserve price can be established by regulation under the existing authority of the APCA and Article I, §27 without the need for further legislation. Moreover, a carbon tax will not guarantee achieving carbon neutrality by mid-century. A cap-and-trade program with an auction and reserve price and a descending cap reaching carbon neutrality by mid-century

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522. See CAL. HEALTH & SAFETY CODE §§ 38500-38599 (West 2006); CAL. CODE REGS., tit. 17, §§ 95801-96022 (2018). These regulations were changed in 2016 to set more aggressive targets. We are suggesting that the basic structure of the regulatory program – economy wide applicability with an auction and reserve price – should be adopted by Pennsylvania, not necessarily the goals. Pennsylvania goals should be structured to provide a longer term and certain path to carbon neutrality by the 2050s.

523. THE REG’L GREENHOUSE GAS INITIATIVE, <https://www.rggi.org/> (last visited Mar. 6, 2018).

524. 9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-6010 through 9VAC5-140-6430), 34 Va. Reg. Regs. 924-59 (Jan. 8, 2018). See also Darrell Proctor, *Virginia Moves to Join RGGI Carbon-trading Market*, POWER (Nov. 15, 2017), <http://www.powermag.com/virginia-moves-to-join-rggi-carbon-trading-market/>.

525. See *Elements of RGGI*, REGIONAL GREENHOUSE GAS INITIATIVE, <https://www.rggi.org/program-overview-and-design/elements> (last visited Mar. 6, 2018).

526. See CAL. AIR RES. BD., CALIFORNIA CAP-AND-TRADE PROGRAM: FACTS ABOUT THE LINKED CAP-AND-TRADE PROGRAMS 1 (2017), [https://www.arb.ca.gov/cc/capandtrade/linkage/linkage\\_fact\\_sheet.pdf](https://www.arb.ca.gov/cc/capandtrade/linkage/linkage_fact_sheet.pdf); CAL. AIR RES. BD., CAP-AND-TRADE REGULATION INSTRUCTION GUIDANCE 20-22 (2012), <https://www.arb.ca.gov/cc/capandtrade/guidance/chapter2.pdf>.

527. See *Reserve Sale Information*, CAL. AIR RES. BD. (Mar. 16, 2017), <https://www.arb.ca.gov/cc/capandtrade/reservesale/reservesale.htm>

would also be at least as effective in reducing GHG emissions as a tax, would better ensure that the mid-century goal would be achieved, and would also recover income for the beneficiaries of the constitutional trust.<sup>528</sup>

Emissions reductions can also be achieved using traditional regulatory approaches. Typically, these approaches rely upon emissions limitations based on reductions that are deemed achievable using a certain technology. This was the technique used to derive the emissions reduction goals for the Clean Power Plan.<sup>529</sup>

Although elements of a command-and-control program (such as permits and emissions monitoring) will be required for any effective program, sole reliance on this typical regulatory approach will not achieve the constitutional objectives for a number of reasons.<sup>530</sup> First, emissions limits based on what a given technology can achieve rather than the emissions reduction goal – *i.e.* the pathway necessary to achieve carbon neutrality by mid-century – are unrelated to the ultimate goal and will often fail to achieve it.<sup>531</sup> By contrast, setting a declining cap based on the trajectory deemed appropriate to achieve the emissions reduction will result in certain reductions. Second, the determination of a technology-based limit is based on an *ex ante* estimate of emissions reduction costs and available technologies and usually results in a lower degree of emissions reduction than can actually be achieved at a given cost.<sup>532</sup> Third, as discussed below, it would be more difficult and perhaps impossible to prevent leakage<sup>533</sup> using a technology-based regulatory approach. Fourth, the process of reviewing technologies and developing standards is time and energy intensive, and the standards are unlikely to be put in place within a time frame necessary to achieve the necessary reductions.<sup>534</sup> Fifth, although technology-based standards are intended to be technology forcing, hard caps coupled with an increasing reserve price would better inform the market in advance and would be more likely to drive the necessary capital investment. Sixth, a traditional regulatory approach would not generate income for the beneficiaries of the constitutional trust.

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528. A cap-and-trade program with an auction differs from a tax in one key respect. With a tax, the market determines the extent of emissions reductions, and with the cap-and-trade program, the market determines the amount of money that is recovered. The cap-and-trade program with an auction with a reserve price combines the two approaches and best assures emissions reductions. This is because a cap is often initially set too leniently and neither recovers sufficient income nor assures reductions that can be achieved cost-effectively. Thus, when a cap is set too leniently, the reserve price in the auction results in excess allowances not being sold, acting as a tax and achieving additional cost-effective reductions. The California Court of Appeals held that California’s GHG allowance auction (which utilizes a reserve price) is not a tax. *California Chamber of Commerce v. State Air Res. Bd.*, 216 Cal. Rptr. 3d 694, 700 (Cal. Ct. App. 2017) (“These twin aspects of the auction system, voluntary participation and purchase of a specific thing of value, preclude a finding that the auction system has the hallmarks of a tax.”).

529. See 40 C.F.R. pt. 60 (2017). See also *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 Fed. Reg. 48,035, 48,037 (proposed Oct. 16, 2017) (to be codified at 40 C.F.R. pt. 60) (proposing a repeal of the Clean Power Plan in part because the “rule established performance standards for coal-fired plants assuming a uniform emissions rate well below that which could be met by existing units through any retrofit technology of reasonable cost available at the time”).

530. See McKinstry, Peterson & Chester, *supra* note 192, at 10139-41 (discussing why a technology-based approach such as that applied in the Clean Power Plan is unlikely to result in the reductions necessary to achieve the objectives of the Paris Agreement).

531. *Id.* at 10140.

532. In virtually all cases, emissions reductions have been achieved at a significantly lower cost than originally estimated. This means that a cap-and-trade program with a reserve price set at the social cost of carbon will likely result in more emissions reductions than might be achieved by attempting to determine what technologies could be employed at the social cost of carbon and establishing emissions limits based on those technologies. For example, in the Clean Power Plan, EPA based its determination of the required emissions reductions on an *ex ante* determination of what could be achieved by a suite of technologies. Analyses of the CPP concluded that allowance prices would initially be zero, meaning that the required “reductions” would be no greater than business as usual. McKinstry, Peterson & Chester, *supra* note 192, at 10139, n. 35; see also *id.* at 10140; David M. Driesen, *Is Emissions Trading an Economic Incentive Program?: Replacing the Command and Control/Economic Incentive Dichotomy*, 55 WASH. & LEE L.R. 289, 318-319 (1998).

533. The concept of leakage is discussed in the following section.

534. For example, 40 C.F.R. § 60, which establishes standards of performance for new stationary sources of air pollutants for various industrial categories, now contains subparts A through UUUU, with each subpart generally addressing a different industrial category. 40 C.F.R. § 60 (2016). In the decade following *Massachusetts v. EPA*, EPA has established technology-based standards for just one category, new and existing power plants, 40 C. F.R. § 60, subparts TTT & UUUU, and those standards have been stayed and are under reconsideration. Moreover, as discussed above, the standards were outdated even before implementation, such that the new source standards were weaker than the emissions being achieved by existing combined cycle natural gas-fired plants, and the standard for existing power plants was no better than business as usual. McKinstry, Peterson & Chester, *supra* note 192, at 10139-40.

Still, regulatory approaches could be helpful to address situations where the market does not function efficiently.<sup>535</sup> California employs a number of supplemental measures to address these situations.<sup>536</sup> For example, as a part of its cap-and-trade program, the state imposes a price on fuel based on the GHG emissions from its combustion by requiring fuel suppliers to acquire and surrender allowances. However, this approach will not readily produce emissions reductions if manufacturers do not make lower emissions vehicles available, or if suppliers do not make low carbon fuels available, or if homebuyers do not consider utility costs in deciding whether to purchase energy efficiency measures rather than granite countertops in their new homes.<sup>537</sup> Therefore, measures like fleet emissions limits, fuel content requirements, and building codes requiring energy efficiency all reduce the cost of emissions reductions and can achieve greater emissions reductions when coupled with a cap-and-trade program. California includes measures such as these to support its cap-and-trade program.<sup>538</sup> However, without the uniform ceiling created by the cap, and without the uniform price floor created by the reserve price, those measures alone will not achieve the emissions reductions within the time necessary to conserve and maintain a stable climate.

## B. *The Significance of Leakage*

Both constitutional and practical policy considerations call for the implementation of a policy program that prevents or at least minimizes the phenomenon of “leakage.” Leakage refers to increases in emissions in unregulated sectors or unregulated jurisdictions that are caused by the relocation of emissions-generating activity away from the regulated sector or jurisdiction.<sup>539</sup> Leakage can occur because a business shifts some or all of its production to other states or nations. Leakage may also occur between sectors. If the result of regulation is an increase of emissions in other sectors, in other states, or in other nations, at least some of the damage to the natural resources will occur in any case.

### 1. Types of Leakage

Interstate leakage occurs in the electricity sector, where electrons flow readily across state boundaries and where generation units are called upon to supply electricity to the grid in order of price.<sup>540</sup> For example, if Pennsylvania puts a price on carbon but West Virginia does not, then generation units in West Virginia would not include an emissions price in their bids, and they would be able to submit lower bids. This would move the West Virginia units up in the order in which they are called. In some cases, this might result in a West Virginia coal-fired plant being called upon before a combined cycle natural gas plant in Pennsylvania, which has only about 40% of the emissions of the coal-fired plant.<sup>541</sup> In that case, even though Pennsylvania coal-fired plants would operate less frequently, some of the

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535. See Daniel Shawhan, *Reductions and “Leakage” from US State Cap-and-Trade Programs* (Sept. 19, 2013), <http://www.rff.org/files/sharepoint/Documents/Events/Workshops%20and%20Conferences/Shawhan-presentation.pdf>; MEREDITH L. FOWLIE, MAR REGUANT, & STEPHEN P. RYAN, MEASURING LEAKAGE RISK, 13 (2016), <https://www.arb.ca.gov/cc/capandtrade/meetings/20160518/ucb-intl-leakage.pdf>.

536. E.g., CAL. AIR RES. BD., CALIFORNIA’S 2017 CLIMATE CHANGE SCOPING PLAN, THE STRATEGY FOR ACHIEVING CALIFORNIA’S 2030 GREENHOUSE GAS TARGET (2017), [https://www.arb.ca.gov/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf). The additional measures include California’s renewable portfolio standard (“RPS”); a low carbon fuel standard; a multi-faceted mobile source strategy (including vehicle fleet standards, measures for encouraging the electrification of the vehicle fleet, and transportation and land use planning to reduce vehicle miles traveled); standards to reduce emissions of methane and carbon black as well as use of HFC’s; and measures to improve freight efficiency. *Id.* at 25, Table 1.

537. Although emissions reductions will ultimately occur even without the supplemental measures, a much higher price must be imposed without the supplemental measures.

538. *Id.* at ES16.

539. See Shawhan, *supra* note 254, at slide 5; FOWLIE ET. AL., *supra* note 254 at 13.

540. Fed. Energy Regulatory Comm’n v. Elec. Power Supply Ass’n, 136 S. Ct. 760, 768-69 (2016) (describing the structure of competitive, interstate electricity markets).

541. The national emissions data gathered by EPA and reported in the technical support documents for the Clean Power Plan indicated that in the Eastern Interconnection coal-fired plants emitted 1,356,066 thousand tons of carbon dioxide while producing 1,230,444 GWh of electricity for an emission rate of 1,102 tons/GWh, while combined cycle natural gas-fired plants emitted 328,220 thousand tons of carbon dioxide while producing 734,335 GWh, for an emission rate of 447 tons/GWh, or 40.6% of the average rate for the coal-fired fleet. ENVTL. PROT. AGENCY, OFFICE OF AIR & RADIATION, CO<sub>2</sub> EMISSION PERFORMANCE RATE AND GOAL COMPUTATION TECHNICAL SUPPORT DOCUMENT FOR CPP FINAL

emissions reductions would be offset by increased emissions from coal-fired plants in West Virginia operating more frequently. This type of leakage can also occur in regulatory regimes. If Pennsylvania requires the installation and operation of carbon capture and sequestration control equipment on its fossil-fired plants and West Virginia does not, the dispatch of electricity could also shift to West Virginia.

The EPA addressed interstate leakage of conventional air pollutants in its Cross-State Air Pollution Rule implementing the Clean Air Act's Good Neighbor provision.<sup>542</sup> The EPA based its allowance caps and state budgets on models using a uniform allowance price.<sup>543</sup> In essence, this created a program imposing a uniform price across state boundaries to prevent leakage.<sup>544</sup> Similar mechanisms to put a uniform price on emissions will be required for programs requiring GHG emissions reductions in the electricity sector.

Leakage has been a significant problem for the RGGI cap-and-trade program, which is limited to the electricity sector. Although the RGGI program has achieved significant emissions reductions in RGGI states, a portion of those reductions has caused the shifting of dispatch to higher emitting fossil fuel-fired facilities in Pennsylvania and other states.<sup>545</sup> This leakage not only limits the effectiveness of the RGGI program to reduce overall emissions, but also depresses RGGI allowance prices.<sup>546</sup> Allowance prices are so depressed by this leakage that New York needed to adopt a mechanism requiring electricity distribution companies to buy zero emission credits (ZECs) based on the social cost of carbon in order to prevent the premature closure of non-emitting nuclear units.<sup>547</sup>

Interstate and international leakage may occur in other industries, although not as readily as in the electricity industry. In the case of electricity generation, shifting dispatch of electricity units from one state to another based on price occurs immediately. However, products in other industries are not as readily fungible, and leakage may lead to the closing of a plant or moving production.<sup>548</sup> The difference in industry structure may necessitate different leakage control mechanisms, as discussed in the next subsection.

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RULE 10, Table 3 (2015), <https://archive.epa.gov/epa/sites/production/files/2015-11/documents/tsd-cpp-emission-performance-rate-goal-computation.pdf>.

542. Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48208 (August 8, 2011) (Cross-State Air Pollution Rule), *aff'd* Env'tl. Prot. Agency v. EME Homer City Generation, L.P., 572 U.S. 32 (2014); CROSS-STATE AIR POLLUTION RULE, REDUCING AIR POLLUTION PROTECTING PUBLIC HEALTH, U.S. ENVTL. PROT. AGENCY, OFFICE OF AIR & RADIATION (2011).

543. See 76 Fed. Reg. 48248-53.

544. In the Cross-State Air Pollution Rule, EPA created state budgets based on air quality needs and the cost of "highly cost effective reductions," and it imposed uniform costs to prevent leakage. The U.S. Supreme Court recognized the problem of leakage and approved this approach to dealing with it in *Env'tl. Prot. Agency v. EME Homer City Generation, L.P.*, 572 U.S. \_\_\_, at 4 (2014).

545. SUE WING & MAREK KOLODZIEJ, THE REG'L GREENHOUSE GAS INITIATIVE: EMISSION LEAKAGE AND THE EFFECTIVENESS OF INTERSTATE BORDER ADJUSTMENTS 4 (2008), [https://sites.hks.harvard.edu/m-rcbg/rpp/Working%20papers/RPP\\_2008\\_03\\_SueWing.pdf](https://sites.hks.harvard.edu/m-rcbg/rpp/Working%20papers/RPP_2008_03_SueWing.pdf).

546. In the RGGI program, the California cap-and-trade program and other similar programs, an allowance represents the right to emit one metric ton of carbon dioxide or its equivalent. See RGGI 2017 MODEL RULE, at 4; CAL. CODE REGS., tit. 17, § 95802(8) (2018); These programs auction or otherwise distribute a number of allowances equal to the cap. See *Elements of RGGI*, *supra* note 244. Each regulated party must surrender a number of allowances equal to its emissions (or the emissions produced by the regulated products in the case of the California program) at the end of the applicable compliance period.

547. *Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554, 561-63 (S.D.N.Y. 2017), *aff'd* No. 17-2654-cv (2d Cir. Sept. 27, 2018) (quoting CES Order, App'x E, at 1).

548. If a price is put on emissions from industries such as steel and fertilizer production in one state, production costs will increase in that state and a company might switch production to another plant in a state or nation that does not put a price on emissions. In that case, emissions will still occur, but in a different location. The disparity in production costs may cause a plant to close, shifting production elsewhere.

It is important to note that the electricity industry is fundamentally different from industries such as steel and fertilizer production. Electricity production must occur within a relatively limited geographic area that is tied to the consumer by the grid and is sufficiently proximate to prevent excessive transmission losses. For the most part, electricity cannot be stored and, although storage technologies are improving, they are still very limited; storage can occur for only a short period of time. Electricity therefore relies upon markets in which generation sources that can be turned on or off are called upon in the order of bids, and all electricity generators receive a price based upon the highest bid that is called upon. The bids are based on marginal operating costs and not on fixed or capital costs. Non-emitting sources, such as nuclear or most renewable generation sources, do not have significant marginal operating costs and cannot readily be turned on or off. These non-emitting sources, therefore, submit zero or negative bids and rely upon the bids of fossil generators to set the price of electricity that the non-emitting sources receive. If electricity prices are not sufficiently high, companies will not invest capital necessary to expand the capacity of non-emitting generation or to keep that generation operating. The fossil sources set their bids above their net marginal operating costs, which are based on the cost of fuel, pollution control and other

Finally, if emissions control requirements are imposed or an emission price is imposed on the electricity sector but not on other sectors, then the other sectors may switch from electricity use to the use of fossil fuels. For example, if a price is put on emissions from the electricity sector but not on the transportation sector, electric cars and plug-in hybrids will be more expensive compared to vehicles with internal combustion engines, deterring the emissions reductions that would occur as a result of electrification of the transportation sector. This can also occur in the area of building heating and cooling. If a price is put on emissions from the electricity industry but not on heating oil or natural gas, it will encourage direct use of fossil fuels for heat instead of non-emitting electric heating, even in buildings that use non-fuel mechanisms to increase heating efficiency, such as ground source geothermal.<sup>549</sup> Leakage may also affect production technology choice. For example, steel can be manufactured using an electric arc furnace, which uses electricity, or an open-hearth furnace, which uses coal. Increasing the cost of electricity emissions and the cost of electricity without putting a price on emissions from the electric hearth unit may cause leakage by shifting some production to the open-hearth technology.

## 2. Mechanisms to Prevent Leakage

The regulatory mechanisms employed by California pursuant to the Global Warming Solutions Act reflect consideration of each of these forms of leakage. To prevent intersectoral leakage, California has created an economy-wide cap-and-trade program applicable to GHG emissions from the electricity sector; emissions from other major air pollution sources; the import of electricity; and the sale of natural gas, heating oil, and gasoline.<sup>550</sup> Interstate leakage in the electricity sector is controlled by requiring that importers of electricity surrender allowances equal to the GHG emissions resulting from the electricity generation.<sup>551</sup> Interstate and international leakage from sectors vulnerable to international and interstate competition is prevented by awarding allowances to those industries rather than requiring the allowances to be purchased at auction.<sup>552</sup>

The RGGI states attempt to eliminate leakage among the participating states through the creation of a uniform trading program, so that generators in the nine states will face similar costs and cannot benefit by switching dispatch or investment to other RGGI states.<sup>553</sup> Nevertheless, leakage has occurred as dispatch is switched to other nearby states that do not regulate GHG emissions or put a price on those emissions. For RGGI, as in Pennsylvania, it is difficult to require the surrender of allowances for imported electricity, as would happen in California.

PJM Interconnection, LLC (PJM), the regional transmission organization that oversees the dispatch and transmission of electricity in Pennsylvania and several RGGI states,<sup>554</sup> as well as New York Independent System

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marginal costs. If a fossil generator receives an allowance based on its production, that allowance will produce operating revenue offsetting the operating costs, allowing all fossil generators to submit lower bids. Lower electricity prices will reduce the amount of non-emitting generation by reducing the return on capital. In some cases, it may also move higher emitting facilities, such as coal-fired plants, up in the order of dispatch, thereby increasing emissions. For a discussion of wholesale electricity markets, *see* Fed. Energy Regulatory Comm'n v Elec. Power Supply Ass'n, 136 S.Ct. 760, 768-772 (2016).

By contrast, steel and fertilizers operate in international markets and can be stored for long period of time in warehouses, so that the actions of a single state or even a group of states such as RGGI will not affect the price of a ton of steel or of fertilizer. If these industries are awarded allowances based on production, it will not affect price but will still create a strong incentive to reduce emissions and thereby reduce costs. This will reduce and possibly eliminate the incentive to shift production to another state or country or to abandon capital by shutting a plant down.

549. Heat pumps are more efficient than other forms of electric heating, and ground source geothermal increases the efficiency of heat pumps significantly by allowing them to discharge heat into the subsurface while cooling and to pull heat from the subsurface while heating. Because the subsurface maintains a constant temperature over the seasons, the heat pump is able to operate at maximum efficiency, reducing the amount of electricity used and emissions that may be associated with that electricity.

550. CAL. CODE REGS. tit. 17, § 95101 (2018) (covered entities); *see generally*, California Global Warming Solutions Act, CAL. HEALTH & SAFETY CODE §§ 38500-38599 (West 2018); CAL. CODE REGS., Tit. 17, §§ 95801-96022 (2018).

551. CAL. CODE REGS. Tit. 17, §§ 95101(b), 95852(b)(3) (2018).

552. *Id.* at § 95891.

553. *See generally* RGGI 2017 MODEL RULE.

554. The interconnection itself is known as the Pennsylvania-New Jersey-Maryland Interconnection. PJM includes Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

Operator (NYISO) and Independent System Operator New England (ISO New England), are currently exploring mechanisms to prevent leakage and the market distortions caused by some states' failure to put an adequate price on GHG emissions. The mechanisms include border adjustments made by way of "carbon adders" that are placed on bids from fossil fuel-fired units in states without regulation or other border charges. NYISO commissioned a study "to explore whether and how New York State environmental policies limiting carbon may be pursued within the existing wholesale market structure."<sup>555</sup> The NYISO study explained how, for the purpose of deciding the order in which generation units would be "dispatched" or called upon, border adjustments could assign a price or "carbon adder" that would be added to imports based on the generator's emissions and the price within New York.<sup>556</sup> Exporters from New York would receive a credit based on the emissions charges.<sup>557</sup> PJM, which involves multiple states, has gone further and described a mechanism that would create subregions to prevent leakage across regulated and unregulated regions by way of a two-stage process.<sup>558</sup>

Notably, the various mechanisms for limiting interstate and intersectoral leakage cannot operate effectively without a cap-and-trade program that imposes a uniform price on emissions.<sup>559</sup> Therefore, at a minimum, an effective program will require such a cap-and-trade program with the opportunity to trade with other similar programs.<sup>560</sup>

### C. Authority to Regulate Greenhouse Gas Emissions Under the Pennsylvania Air Pollution Control Act

The Commonwealth Court reasoned in the *Funk* decision that existing legislative authority to limit GHG emissions is a necessary basis for obtaining judicial relief requiring regulatory action to limit those emissions.<sup>561</sup> The court's decision was based on well-founded separation of powers concerns.<sup>562</sup> As also noted in *Funk*, and explained in greater detail below, regulation of GHG emissions is authorized under the APCA.<sup>563</sup> This statute governs the air pollution control program in Pennsylvania and authorizes the type of cap-and-trade program described above. The APCA authorizes the EQB to adopt air pollution regulations,<sup>564</sup> and the EQB has rules governing the submission of

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In regions where electric utilities were restructured such that generation was deregulated (*i.e.* became competitive), regional transmission organizations ("RTOs") and independent service operators ("ISOs") manage wholesale electricity transmission, deciding which generation units should be dispatched. In other regions, the electricity transmission and generation are handled by traditional vertically integrated utilities. See CONGRESSIONAL RESEARCH SERV., REPORT R44783, FEDERAL POWER ACT (FPA) AND ELECTRICITY MARKETS (2017).

555. SAMUEL A. NEWELL ET. AL., N.Y. DEP'T. OF PUB. SERV., N.Y. INDEP. SYS. OPERATOR, PRICING CARBON INTO NYISO'S WHOLESALE ENERGY MARKET TO SUPPORT NEW YORK'S DECARBONIZATION GOALS iv (2017), [https://www.energymarketers.com/Documents/Brattle\\_study\\_carbon\\_pricing.pdf](https://www.energymarketers.com/Documents/Brattle_study_carbon_pricing.pdf).

556. *Id.* at 23-26.

557. *Id.* at 24.

558. PJM, ADVANCING ZERO EMISSIONS OBJECTIVES THROUGH PJM'S ENERGY MARKETS: A REVIEW OF CARBON-PRICING FRAMEWORKS (2017), <http://pjm.com/~media/library/reports-notice/special-reports/20170502-advancing-zero-emission-objectives-through-pjms-energy-markets.ashx>. These leakage prevention mechanisms require approval by the Federal Energy Regulatory Commission.

559. The leakage control mechanisms rely upon a fungible price to eliminate interstate disparities caused by the state's putting a price on GHG emissions. If a state relied on a more traditional regulatory approach, such as establishing emissions limits, it would lack jurisdiction to impose those limits on other states or nations. A regulatory approach is insufficiently fungible to allow a state to impose a charge that equalizes the effect, particularly in light of the dormant commerce clause. U.S. CONST., Art. I, § 8, cl. 3.

560. Clean Air Rule, WAC 173-442-100 (2016). The State of Washington Department of Ecology has adopted a Clean Air Rule, which creates a different type of program that requires annual percentage GHG emissions reductions and allows the use of tradeable emissions allowances from other states to satisfy the emissions reduction obligation. Chapter 173-442 WAC. This regulation has been suspended because of a decision partially invalidating it. Regardless, this approach would not be applicable to Pennsylvania because it would not generate income for beneficiaries of the trust. Although it assures emissions reductions, the ability to trade under the program ultimately depends upon other jurisdictions creating tradable allowances with a transparent price.

561. *Funk v. Wolf*, 144 A.3d 228, 235, 248-49 (Pa. Commw. Ct. 2016) *aff'd without opinion*, 158 A.3d 642 (Pa. 2017).

562. *Id.* at 235.

563. 35 PA. CONS. STAT. § 4001-4015

564. 35 PA. CONS. STAT. § 4005

petitions for rulemaking under the APCA.<sup>565</sup> The APCA further authorizes DEP to administer air regulatory programs, including regulations adopted by the EQB.<sup>566</sup>

The APCA provides DEP with the authority to regulate air pollution in accordance with the federal Clean Air Act.<sup>567</sup> The APCA states that DEP “shall have the power and its duty shall be to [i]mplement the provisions of the Clean Air Act in the Commonwealth.”<sup>568</sup> The Act further provides that the EQB “[s]hall have the power and its duty shall be to [a]dopt rules and regulations to implement the provisions of the Clean Air Act,” which “shall be consistent with the requirements of the Clean Air Act and the regulations adopted thereunder.”<sup>569</sup> These provisions suggest that the EQB has broad authority to promulgate regulations consistent with the requirements of the Clean Air Act and that DEP has authority to implement the provisions of the federal Clean Air Act.

The statute further provides that no operating permit may be issued by DEP unless it determines that the source will not discharge air contaminants “in violation of any performance or emission standard or other requirement” established by EPA or DEP.<sup>570</sup> Further, DEP must revise any permit to incorporate applicable standards and regulations promulgated under the Clean Air Act after issuance of the permit in accordance with a timeframe set forth in the statute.<sup>571</sup> Because GHGs are now clearly pollutants under the Clean Air Act,<sup>572</sup> DEP must regulate those gases, at least to the extent set out in the federal Clean Air Act. This includes control of new or modified major stationary sources emitting 75,000 tons or more of greenhouse gases if that source also emits other pollutants regulated under the Clean Air Act.<sup>573</sup>

The EQB’s duty to adopt regulations limiting GHG emissions goes beyond the minimum that may be required under the Clean Air Act, even without considering the Commonwealth’s duty as a trustee under the ERA. The APCA provides the EQB with the authority and the mandatory duty to:

Adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution, applicable throughout the Commonwealth or to such parts or regions or subregions thereof specifically designated in such regulation which shall be applicable to all air contamination sources regardless of whether such source is required to be under permit by this act.<sup>574</sup>

Those rules and regulation may, among other things, “prohibit or regulate any process or source or class of processes or sources.”<sup>575</sup> Further, the APCA authorizes the Department to:

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565. 23 PA. CODE §§ 23.1-23.8,

566. 35 PA. CONS. STAT. §4004.

567. 42 U.S.C. §§ 7401-7671q (1970).

568. 35 PA. CONS. STAT. § 4004(1).

569. 35 PA. CONS. STAT. § 4005(a)(8).

570. *Id.* at § 4006.1(b)(2).

571. *Id.* at § 4006.1(k).

572. *Coal. for Responsible Regulation, Inc. v. U.S. Evtl. Prot. Agency*, 684 F.3d 102 (D.C. Cir. 2012) *aff’d in part and rev’d in part on other grounds sub nom*; *Util. Air Regulatory Grp. v. Evtl. Prot. Agency*, 134 S. Ct. 2427 (2014); *see also Funk v. Wolf*, 144 A.3d 228, 250, n.17 (Pa. Commw. Ct. 2016), *aff’d without opinion*, 158 A.3d 642 (Pa. 2017)

573. In *UARG*, the U.S. Supreme Court upheld EPA regulation requiring control of greenhouse gases emitted by sources otherwise subject to Prevention of Significant Deterioration (PSD) review in quantities of at least 75,000 tons per year of carbon dioxide equivalent. *Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements*, 80 Fed. Reg. 50,199 (Aug. 19, 2015). *See also Funk*, 144 A.3d at 250, n.17.

The Clean Power Plan, which would limit GHG emissions from power plants, has been stayed until all legal challenges are resolved. *West Virginia v. Evtl. Prot. Agency*, 136 S. Ct. 1000, 1000 (2016). Certain other rules limiting GHG emissions are under reconsideration by EPA. Still, these regulations remain on the books. There are many other laws and regulations limiting GHG emission under the Clean Air Act that remain in force and are not under reconsideration. More significantly, there are substantial arguments that GHG emissions from power plants and other stationary sources must be regulated under section 111 of the Clean Air Act. *See American Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011).

574. 35 PA. CONS. STAT. § 4005(a)(1).

575. *Id.*

Prepare and develop a general comprehensive plan for the control and abatement of existing air pollution and air contamination and for the abatement, control and prevention of *any new* air pollution and air contamination . . . and to submit a comprehensive plan to the [EQB] for its consideration and approval.<sup>576</sup>

The APCA defines “air contaminant” to include a “gas,” which would therefore include greenhouse gases.<sup>577</sup> The statute defines “air contamination” as the “presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution”.<sup>578</sup> It further defines “air pollution” as:

The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any . . . gases, vapors, . . . or any other matter in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.<sup>579</sup>

The EPA endangerment finding under the Clean Air Act, the 2015 DEP report under the Climate Change Act, and a wide variety of other scientific studies support the conclusion that GHGs constitute air pollution.<sup>580</sup>

Moreover, the Climate Change Act requires not only a report on greenhouse gas impacts every three years but also requires DEP to develop a climate change action plan for submission to the Governor identifying “cost-effective strategies for reducing and offsetting GHG emissions.”<sup>581</sup> This provision would not make sense unless the APCA allowed regulation of GHGs. The fact that the plan is submitted to the administrative branch rather than the legislative branch suggests that the General Assembly contemplated that the administrative branch could implement those strategies through rule-making and other actions already authorized by the General Assembly. Thus, DEP has authority under existing law to regulate GHGs through adoption of regulations by EQB, even in the absence of regulations under the federal Clean Air Act.<sup>582</sup>

Case law also supports this position. In *Commonwealth, Department of Environmental Resources v. Pennsylvania Power Co.*,<sup>583</sup> the Commonwealth Court held that the APCA authorized regulations more stringent than federal

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576. *Id.* at § 4004(18) (emphasis added).

577. *See id.* at § 4003 (definition of “air contaminant”).

578. *Id.* at § 4003 (definition of “air contamination”).

579. *Id.* at § 4003 (definition of “air pollution”).

580. *See Massachusetts v. Env'tl. Prot. Agency*, 549 U.S. 497, 528-530 (2007) (analysis of why greenhouse gases are air pollutants under the Clean Air Act).

581. *See* 71 PA. CONS. STAT. §§ 1361.3, 1361.7 (2018). Although the Act also requires the Plan to recommend legislative changes, this should not be read to suggest that existing law does not authorize comprehensive regulation.

582. The APCA limits the stringency of some regulations that the EQB may adopt. These limitations are unlikely to apply to regulations limiting GHG emissions even assuming that they are constitutional under the Court’s decisions in *Robinson Twp.* and *PEDF*. Section 4004.2 of the APCA prohibits regulation beyond that necessary to meet the minimum requirements of the federal Clean Air Act for purposes of implementing section 109 of the Clean Air Act, which relates to “criteria pollutants” governed by National Ambient Air Quality Standards (“NAAQS”) established for GHGs. *See* 35 PA. CONS. STAT. § 4004.2 (2018). That section does not apply because EPA has not established a NAAQS for GHGs. Even if EPA establishes a NAAQS for GHGs in the future, it must be set at a level sufficient to protect public health and welfare. *See* 42 U.S.C. § 7409. Achieving and maintaining that NAAQS will require emissions reductions commensurate with the social cost of carbon so that the regulation described here would be consistent with that section. Further, the EQB may not establish “a more stringent performance or emission standard for hazardous air pollutant emissions from existing sources” than federal section 112 standards. 35 PA. CONS. STAT. § 4006.6(a) (2018); *see* PPL Generation, LLC v. Commonwealth, Dep’t of Env’tl. Prot., 986 A.2d 48, 50-51 (Pa. 2009). That section does not apply because greenhouse gases are not considered “hazardous air pollutants,” which is a narrow term referring to air pollutants that present “a threat of adverse human health effects.” *See* 42 U.S.C. §§ 7412(b)(1) (list of hazardous air pollutants that does not include greenhouse gases); 7412(b)(2) (criteria for revising the list, which emphasize that only pollutants which present a threat of adverse human health effects may be added and explicitly excludes substances added solely “due to [their] adverse effects on the environment.”).

583. *Commonwealth, Dep’t of Env’tl. Res. v. Pa. Power Co.*, 384 A.2d 273, 284-85 (Pa. Commw. Ct.1978) (“After careful consideration of the CAA, the APCA and the pertinent legislative histories thereto, we must agree with DER and conclude that the purpose behind the APCA and the provisions contained therein is to provide the people of this Commonwealth with air which is of a higher quality than that required by federal law.”), *rev’d in part* on other grounds, 426 A.2d 995 (1980).

regulations.<sup>584</sup> In addition, the Pennsylvania Supreme Court recognized that Article I, § 27 authorizes DEP to adopt regulations going beyond the statutory minimum in order to implement a statute’s legislative purposes.<sup>585</sup> In *Funk*, as previously noted, the Commonwealth Court noted that DEP and other state respondents “acknowledge that the General Assembly, through the APCA, bestowed upon them a duty to promulgate and implement rules and regulations to reduce CO<sub>2</sub> and GHG emissions.”<sup>586</sup>

The APCA also contains sufficient authority to extend regulations throughout the economy, by going “upstream” and regulating fossil fuels where it is impractical to regulate the emissions source. It is impractical to require that vehicles and individual homes and buildings measure emissions and surrender allowances.<sup>587</sup> The RGGI program and the proposed Virginia emissions trading program cover only certain larger electricity-generating facilities,<sup>588</sup> whose GHG emissions are measured and reported under federal law<sup>589</sup> and can therefore be readily regulated. These programs nonetheless fail to capture the majority of GHG emissions<sup>590</sup> and therefore allow intersectoral leakage. By contrast, the California-Quebec-Ontario cap-and-trade-program extends to all major air pollution emissions sources where emissions can be measured, and also extends to sectors where it is infeasible to regulate the emissions source.<sup>591</sup> That program also requires that those distributing fossil fuels within the state or importing electricity or fuels acquire allowances, and therefore captures the majority of GHG emissions and more effectively prevents leakage.<sup>592</sup> This vastly more effective program is authorized by existing law in Pennsylvania.

The APCA authorizes and gives the EQB the power and the duty to adopt regulations applicable to “all air contamination sources regardless of whether such source is required to be under permit by this act” and states that these regulations may “prohibit or regulate the combustion of certain fuels.”<sup>593</sup> This authorization appears to encompass the broader and more effective California-Quebec-Ontario approach, particularly when read in light of the Commonwealth’s duty as a trustee under the ERA.

There are cogent reasons for adopting the broader California-Quebec-Ontario approach and interpreting the APCA to support that approach. Most notably, it prevents leakage between sectors subject to a carbon price and those not subject to a price. For example, if electricity prices rise as a result of putting a price on carbon emissions, and if the price of GHG emissions is not reflected in the price of motor vehicle fuels, this may discourage the purchase and use of electric vehicles, resulting in increased emissions of both GHGs and conventional pollutants. If electricity prices increase as a result of regulations and an equivalent price is not reflected in the price of natural gas and home heating oil, the price disparity may discourage electrification of the building sector and many industries. Electrification of

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584. *Commonwealth, Dep’t of Env’tl Res.*, 384 A.2d at 284.

585. *Eagle Env’tl. II, L.P. v. Commonwealth, Dep’t of Env’tl. Prot.*, 144 A.3d 228 (2005).

586. *Id.* at 250.

587. These small sources are not individually regulated under federal or state law and are not required individually to obtain a permit or to measure or report emissions. Regulating the millions of sources individually would create an undue administrative burden for both the regulators and the regulated community. Indeed, EPA deemed it impractical to regulate even larger sources of GHG emissions that would exceed a 250 ton per year threshold and, for that reason the Supreme Court in *UARG* defined the use of the term “pollutant” in the new source review provisions of the Clean Air Act to exclude carbon dioxide. Individual homes and vehicles generally emit GHGs at lower levels and their individual regulation would be even less feasible.

588. CO<sub>2</sub> Budget Training Program General Provisions, Model Rule, § XX-1.4(a), REG’L GREENHOUSE GAS INITIATIVE (2017), [https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model\\_Rule\\_2017\\_12\\_19.pdf](https://www.rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model_Rule_2017_12_19.pdf); 9 VA. ADMIN. CODE §§ 5-140-10 to 5-140-260, Regulation for Emissions Trading Programs, 9VAC5-140 (Jan. 8, 2018).

589. Mandatory Reporting of Greenhouse Gas Emissions, 40 C.F.R. § 90 (2012).

590. U.S. ENVTL. PROT. AGENCY, INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS: 1990-2016 ES-6 to ES-7 (2018), [https://www.epa.gov/sites/production/files/2018-01/documents/2018\\_complete\\_report.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf) (In 2016, the entire electric power sector in the United States emitted 1,809.3 million metric tons of carbon dioxide, or 34.1 percent of the total 5,310.9 million metric tons of carbon dioxide emitted by all sectors (transportation, industrial, residential, commercial and U.S. territories in addition to the electric power sector) and 27.8 percent of the total 6,511.3 million metric tons of emissions when all categories of GHGs (methane, nitrous oxide, HFCs, PFCs, SF<sub>6</sub> and NF<sub>3</sub> in addition to carbon dioxide) are included).

591. CAL. CODE REGS. tit. 17, § 95811(a)-(h) (2012); *see also* CAL. LEGISLATIVE ANALYST’S OFFICE, THE 2017-18 BUDGET: CAP-AND TRADE, 5 (2017), <http://www.lao.ca.gov/reports/2017/3553/cap-and-trade-021317.pdf>.

592. CAL. LEGISLATIVE ANALYST’S OFFICE, *supra* note 311.

593. 35 PA. CONS. STAT. § 4005(a)(1) (1992).

these sectors will be required to achieve carbon neutrality by mid-century, as required to conserve and maintain a stable climate.

As noted above, interstate emissions trading with uniform pricing is one of the mechanisms necessary to prevent leakage. The Pennsylvania Uniform Interstate Air Pollution Agreements Act authorizes participation in interstate trading programs.<sup>594</sup> That Act encourages DEP to coordinate and cooperate with “State and local authorities of other states affected by air sheds or regional air masses lying partly within another state or states, or moving between or among this State and another state or states.”<sup>595</sup> This statute, along with the broad authorizations in the APCA to address air pollution and to implement the Clean Air Act as interpreted by Pennsylvania courts, appears to authorize Pennsylvania to develop and participate in interstate trading arrangements that would put a price on carbon. These include RGGI; the broader programs being implemented by California, Quebec, and Ontario; the trading-ready program being developed by Virginia;<sup>596</sup> or a similar interstate or regional arrangement involving emissions trading or other mechanisms to put a price on GHG emissions or otherwise limit those emissions.<sup>597</sup>

Under RGGI, allowances are auctioned by each state and a portion of the auction revenue (or a portion of the allowances themselves) must be devoted to strategic energy purposes.<sup>598</sup> Although the APCA lacks specific authorization for auctions of emissions rights, a partial allowance auction has been implemented in Pennsylvania in the past, since the Title IV program under the federal Clean Air Act allocates some allowances by auction.<sup>599</sup>

More significantly, the *PEDF* decision suggests that an auction with a reserve price is constitutionally required to allow the beneficiaries of the trust to benefit from the program. As discussed below, allowances may be considered to represent ecosystem services in that they represent the limited remaining ability of the atmosphere to absorb additional GHG pollution without disruption. Because the revenues would derive from efforts to preserve the

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594. 35 PA. CONS. STAT. §§ 4101-4106 (1972).

595. *Id.* at § 4103(a); *see also id.* at § 4101 (making it the policy of Pennsylvania to encourage interstate cooperation and agreements).

596. Joining or leaving RGGI is arguably an action within the purview of the governor’s executive power, even without other authority. Both the Governor of New York, in joining RGGI, and the Governor of New Jersey, in leaving RGGI, relied on their executive power. *See, e.g.*, *Thrun v. Cuomo*, 976 N.Y.S.2d 320, 323 (N.Y. App. Div. 2013); *In re Regional Greenhouse Gas Initiative*, No. A-4878-11T4 (N.J. Super. Ct., App. Div. March 25, 2014) (holding that notice and comment rulemaking is required before withdrawing rules implementing RGGI in response to Governor Christie’s withdrawal from RGGI). The Governor of Virginia has issued an Executive Order directing the creation of a cap-and-trade program for the electricity sector. Executive Directive 11 (2017), <http://governor.virginia.gov/media/9155/ed-11-reducing-carbon-dioxide-emissions-from-electric-power-facilities-and-growing-virginias-clean-energy-economy.pdf>. Pursuant to that Order, the State has published a proposed regulation that mirrors the RGGI program and would allow trading even without Virginia joining RGGI. *See* 9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-6010 through 9VAC5-140-6430), 34 VA. Reg. 924 (Jan. 8, 2018).

597. *See* 35 PA. CONS. STAT. § 4103(b). The Act imposes limitations on such agreements, requiring that DEP not delegate its enforcement authority to other states or agencies and limiting appropriation authority and authority to pledge credit. 35 PA. CONS. STAT. § 4105. However, these limitations would not prevent participation in RGGI or similar interstate trading programs, since these programs are premised on voluntary coordination where each state relies upon its own statutes and regulations and each state enforces its own requirements.

The APCA also includes a provision authorizing the DEP to cooperate with other states and interstate agencies to control and prevent air pollution, and “where appropriate formulate interstate air pollution control compacts or agreements for the submission thereof to the General Assembly.” 35 PA. CONS. STAT. § 4004(24). Although this provision might be read to suggest that legislative authority is necessary before Pennsylvania could join an interstate trading program and adopt any necessary regulations to implement the program, it seems directed to agreements that are binding on the state and therefore require Congressional consent under the compacts clause of the U.S. Constitution. U.S. CONST. art. I, § 10 cl. 3. The trading regimes being independently implemented by states are implemented through a non-binding memorandum of understanding under which each state enacts and enforces its own laws and regulations, and therefore likely would not require Congressional approval under the Compacts Clause or require legislative approval under the APCA. *See United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 470 (1978) (holding that creation of an “active administrative body” without Congressional consent did not “enhance the political power of the member States in a way that encroaches upon the supremacy of the United States” and therefore did not violate the Compacts Clause. The Court based its decision upon the following factors: (1) there were no features that, on their face, infringed on the supremacy of the United States; (2) the Compact did not authorize any of the member states to “exercise any powers they could not exercise in its absence”; (3) there was no “delegation of sovereign power to the Commission” and the states retained “complete freedom to adopt or reject the rules and regulations of the Commission”; and (4) each state was “free to withdraw at any time”); *Northeast Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159 (1985).

598. *See 2005 RGGI Memorandum of Understanding*, ¶ G(1) (“25% of the allowances will be allocated for a consumer benefit or strategic energy purposes” as further defined in the paragraph), [https://www.rggi.org/sites/default/files/Uploads/Design-Archive/MOU/MOU\\_12\\_20\\_05.pdf](https://www.rggi.org/sites/default/files/Uploads/Design-Archive/MOU/MOU_12_20_05.pdf).

599. 42 U.S.C. § 7651.

environmental trust, these revenues could be considered the result of the sale of renewable ecosystem services, similar to revenue from timber sales on state forest land. *PEDF* applied the law of trusts to invalidate a distribution of trust principal but recognized that trust income from renewable services that did not deplete the trust corpus could be moved to the General Fund.<sup>600</sup> The rule of prudence requires that a trustee manage a trust with the prudence that a reasonable person would manage his or her own affairs, considering the needs of beneficiaries, the need to preserve the corpus of the trust, and the amount and regularity of income.<sup>601</sup> Although this rule of prudence allows considerable discretion in managing a trust, it does not allow the trustee to give away either the principal or the income with no benefit to the beneficiaries or to favor one beneficiary over the other. Thus, the state auctions timber, minerals and other renewable and non-renewable resources produced by state forests. For this reason, an auction of GHG emissions allowances is not only authorized but arguably required in the absence of another rationale, such as preventing leakage.

## VI. ISSUES RELATING TO POSSIBLE LIMITATIONS ON AWARD OF ALLOWANCES AND USE OF REVENUES

*PEDF* restricted the General Assembly's ability to direct lease revenues to the unrestricted general fund based on the Court's conclusion that the Pennsylvania Constitution required the principal of the environmental trust created by the ERA to be retained for the purposes set forth in the Constitution.<sup>602</sup> We have argued that *PEDF* restricts the Commonwealth's ability to award allowances without recovering income for the beneficiaries. We also have argued that the ERA both authorizes an auction with a reserve price based on the social cost of carbon and requires a mechanism that both limits GHG emissions to a level consistent with that required to prevent climate disruption and provides reasonable income to the beneficiaries of the ERA's trust. In this section, we address the limits of these requirements with respect to GHG emissions allowances and proceeds from the auction or sale of those allowances.

The law of trusts does not put handcuffs on a trustee. Rather, it imposes a rule of prudence, requiring that a trustee manage a trust with the prudence that a reasonable person would manage his or her own affairs, considering the needs of beneficiaries, the need to preserve the corpus, the trust, and the amount and regularity of income.<sup>603</sup> Instead of being considered the proceeds from the liquidation of the principal of the trust, auction revenues are more properly considered to constitute income from measures to manage the trust corpus, much like income from sustainable harvest of timber. Therefore, the proceeds from these revenues can be used for any purpose, provided the use accrues to the benefit of the trust's beneficiaries.<sup>604</sup> Likewise, the trustee need not receive income equal to the social cost of carbon in all instances regardless of the outcome, but may award allowances for a lesser cost or even no cost where the Commonwealth, as a prudent business person, could conclude this would serve the best interest of the beneficiaries. For example, awarding allowances at a lower cost or no cost would be prudent where necessary to prevent leakage that would drive business from the Commonwealth without achieving a necessary reduction in GHG emissions. However, these situations should be treated as exceptions to the general rule and should be applied only as prudence demands.

### A. *PEDF's Implications with Respect to Use of Revenues from GHG Emissions Auction*

Questions have arisen as to whether *PEDF* has implications with respect to potential mechanisms to put a price on carbon. Without additional legislation, proceeds from an auction would be deposited in the General Fund.<sup>605</sup> If *PEDF* restricts use of these revenues, the decision would remove a significant incentive for Pennsylvania to impose a price on carbon through an allowance auction. The proceeds of a carbon tax or auction could be used to promote a

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600. Pa. Env'tl. Def. Found. v. Commonwealth, 161 A.3d 911, 935-36 (Pa. 2017).

601. RESTATEMENT (THIRD) OF TRUSTS § 90 (2007); *see also* Harvard Coll. v. Amory, 26 Mass (9 Pick) 446 (1830).

602. *See PEDF*, 161 A.3d at 934.

603. RESTATEMENT (THIRD) OF TRUSTS § 90 (2007); *see also* Harvard Coll., 26 Mass (9 Pick) 446.

604. *See* RESTATEMENT (THIRD) OF TRUSTS § 90 (2007); *see also* Harvard Coll., 26 Mass (9 Pick) 446.

605. 72 PA. CONS. STAT. § 8 (1991).

variety of important fiscal objectives.<sup>606</sup> In addition, the current and the on-going budget crisis in Pennsylvania has created a very significant incentive for the General Assembly to adopt legislation establishing a GHG emission fee or auction and trade program or to allow the EQB's adoption of regulations establishing an auction, so as to generate revenue to fill the gap in the General Fund.<sup>607</sup>

*PEDF* should not restrict the use of revenues from a GHG auction. The analysis of this issue differs according to how one views the auction. In this regard, there are two ways of looking at the auction of allowances. On one hand, one can view the auction of allowances as a regulatory mechanism to reduce GHG emissions. On the other hand, one can view the auction of allowances as a charge for the sale of a public natural resource, either: (1) the air, (2) the limited capacity of the atmosphere to absorb GHG emissions without disrupting the climate, or (3) the costs that will be imposed on future generations from carbon dioxide emissions (*i.e.* "ecosystem services"—one of the natural values of the environment).<sup>608</sup> In both economic and legal theory, the auction has characteristics of both a regulatory mechanism and a charge. However, because differing legal and political considerations apply depending upon whether the fee/auction is characterized as a regulatory mechanism or as a fee for ecosystem services, we will address the considerations applicable to each rationale separately.

If the auction is examined through the regulatory lens, *PEDF* should have no impact on use of the revenues. An auction of allowances is simply one of several regulatory mechanisms to reduce emissions. In this way it is no different from a regulatory emission limit. Under this lens, the auction is a mechanism that acts to preserve the corpus of the trust created by the ERA. Its imposition is therefore consistent with the trustee's duty to preserve the corpus of the trust and there should be no restrictions on the use of revenues.

Characterizing the auction/fee as purely a regulatory measure, however, has both legal and political disadvantages. Treating the auction as purely a regulatory measure under the APCA might undermine the argument for an auction with a meaningful reserve price. The APCA lacks specific legislative authorization for an auction or a reserve price, so that regulations establishing an auction and a reserve price without further action by the General Assembly depend to some degree upon authorization under the ERA. Treating the auction as purely a regulatory mechanism may also undermine the argument that the reserve price should be set equal to the social cost of carbon rather than the far lower reserve prices seen in the California and RGGI programs, which are lower than the marginal cost necessary to prevent further climate disruption. Perhaps more significantly, characterizing the auction as a regulatory mechanism rather than the purchase of ecosystem services could be less palatable to those conservatives who support climate action. The conservative case for a carbon fee is based on the principle that GHG emitters should be charged a fee for the cost of the risk of environmental or other damage that will arise from use of the environment/ecosystem services, rather than the notion that regulation should be expanded.<sup>609</sup>

On the other hand, if one looks at the revenues from the GHG fee/auction as payments for ecosystem services, there is a risk that arguments will be raised that these revenues cannot be devoted to the General Fund to help address

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606. See McKinstry, Rose & Ripp, *Incentive-Based Approaches to Greenhouse Gas Mitigation in Pennsylvania*, 14 WIDENER L.J. at 218-21.

607. Mary Soderberg and Josh Shapiro, *Pennsylvania In Peril: A Financial Crisis*, THE WOLF TRANSITION (Nov. 19, 2014), <http://www.wolftransitionpa.com/sections/blog/pennsylvania-fiscal-crisis>. Although this source was prepared immediately after Governor Wolf's election, the state of finances has not improved, and the budget continues to rely upon sales of assets and transfers that the Supreme Court in *PEDF* found illegal. See PA. OFFICE OF THE BUDGET, 2017-18 BUDGET IN BRIEF (2017), <http://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Documents/2017-18%20Proposed%20Budget/2017-18%20Budget%20In%20Brief%20-%20Web.pdf>.

608. Ecosystem services have been defined as "benefits people obtain from ecosystems. These include provisioning services such as food and water; regulating services such as regulation of floods, drought, land degradation, and disease; supporting services such as soil formation and nutrient cycling; and cultural services such as recreational, spiritual, religious and other nonmaterial benefits," including a stable climate. UNEP SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY, BEST POLICY GUIDANCE FOR THE INTEGRATION OF BIODIVERSITY AND ECOSYSTEM SERVICES IN STANDARDS, CBD Technical Series No. 73 (2012) at 14, <https://www.cbd.int/doc/publications/cbd-ts-73-en.pdf>.

609. See, e.g., Marc Gunther, *Climate Converts: The Conservatives Who Are Switching Sides on Warming*, YALE ENVIRONMENT 360 (Mar. 30, 2017), <http://e360.yale.edu/features/climate-converts-the-conservatives-who-are-switching-sides-on-climate-change>; Jerry Taylor, *The Conservative Case for a Carbon Tax*, NISKANEN CTR. (Mar. 23, 2015), <https://niskanencenter.org/wp-content/uploads/2015/03/The-Conservative-Case-for-a-Carbon-Tax1.pdf>; Bob Litterman, *What is the Right Price for Carbon Emissions*, 36 REGULATION 38 (2013), <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2013/6/regulation-v36n2-1-1.pdf>.

Pennsylvania's budget crisis but must be retained as part of the corpus of the ERA trust. Although there is a risk that this argument may be raised, close examination of the *PEDF* decision, and the facts presented there, suggest that this argument should not prevail. Even if this argument prevails, it would not require retention of all revenues or even any revenues.

The legislation at issue in *PEDF* diverted revenues that had been devoted to the maintenance of the corpus of the trust away from that purpose and impaired DCNR's ability to maintain parks and forests, which also constitute the corpus of the trust.<sup>610</sup> In contrast, the establishment of a GHG auction and generation of revenues would not divert any existing, similarly committed revenues away from the trust or impair the Commonwealth's ability to maintain and conserve public natural resources. It would instead create new revenues by a mechanism that would also maintain and conserve the corpus of the trust.

It should be noted that, even if the fee/auction is viewed as *both* a regulatory mechanism and the sale of a natural resource, the trustee should be entitled to distribute income to the beneficiaries as long as the revenue does not deplete or impair the trust corpus. In *PEDF*, the Commonwealth was selling non-renewable resources and depleting the corpus of the trust, which should not be depleted.<sup>611</sup> A GHG auction preserves the capital and produces the equivalent of dividend income. Since the application of the income will benefit the beneficiaries, that income could go to the General Fund. In fact, because the social cost of carbon is set at the marginal cost/value of avoided future damage to trust resources, all revenues equal to the social cost of carbon come from measures to preserve the trust principal and can be considered income. As long as the principal is maintained, and income is provided for the benefit of the beneficiaries, the rule of prudence should be satisfied.

### B. *PEDF's Implications with Respect to Award of Allowances*

We argue that allowances, as attributes of the environmental trust, should generally be auctioned, just as other sustainable products of the environmental trust should be auctioned. We also argue that the auction should include a reserve price based on the social cost of carbon to assure that the measures undertaken in response to the cap-and-trade program will include the measures necessary to prevent human-caused climate disruption. This does not require an ironclad rule. Under the rule of prudence applicable to trustees, certain exceptions may be appropriate to prevent or moderate leakage, while still preserving the corpus of the trust and producing a stream of income to the trust's beneficiaries.<sup>612</sup>

First, under the rule of prudence, in order to prevent leakage, Pennsylvania could allow distribution of allowances free of charge or at a reduced rate to industries subject to international or interstate competition where necessary to preserve those industries' international markets. Because the allowances will have a value equal to or greater than the reserve price in the auction, these industries will still have strong incentive to reduce emissions and rely on electricity rather than fossil fuels. However, they will be able to price their products competitively and they will no longer have an incentive to move their operations to a state or nation without regulation where those operations would result in leakage. This approach will need to be employed cautiously, so as to avoid perverse results.<sup>613</sup>

Second, it may be appropriate to provide for a lower reserve price initially if warranted to assure adequate long-term income. The RGGI and California-Quebec-Ontario programs all include significantly lower auction minimum reserve prices,<sup>614</sup> as well as cost containment reserves that provide for the release of additional allowances if allowance

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610. Pa. Env'tl. Def. Found. v. Commonwealth, 161 A.3d 911, 937-39 (Pa. 2017).

611. *Id.*

612. See RESTATEMENT (THIRD) OF TRUSTS § 90 (2007); see also Harvard Coll. v. Amory, 26 Mass (9 Pick) 446 (1830).

613. For example, as discussed in *supra* note 265, in industries outside the electricity sector with international markets (such as steel), it may be worthwhile to award free or reduced cost allowances based on the prior year's unit production, with the number of free allowances per unit of production decreasing over time. That approach would have perverse results, however, if it were applied to the electricity sector, since it would encourage production even where that production would increase overall emissions. In the electricity sector, an allowance would represent income and, if tied to production, would allow a lower bid, removing the incentive to switch dispatch away from units with higher emissions. Therefore, industry structure should be carefully assessed and exceptions to the general rule allowed only where strictly warranted.

614. CAL. CODE REGS. tit. 17, § 95911(c) (2017); RGGI Model Rule § XX-1.2 (2017) (definition of "minimum reserve price"), [https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model\\_Rule\\_2017\\_12\\_19.pdf](https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model_Rule_2017_12_19.pdf).

prices exceed a value significantly lower than the social cost of carbon.<sup>615</sup> The proposed Virginia program closely follows RGGI.<sup>616</sup> If the Pennsylvania reserve price is set too high and trading is allowed, this may reduce the number of allowances that buyers will purchase from Pennsylvania, significantly depleting the income to be received by the trust beneficiaries. Therefore, Pennsylvania could initially establish a reserve price more consistent with California's reserve price. All of the other state trading programs call for reductions in the caps, increases in the reserve prices, and increases in the triggers for releasing cost containment reserves, such that the prices will approach the social price of carbon.<sup>617</sup> Moreover, because the social cost of carbon increases significantly if action imposing an adequate price on emissions is delayed,<sup>618</sup> accepting a lower price today will mean that the price to be paid eventually will be higher.<sup>619</sup> Thus, the rule of prudence provides the Commonwealth with flexibility.

## VII. BLOCKING ACTION BY THE GENERAL ASSEMBLY PREVENTING IMPLEMENTATION OF GHG REGULATION

Perhaps the clearest implication of the *PEDF* and *Robinson Township* decisions is that Article I, § 27 may be relied upon to invalidate actions by the General Assembly aimed at blocking the implementation of regulations establishing meaningful limits on GHG emissions. The General Assembly can exercise a variety of powers to attempt to block the adoption of regulations limiting emissions of GHGs and having the effect of putting a price on those emissions.<sup>620</sup> The General Assembly could also seek to block those regulations through its appropriations power or by adopting legislation repealing the regulations and removing the EQB's authority to regulate.

*Robinson Township* invalidated legislation that removed powers from municipalities and the DEP that allowed those municipalities and the DEP to exercise their duties as trustees.<sup>621</sup> *PEDF*'s holding makes it clear that the Commonwealth's duty as a trustee applies to all types of actions, including appropriations. *PEDF* could be relied upon to invalidate the General Assembly's action, just as the transfer of funds through the budget process was invalidated

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615. CAL CODE REGS. tit. 17, § 95913 (2017); RGGI Model Rule §§ XX-1.2 (2017) (definition of "CO<sub>2</sub> cost containment reserve allowance or CO<sub>2</sub> CCR allowance"), XX-9.2(b), [https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model\\_Rule\\_2017\\_12\\_19.pdf](https://rggi.org/sites/default/files/Uploads/Program-Review/12-19-2017/Model_Rule_2017_12_19.pdf).

616. See Regulation for Emissions Trading Programs, *supra* note 243.

617. Arguably, the RGGI and California-Quebec-Ontario reserve prices are currently too low to drive necessary reductions, since the social cost of carbon is based on the economically efficient marginal cost of the damage averted. Because the allowance prices obtained in RGGI auctions have been insufficient even to prevent existing nuclear facilities from premature closure, New York promulgated regulations requiring that electricity distribution companies purchase ZECs based on the social cost of carbon from existing nuclear generation units to put a sufficient value on their emissions-free electricity. The New York Clean Energy Standard upheld in *Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554, 561 (S.D.N.Y. 2017, *aff'd* No. 17-2654-cv (2d Cir. Sept. 27, 2018) (quoting CES Order, App'x E, at 1), was designed to further New York's policy to reduce GHG emissions by preserving existing emissions free electricity provided by New York's nuclear plants and by encouraging the development of additional emissions-free electricity from renewable generation sources. It was motivated, in part, by the announcements that the Fitzpatrick and Ginna nuclear plants would close due to financial stresses caused by low electricity prices created by the oversupply of natural gas from shale gas resources, as well as by the failure of the RGGI prices to impose sufficient costs for CO<sub>2</sub> emissions from fossil-fired electricity generation. *Id.* at 562, n.5.

618. Daniel et. al., *supra* note 120 at 38-39; see also Litterman, *supra* note 331; Litterman, Daniel & Wagner, *supra* note 218, at 43.

619. Increasing prices in later years, when there is a lower cap, will help maintain total revenues.

620. For example, the General Assembly might adopt legislation such as the Pennsylvania Greenhouse Gas Regulation Implementation Act, 71 PA. CONS. STAT. §§ 1362.1-1362.4, (2014), where the General Assembly required legislative review of Pennsylvania's submission of its implementation plan for the Clean Power Plan. Unless the Act is construed to make it constitutional, it provides a possible mechanism for an unconstitutional one-house veto of the plan. See PA. CONST. art. I, §27 (stating that Pennsylvania's natural resources are a public trust), art. IV, §§ 9,15 (requiring passage of laws, resolutions and votes by both houses and presentation to the governor); *Commonwealth v. Sessoms*, 516 Pa. 365, 532 A.2d 775 (1987) (invalidating legislative veto); *MCT Transportation, Inc. v. Philadelphia Parking Auth.*, 60 A.3d 899 (Pa. Commw. Ct. 2013) (holding that approval of a rule under a similar procedure did not constitute valid legislative action consistent with separation of powers principles and specifically disapproving of the process as a one-house veto). The General Assembly might also attempt to invalidate a regulation pursuant to the process prescribed in the Regulatory Review Act, 71 PA. CONS. STAT. §§ 745.1-745.15 (1982).

621. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 977-85 (Pa. 2013).

in *PEDF*. Even the *Funk* decision recognized that the ERA could be used to invalidate legislation that impaired rights guaranteed by the ERA.<sup>622</sup>

Legislation blocking a regulation required to “maintain and conserve” a stable climate, repealing such a regulation, replacing a regulation with a weaker version that did not maintain and conserve a stable climate, or removing the power to regulate GHGs from the EQB would all likely be unconstitutional violations of the ERA under the reasoning in *PEDF* and *Robinson Township*.

## CONCLUSION

The precise contours of Article I, § 27 rights, enunciated in *Robinson Township* and *PEDF*, as they relate to GHG regulation and emissions pricing have not been litigated. Nevertheless, those opinions provide substantial support both for meaningful regulation of GHG emissions by Pennsylvania and for a regulated emissions price sufficient to put the Commonwealth on a path to deep decarbonization and economic modernization.

If these decisions are extended to support an Article I, § 27 mandate to regulate GHGs as suggested here, that extension can also have national and international significance. Many states and nations have similar provisions in their constitutions or public trust doctrines, and the scholarly constitutional jurisprudence of the Pennsylvania Supreme Court may be persuasive to these other jurisdictions.

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622. *Funk* cited *Cnty. Coll. of Delaware Cty. v. Fox*, 20 Pa. Commw. 335, 342 A.2d 468, 473 (1975) for the proposition that “the ERA “could operate *only to limit such powers as had been expressly delegated by proper enabling legislation.*” *Funk v. Wolf*, 144 A.3d 228, 249 (Pa. Commw. Ct. 2016), *aff’d without opinion*, 158 A.3d 642 (Pa. 2017) (emphasis in *Funk*).

**CHAPTER 147: PENNSYLVANIA CAP ON GREENHOUSE GAS EMISSIONS AND  
MARKET-BASED COMPLIANCE MECHANISMS**

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## **Subchapter 1: Purpose, Findings and Definitions**

### § 147.000. Purpose.

The purpose of this article is to reduce emissions of greenhouse gases associated with entities identified in this article through the establishment, administration, and enforcement of the Pennsylvania Greenhouse Gas Cap-and-Trade Program by applying an aggregate greenhouse gas allowance budget on covered entities and providing a trading mechanism for compliance instruments.

### § 147.101. Findings

(a) Disruption of the climate caused by the buildup of greenhouse gases in the atmosphere poses an existential threat to the health and welfare of present and future generations of Pennsylvanians and to the conservation of the public natural resources of the Commonwealth with respect to which the Commonwealth has a duty as a trustee under Article I, § 27 of the Pennsylvania Constitution.

(b) The scientists on Intergovernmental Panel on Climate Change have reached the consensus scientific conclusion that the worst adverse impacts of climate disruption cannot be avoided unless worldwide greenhouse gas emissions are reduced by approximately 45% from 2010 levels by 2030 and to the point that the emissions are no greater than uptake by long term sinks by 2050.

(c) Pennsylvania's emissions of greenhouse gases are globally significant, exceeding the emissions of most nations of the world on both an absolute and per capita basis. The world cannot achieve the emissions reductions necessary to prevent the worst adverse impacts of climate disruption unless Pennsylvania achieves the same or greater emissions reductions as the Intergovernmental Panel on Climate C has found are necessary for the world as a whole.

(d) Any delay by Pennsylvania in achieving the emissions reductions required under this chapter will cause irreparable harm to the conservation of public natural resources protected by Article I, § 27 of the Constitution and the health and welfare of current and future generations of Pennsylvanians.

(e) After they are released from fossil sinks into the ambient air greenhouse gases persist and their concentrations increase. The most common greenhouse gas, carbon dioxide,

will persist in the environment for millennia after being released from fossil sinks as the result of the combustion of fossil fuels or alteration of carbonate rocks.

(f) If the emissions reductions required under this chapter are delayed, slowed or reduced, the additional greenhouse gases added to the atmosphere will persist, causing irreparable harm and requiring greater and more costly emissions reductions or costly efforts to remove them from the atmosphere in the future.

(g) Based on scientifically defensible determinations of the social cost of carbon with an appropriate risk premium, the benefits of this chapter will far outweigh any costs.

(h) By putting an appropriate price on emissions of greenhouse gases and providing long term certainty to its industries, this chapter will encourage the development of sustainable industries and sustainable development that will strengthen the economy of the Commonwealth.

#### § 147.002. Definitions.

(a) Definitions. For the purposes of this article, the following definitions shall apply: “Account Viewing Agent” means an individual authorized by a registered entity to view all the information on the entity’s accounts contained in the tracking system.

“Accounts Administrator” means the entity acting in the capacity to administer the accounts identified in this regulation. This may be DEP or could be an entity with whom DEP enters into a contract.

“Activity-Shifting Leakage” means increased GHG emissions or decreased GHG removals that result from the displacement of activities or resources from inside the offset project’s boundary to locations outside the offset project’s boundary as a result of the offset project activity.

“Additional” means, in the context of offset credits, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, that result in emissions reductions that will not otherwise reduce the demand for allowances, and exceed any greenhouse gas reductions or removals that would occur if an offset were not provided to the project.

“Adverse Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body cannot say with reasonable

assurance that the submitted Offset Project Data Report is free of an offset material misstatement, or that it cannot attest that the Offset Project Data Report conforms to the requirements of this article or applicable Compliance Offset Protocol.

“Allowance” means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

“Alternate Account Representative” means an individual designated pursuant to section 147.132 to take actions on an entity’s accounts.

“Annual Allowance Budget” means the number of Pennsylvania Greenhouse Gas Allowances associated with one year of the Cap-and-Trade Program in subchapter 6.

“Asset Controlling Supplier” means any entity that owns or operates inter-connected electricity generating facilities or serves as an exclusive marketer for these facilities even though it does not own them, and is assigned a supplier-specific identification number and system emission factor by DEP for the wholesale electricity procured from its system and imported into Pennsylvania. Asset Controlling Suppliers are considered specified sources.

“Assigned Emissions” or “Assigned Emissions Level” means an amount of emissions, in CO<sub>2</sub>e, assigned to the reporting entity by the Department.

“Associated Gas” or “Produced Gas” means a natural gas that is produced in association with the production of crude oil.

“Auction” means the process of selling Pennsylvania Greenhouse Gas Allowances, along with allowances from External Greenhouse Gas Emissions Trading Systems with which Pennsylvania has linked its Cap-and-Trade Program pursuant to subchapter 12, by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

“Auction Purchase Limit” means the limit on the number of allowances one entity or a group of affiliated entities may purchase from the share of allowances sold at a quarterly auction.

“Auction Reserve Price” means a price for allowances below which bids at auction would not be accepted.

“Auction Settlement Price” means the price announced by the Auction Administrator at the conclusion of each quarterly auction. It is the price which all successful bidders will pay for

their allowances and also the price to be paid to those entities which consigned allowances to the auction.

“Authorized Project Designee” means an entity authorized by an Offset Project Operator to act on behalf of the Offset Project Operator. The Authorized Project Designee must be a Primary Account Representative or Alternate Account Representative on the Offset Project Operator’s Holding Account.

“Aviation Gasoline” means a complex mixture of volatile hydrocarbons, with or without additives, suitably blended to be used in aviation reciprocating engines.

“Banking” means the holding of compliance instruments from one compliance period for the purpose of sale or surrender in a future compliance period.

“Barrel of Gas Processed Equivalent,” means the volume of associated gas, waste gas, and natural gas processed converted to barrels at 5.8 MMBtu per barrel.

“Barrel of Oil Equivalent,” with respect to reporting of oil and gas production, means barrels of crude oil produced, plus associated gas and dry gas produced, converted to barrels at 5.8 MMBtu per barrel.

“Biodiesel” means a diesel fuel substitute produced from nonpetroleum renewable resources that meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel that is all of the following: registered as a motor vehicle fuel or fuel additive under 40 C.F.R. Part 79; a mono-alkyl ester; meets American Society for Testing and Material designation ASTM D 6751-08 (Standard Specification for Biodiesel Fuel Blendstock (B100) for Middle Distillate Fuels, 2008); intended for use in engines that are designated to run on conventional diesel fuel; and derived from nonpetroleum renewable resources.

“Biogas” means gas that is produced from the breakdown of organic material in the absence of oxygen. Biogas is produced in processes including anaerobic digestion, anaerobic decomposition, and thermochemical decomposition. These processes are applied to biodegradable biomass materials, such as manure, sewage, municipal solid waste, green waste, and waste from energy crops, to produce landfill gas, digester gas, and other forms of biogas.

“Biomass” means non-fossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material. For the purpose of this article, biomass includes both Pennsylvania Alternative Energy Portfolio Standard (“AEPS”) eligible and non-eligible biomass.

“Biomass-Derived Fuels” or “Biomass Fuels” or “Biofuels” means fuels derived from biomass.

“Biomethane” means biogas that meets pipeline quality natural gas standards.

“Budget Year” means the calendar year to which an annual allowance budget is assigned pursuant to subchapter 6.

“Business-as-Usual Scenario” means the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits“ and that result in emissions reductions that will not otherwise reduce the demand for allowances or are not otherwise required by law.

“Calendar Year” means the time period from January 1 through December 31.

“Cap” means the total number of Pennsylvania GHG Allowances that the Department issues for a calendar year.

“Cap-and-Trade Program” means the requirements of this chapter.

“Carbon Dioxide” or “CO<sub>2</sub>” means the most common of the primary greenhouse gases, consisting on a molecular level of a single carbon atom and two oxygen atoms.

“Carbon Dioxide Equivalent” or “CO<sub>2</sub> equivalent” or “CO<sub>2</sub>e” means the number of metric tons of CO<sub>2</sub> emissions with the same global warming potential as one metric ton of another greenhouse gas. Global warming potential values shall be determined consistent with the definition of Carbon Dioxide Equivalent in the MRR.

“Carbon Dioxide Supplier” or “CO<sub>2</sub> Supplier” means (a) facilities with production process units located in the Commonwealth of Pennsylvania that capture a CO<sub>2</sub> stream for

purposes of supplying CO<sub>2</sub> to another entity or facility or that capture the CO<sub>2</sub> stream in order to utilize it for geologic sequestration where capture refers to the initial separation and removal of CO<sub>2</sub> from a manufacturing process or any other process, (b) facilities with CO<sub>2</sub> production wells located in the Commonwealth of Pennsylvania that extract or produce a CO<sub>2</sub> stream for purposes of supplying CO<sub>2</sub> for commercial applications or that extract a CO<sub>2</sub> stream in order to utilize it for geologic sequestration, (c) exporters (out of the Commonwealth of Pennsylvania Pennsylvania) of bulk CO<sub>2</sub> that export CO<sub>2</sub> for the purpose of geologic sequestration, (d) exporters (out of the Commonwealth of Pennsylvania Pennsylvania) of bulk CO<sub>2</sub> that export for purposes other than geologic sequestration, and (e) importers (into the Commonwealth of Pennsylvania Pennsylvania) of bulk CO<sub>2</sub>. This source category is focused on upstream supply and is not intended to place duplicative compliance obligations on CO<sub>2</sub> already covered upstream. The source category does not include transportation or distribution of CO<sub>2</sub>; purification, compression, or processing of CO<sub>2</sub>; or on-site use of CO<sub>2</sub> captured on-site.

“Carbon Stock” means the quantity of carbon contained in an identified GHG reservoir.

“Cogeneration” means an integrated system that produces electric energy and useful thermal energy for industrial, commercial, or heating and cooling purposes, through the sequential or simultaneous use of the original fuel energy. Cogeneration must involve onsite generation of electricity and useful thermal energy and some form of waste heat recovery. Some examples of cogeneration include: (a) a gas turbine or reciprocating engine generating electricity by combusting fuel, which then uses a heat recovery unit to capture useful heat from the exhaust stream of the turbine or engine; (b) Steam turbines generating electricity as a byproduct of steam generation through a fired boiler; (c) Cogeneration systems in which the fuel input is first applied to a thermal process such as a furnace and at least some of the heat rejected from the process is then used for power production. For the purposes of this chapter, a combined-cycle power generation unit, where none of the generated thermal energy is used for industrial, commercial, or heating and cooling purposes (these purposes exclude any thermal energy utilization that is either in support of or a part of the electricity generation system), is not considered a cogeneration unit.

“Combustion Emissions” means greenhouse gas emissions occurring during the exothermic reaction of a fuel with oxygen.

“Compliance Account” means an account created by the accounts administrator for a covered entity or opt-in covered entity with a compliance obligation, to which the entity transfers compliance instruments to meet its annual and full compliance period compliance obligations.

“Compliance Instrument” means an allowance or offset, issued by DEP or by an External Greenhouse Gas Emissions Trading System to which Pennsylvania has linked its Cap-and-Trade Program pursuant to subchapter 12, or sector-based offset credit. Each compliance instrument can be used to fulfill a compliance obligation equivalent to up to one metric ton of CO<sub>2</sub>e.

“Compliance Obligation” means the quantity of verified reported emissions or assigned emissions for which an entity must submit compliance instruments to DEP.

“Compliance Offset Protocol” means an offset protocol approved by the Department or approved by reference under this chapter.

“Compliance Period” means the three-year period for which the compliance obligation is calculated for covered entities except for the first compliance period under section 147.140(a).

“Compressed natural gas” or “CNG” means natural gas in high-pressure containers that is highly compressed (though not to the point of liquefaction), typically to pressures ranging from 2900 to 3600 psi.

“Conflict of Interest” means, for purposes of this article, a situation in which, because of financial or other activities or relationships with other persons or organizations, a person or body is unable or potentially unable to render an impartial Offset Verification Statement of a potential client’s Offset Project Data Report, or the person or body’s objectivity in performing offset verification services is or might be otherwise compromised.

“Conservative” means, in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements.

“Consumer Price Index for All Urban Consumers” means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers and is published by the U.S. Bureau of Labor Statistics.

“Contract Description Code” means the alphanumeric code assigned by an exchange to a particular exchange product that differentiates the product from others traded on the exchange.

“Counterparty” means the opposite party in a bilateral agreement, contract, or transaction.

“Covered Entity” means an entity within Pennsylvania that has one or more of the processes or operations and has a compliance obligation as specified in subchapter 7 of this regulation; and that has emitted, produced, imported, manufactured, or delivered in 2016 or any subsequent year more than the applicable threshold level specified in section 147.112(a) of this rule.

“Crediting Baseline” refers to the reduction of absolute GHG emissions below the business-as-usual scenario or reference level across a jurisdiction’s entire sector in a sector-based crediting program after the imposition of greenhouse gas emission reduction requirements or incentives.

“Crediting Period” means the pre-determined period for which an offset project will remain eligible to be issued DEP offset credits or registry offset credits for verified GHG emission reductions or GHG removal enhancements.

“Data Year” means the calendar year in which emissions occurred.

“Deforestation” means direct human-induced conversion of forested land to non-forested land.

“Delivered Electricity” means electricity that was distributed from a PSE and received by a PSE or electricity that was generated, transmitted, and consumed.

“DEP ID” means, for the purposes of this article, the unique identification number assigned to each facility, supplier, and electric power entity that reports GHG emissions to the DEP pursuant to MRR.

“DEP Offset Credit” means a tradable compliance instrument issued by DEP that represents a GHG reduction or GHG removal enhancement of one metric ton of CO<sub>2</sub>e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable. DEP offset credits may only be issued for GHG emission reductions or GHG removal enhancements that occur during a “Reporting Period,” as defined in this section.

“Diesel Fuel” means Distillate Fuel No. 1 and Distillate Fuel No. 2, including dyed and non-taxed fuels.

“Direct Delivery of Electricity” or “directly delivered” means electricity that meets any of the following criteria:

The facility has a first point of interconnection with a Pennsylvania PUC regulated transmission or distribution utility for distribution to Pennsylvania users;

The electricity is scheduled for delivery from a specified source into Pennsylvania via a continuous physical transmission path into Pennsylvania; or

There is an agreement to dynamically transfer electricity from the facility to Pennsylvania.

“Direct GHG Emission Reduction” means a GHG emission reduction from applicable GHG emission sources, GHG sinks, or GHG reservoirs that are under control of the Offset Project Operator or Authorized Project Designee.

“Direct GHG Removal Enhancement” means a GHG removal enhancement from applicable GHG emission sources, GHG sinks, or GHG reservoirs under control of the Offset Project Operator or Authorized Project Designee.

“Distillate Fuel No. 1” has a maximum distillation temperature of 550 F at the 90 percent recovery point and a minimum flash point of 100 F and includes fuels commonly known as Diesel Fuel No. 1 and Fuel Oil No. 1 but excludes kerosene. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

“Distillate Fuel No. 2” has a minimum and maximum distillation temperature of 540 F and 640 F at the 90 percent recovery point, respectively, and includes fuels commonly known as Diesel Fuel No. 2 and Fuel Oil No. 2. This fuel is further subdivided into categories of sulfur content: High Sulfur (greater than 500 ppm), Low Sulfur (less than or equal to 500 ppm and greater than 15 ppm), and Ultra Low Sulfur (less than or equal to 15 ppm).

“Distillate Fuel No. 4” means a distillate fuel oil with a minimum flash point of 131 °F made by blending distillate fuel oil and residual fuel oil.

“Distillate Fuel Oil” means a classification for one of the petroleum fractions produced in conventional distillation operations and from crackers and hydrotreating process units. The generic term “distillate fuel oil” includes kerosene, kerosene-type jet fuel, diesel fuels (Diesel Fuels No. 1, No. 2, and No. 4), and fuel oils (Fuel Oils No. 1, No. 2, and No. 4).

“Distilled spirit” means a spirit made from the separation of alcohol and a fermented product.

“District Heating Facility” means a facility that, at a central plant, produces hot water, steam, and/or chilled water that is distributed through underground pipes to buildings and facilities connected to the system that are not part of the same facility. District Heating Facility does not include a facility that produces electricity.

“Dry Gas” means a natural gas that is produced from gas wells not associated with the production of crude oil.

“Electric Power Entity” means electricity importers and exporters and retail providers.

“Electrical Distribution Utility(ies)” or “EDU” means an entity that owns and/or operates an electrical distribution system that provides electricity to retail end users in Pennsylvania.

“Electricity Generating Facility” means a facility that generates electricity and includes one or more generating units at the same location.

“Electricity Importers” deliver imported electricity to Pennsylvania from a generation facility in a jurisdiction that is not linked to the Pennsylvania cap-and-trade programs as identified by the PJM GATS system. Generation.

“Emissions” means the release of greenhouse gases into the atmosphere from sources and processes in a facility, including from the combustion of transportation fuels such as natural gas, petroleum products, and natural gas liquids. In the context of offsets, “emissions” means the release of greenhouse gases into the atmosphere from sources and processes within an offset project boundary.

“Emissions Data Report” or “greenhouse gas emissions data report” or “report” means the report prepared by an operator or supplier each year and submitted by electronic means to DEP that provides the information required by MRR. The emissions data report is for the submission of required data for the calendar year prior to the year in which the report is due. For

example, a 2020 emissions data report would cover emissions and product data for the 2020 calendar year and would be reported in 2021.

“Emissions Efficiency Benchmark” or “GHG emissions efficiency benchmark” means a performance standard used to evaluate GHG emissions efficiency between and amongst similar facilities or operations in the same industrial sector.

“End User” means a final purchaser of an energy product, such as electricity, thermal energy, or natural gas not for the purposes of retransmission or resale. In the context of natural gas consumption, an “end user” is the point to which natural gas is delivered for consumption.

“Enforceable” means the authority for DEP to hold a particular party liable and to take appropriate action if any of the provisions of this chapter are violated.

“Enhanced Oil Recovery” or “EOR” means the use of certain methods such as steam (thermal EOR), water flooding or gas injection into existing wells to increase the recovery of crude oil from a reservoir. In the context of this rule, EOR also applies to injection of critical phase carbon dioxide into a crude oil reservoir to enhance the recovery of oil.

“Enterer” means an entity that imports, into Pennsylvania, motor vehicle fuel, diesel fuel, fuel ethanol, biodiesel, or non-exempt biomass-derived fuel or renewable fuel and who is the importer of record under federal customs law or the owner of fuel upon import into Pennsylvania, if the fuel is not subject to federal customs law. Only entities that import the fuels specified in this definition outside the bulk transfer/terminal system are subject to reporting under the regulation.

“Entity” means a person, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or government agency.

“Entity type” means the type of entity based on the qualification to register in the tracking system as a covered entity (pursuant to section 147.111), an opt-in covered entity (pursuant to section 147.113), or a voluntarily associated entity (pursuant to section 147.114).

“Exchange” means a central marketplace with established rules and regulations where buyers and sellers meet to conduct trades.

“Expected Settlement Date” is a date specified in a transaction agreement on which all requirements in the transaction agreement are expected to be settled, exclusive of any contingencies specified in the agreement.

“Expected Termination Date” is a date specified in a transaction agreement on which all requirements in the transaction agreement are expected to be completed, exclusive of any contingencies specified in the agreement.

“Exported Electricity” means electricity generated inside Pennsylvania and delivered to serve load located outside of Pennsylvania and outside of a state that does not have an External GHG ETS that is linked to the Pennsylvania Cap-and-Trade Program, as identified by GATS.

“External Greenhouse Gas Emissions Trading System” or “External GHG ETS” means an administrative system, other than the Pennsylvania Cap-and-Trade Program, that controls greenhouse gas emissions from sources in its program.

“Facility,” unless otherwise specified in relation to natural gas distribution facilities and petroleum and natural gas production facilities as defined in section 147.002(a), means:

Any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

With respect to natural gas distribution, “Facility” means the collection of all distribution pipelines and metering-regulating stations that are operated by a Local Distribution Company (LDC) within the Pennsylvania that is regulated as a separate operating company by a public utility commission or that are operated as an independent municipally-owned distribution system.

With respect to petroleum and natural gas production, “Facility” means all petroleum and natural gas equipment on a well-pad, or associated with a well pad or to which emulsion is transferred and CO<sub>2</sub> EOR operations that are under common ownership or common control including leased, rented, or contracted activities by a

petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin. When a commonly owned cogeneration plant is within the basin, the cogeneration plant is only considered part of the petroleum and natural gas production facility if the petroleum and natural gas production facility operator or owner has a greater than fifty percent ownership share in the cogeneration plant. Where a person or entity owns or operates more than one well in a basin, then all petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility.

Natural gas processing equipment that is owned and/or operated by the facility owner/operator and located within the same basin, is considered “associated with a well pad” and is included with the petroleum and natural gas production facility, unless such equipment is required to be reported as part of a separate petroleum and natural gas processing facility.

With respect to natural gas processing, “Facility” means equipment associated with the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, including separation of sulfur and carbon dioxide, that processes an annual average throughput of 25 MMscf per day or greater, or whose owner/operator does not also own/operate a production facility in the same air basin.

“Final Point of Delivery” means the site of delivery identified by GATS.

“First Deliverer of Electricity” or “First Deliverer” means the owner or operator of an electricity generating facility in Pennsylvania or an electricity importer.

“First Point of Receipt” means the generation source specified by GATS.

“Flash Point” of a volatile liquid is the lowest temperature at which it can vaporize to form an ignitable mixture in air.

“Fluorinated Greenhouse Gas” means sulfur hexafluoride (SF<sub>6</sub>), nitrogen trifluoride (NF<sub>3</sub>), and any fluorocarbon except for controlled substances as defined at 40 CFR Part 82, subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 C. With these exceptions, “fluorinated GHG” includes any hydrofluorocarbon; any perfluorocarbon; any

fully fluorinated linear, branched, or cyclic alkane, ether, tertiary amine, or amino ether; any perfluoropolyether; and any hydrofluoropolyether.

“Forest Buffer Account” means a holding account for DEP offset credits issued to forest offset projects. It is used as a general insurance mechanism against unintentional reversals, for all forest offset projects listed under a Compliance Offset Protocol.

“Forest Offset Project” means an offset project that uses or has used either the offset protocols identified in section 147.273(a)(2)(C)4.

“Forest Owner” means the owner of any interest in the real (as opposed to personal) property involved in a forest offset project, excluding government agency third party beneficiaries of conservation easements. Generally, a Forest Owner is the owner in fee of the real property involved in a forest offset project. In some cases, one entity may be the owner in fee while another entity may have an interest in the trees or the timber on the property, in which case all entities or individuals with interest in the real property are collectively considered the Forest Owners, however, a single Forest Owner must be identified as the Offset Project Operator.

“Fossil Fuel” means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

“Fractionates” means the process of separating natural gas liquids into their constituent liquid products.

“Fuel Analytical Data” means data collected about fuel usage (including mass, volume, and flow rate) and fuel characteristics (including heating value, carbon content, and molecular weight) to support emissions calculation.

“Fuel Cell” means a device that converts the chemical energy of a fuel and an oxidant directly into electrical energy without using combustion. Fuel cells require a continuous source of fuel and oxidant to operate.

“Fuel supplier” means a supplier of petroleum products, a supplier of biomass-derived transportation fuels, a supplier of natural gas including operators of interstate and intrastate pipelines, a supplier of liquefied natural gas, or a supplier of liquefied petroleum gas as specified in the MRR.

“Fugitive Emissions” means those emissions which are unintentional and could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

“Full Offset Verification” means, for the purposes of this article, offset verification services that meet all the requirements of sections 147.277.1 and 147.277.2, including a site visit.

“Gas” means the state of matter distinguished from the solid and liquid states by: relatively low density and viscosity; relatively great expansion and contraction with changes in pressure and temperature; the ability to diffuse readily; and the spontaneous tendency to become distributed uniformly throughout any container.

“Gaseous Hydrogen” means hydrogen in a gaseous state.

“GATS” or the “Generation Attribute Tracking System” means the system applied by PJM to track attributes of electricity generation where the electricity is delivered within the PJM system, including emissions associated with the generation of the electricity, the location of the generation and surrender of allowances for such generation.

“Geologic Sequestration” means the process of injecting CO<sub>2</sub> captured from an emissions source into deep subsurface rock formations for permanent storage or disposal.

“Global Warming Potential” or “GWP” means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas, *i.e.*, CO<sub>2</sub>.

“Greenhouse Gas” or “GHG” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrogen trifluoride (NF<sub>3</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases as defined in this section.

“Greenhouse Gas Emission Reduction” or “GHG Emission Reduction” or “Greenhouse Gas Reduction” or “GHG Reduction” means a calculated decrease in GHG emissions relative to a project baseline over a specified period of time.

“Greenhouse Gas Emissions Source” or “GHG Emissions Source” means, in the context of offset credits, any type of emitting activity that releases greenhouse gases into the atmosphere.

“Greenhouse Gas Removal” or “GHG Removal” means the calculated total mass of a GHG removed from the atmosphere over a specified period of time.

“Greenhouse Gas Removal Enhancement” or “GHG Removal Enhancement” means a calculated increase in GHG removals relative to a project baseline.

“Greenhouse Gas Reservoir” or “GHG Reservoir” means a physical unit or component of the biosphere, geosphere, or hydrosphere with the capability to store, accumulate, or release a GHG removed from the atmosphere by a GHG sink or a GHG captured from a GHG emission source.

“Greenhouse Gas Sink” or “GHG Sink” means a physical unit or process that removes a GHG from the atmosphere.

“HD-5” or “Special Duty Propane” means a consumer grade of liquefied petroleum gas containing a minimum of 90% propane, a maximum of 5% propylene, and a maximum of 5% butane as specified in ASTM D1835-05.

“HD-10” means a fuel that meets the specifications for propane used in transportation fuel.

“Hold” in the context of a compliance instrument, is to have the serial number assigned to that instrument registered into an account assigned to an entity that is registered into the Pennsylvania Cap-and-Trade Program or an External Greenhouse Gas Emissions Trading System to which Pennsylvania has linked its Cap-and-Trade Program pursuant to subchapter 12, or an account under the control of the Department.

“Holding Account” or “General Holding Account” means an account created for each covered entity, opt-in covered entity, or voluntarily associated entity to hold compliance instruments.

“Hydrocarbon” means a chemical compound containing predominantly carbon and hydrogen.

“Hydrofluorocarbon” or “HFC” means a class of GHGs consisting of hydrogen, fluorine, and carbon.

“Hydrogen” means diatomic molecular hydrogen, the lightest of all gases.

“Imported Electricity” means electricity generated outside Pennsylvania and delivered to serve load located inside Pennsylvania.

“Importer of fuel” means an entity that imports fuel into Pennsylvania and who is the importer of record under federal customs law. For imported fuel not subject to federal customs law, the “importer of fuel” is the owner of the fuel upon its entering into Pennsylvania if the eventual transfer of ownership of the product to an end user or marketer located in Pennsylvania occurs at a location inside Pennsylvania. However, where the transfer of ownership of the product fuel to a Pennsylvania end user or marketer occurs at a location outside Pennsylvania, the “importer of fuel” is the producer, marketer, or distributor that is the seller of the fuel the end user or marketer located inside Pennsylvania.

“Initial Crediting Period” means the crediting period that begins with the date that the first GHG emission reductions or GHG removal enhancements took place according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by DEP.

“Intentional Reversal” means any reversal, except as provided below, which is caused by a forest owner’s negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary, or caused by approved growth models overestimating carbon stocks. A reversal caused by an intentional back burn set by, or at the request of, a local, state, or federal fire protection agency for the purpose of protecting forestlands from an advancing wildfire that began on another property through no negligence, gross negligence, or willful misconduct of the forest owner is not considered an intentional reversal but, rather, an unintentional reversal. Receiving Adverse Offset Verification Statements on two consecutive offset verifications after the end of the final crediting period will be considered an intentional reversal.

“Interstate Pipeline” means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in Pennsylvania and is subject to rate regulation by the Federal Energy Regulatory Commission.

“Intrastate Pipeline” means any pipeline or piping system wholly within Pennsylvania that is delivering natural gas to end-users and is not regulated as a public utility gas corporation by the Pennsylvania Public Utility Commission (PUC), is not a publicly owned natural gas utility, and is not regulated as an interstate pipeline by the Federal Energy Regulatory Commission. This definition includes petroleum and natural gas production facilities and natural gas processing facilities that deliver pipeline and/or non-pipeline quality natural gas to one or

more end users. Facility operators that operate an interconnection pipeline that connects their facility to an interstate pipeline, or that share an interconnection pipeline to an interstate pipeline with other nearby facilities, are not considered intrastate pipeline operators. Facilities that receive gas from an upstream LDC and redeliver a portion of the gas to one or more adjacent facilities are not considered intrastate pipelines.

“Inventory Position” means a contractual agreement with the terminal operator for the use of the storage facilities and terminaling services for the fuel.

“Issue” or “Issuance” means, in the context of offset credits, the creation of DEP offset credits or registry offset credits equivalent to the number of verified GHG reductions or GHG removal enhancements for an offset project over a specified period of time. In the context of allowances, issue means the placement of an allowance into an account under the control of the Department.

“Kerosene” is a light petroleum distillate with a maximum distillation temperature of 400 F at the 10-percent recovery point, a final maximum boiling point of 572 F, a minimum flash point of 100 F, and a maximum freezing point of -22 F. Included are No. 1-K and No. 2-K, distinguished by maximum sulfur content (0.04 and 0.30 percent of total mass, respectively), as well as all other grades of kerosene called range or stove oil. Kerosene does not include kerosene-type jet fuel.

“Kerosene-Type Jet Fuel” means a kerosene-based product used in commercial and military turbojet and turboprop aircraft. The product has a maximum distillation temperature of 400 °F at the 10 percent recovery point and a final maximum boiling point of 572 °F. Included are Jet A, Jet A-1, JP-5, and JP-8.

“Lead Verifier” means, for purposes of this article, a person that has met all of the requirements in this chapters for verifying offsets and who may act as the lead verifier of an offset verification team providing offset verification services or as a lead verifier providing an independent review of offset verification services rendered.

“Lead Verifier Independent Reviewer” or “Independent Reviewer” means, for purposes of this article, a lead verifier within a verification body who has not participated in conducting offset verification services for an Offset Project Developer or Authorized Project Designee for

the current Offset Project Data Report and who provides an independent review of offset verification services rendered for an Offset Project Developer or Authorized Project Designee as required in section 147.277.1(b)(3)(R). The independent reviewer is not required to also meet the requirements for a sector specific or offset project specific verifier.

“Less Intensive Verification” means, for the purposes of this article, the offset verification services provided in interim years between full offset verifications of an Offset Project Data Report; less intensive verification of an Offset Project Data Report only requires data checks and document reviews of an Offset Project Data Report based on the analysis and risk assessment in the most current sampling plan developed as part of the most recent full offset verification services. This level of verification may only be used if the offset verifier can provide findings with a reasonable level of assurance.

“Linkage” means the approval of compliance instruments from an external greenhouse gas emission trading system (GHG ETS) to meet compliance obligations under this chapter (including approval by rule\_, and the reciprocal approval of compliance instruments issued by Pennsylvania to meet compliance obligation in an external GHG ETS, unless reciprocal approval is not required as provided in this chapter

“Liquefied natural gas” or “LNG” means natural gas (primarily methane) that has been liquefied by reducing its temperature to -260 degrees Fahrenheit at atmospheric pressure.

“Liquefied Petroleum Gas” or “LPG” means a flammable mixture of hydrocarbon gases used as a fuel. LPG is primarily mixtures of propane, butane, propene (propylene) and ethane. The most common specification categories are propane grades, HD-5, HD-10, and commercial grade propane. LPG also includes both odorized and non-odorized liquid petroleum gas, and is also referred to as propane.

“Liquid Hydrogen” means hydrogen in a liquid state.

“Long-Term Contract” means a contract for the delivery of electricity entered into before [the date of approval of this chapter as a proposal by the EQB], for the term of five years or more.

“Mandatory Reporting Regulation” or “MRR” means the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions as set forth in this chapter.

“Market Index” means any published index of quantities or prices based on results of market transactions.

“Market-Shifting Leakage,” in the context of an offset project, means increased GHG emissions or decreased GHG removals outside an offset project’s boundary due to the effects of an offset project on an established market for goods or services.

“Marketer” means a purchasing-selling entity that delivers electricity and is not a retail provider.

“Methane” or “CH<sub>4</sub>” means a GHG consisting on the molecular level of a single carbon atom and four hydrogen atoms.

“Metric Ton” or “MT” means a common international measurement for mass, equivalent to 2,204.6 pounds or 1.1 short tons.

“Monitoring” means, in the context of offset projects, the ongoing collection and archiving of all relevant and required data for determining the project baseline, project emissions, and quantifying GHG reductions or GHG removal enhancements that are attributable to the offset project.

“Municipal Solid Waste” or “MSW” means shall have the definition provided in the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.* and implementing regulations.

“Natural Gas” means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface, of which its constituents include methane, heavier hydrocarbons, and carbon dioxide. Natural gas may be field quality (which varies widely) or pipeline quality. For the purposes of this rule, the definition of natural gas includes similarly constituted fuels such as field production gas, process gas, and fuel gas.

“Natural Gas Liquids” or “NGLs”, means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods. Natural gas liquids can be classified according to their vapor pressures as low (condensate), intermediate (natural gasoline), and high (liquefied petroleum gas) vapor pressure. Generally, such liquids consist of ethane, propane, butanes, pentanes, and higher molecular

weight hydrocarbons. Bulk NGLs refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.

“Natural gas supplier” or “supplier of natural gas” means any entity that distributes or uses natural gas in Pennsylvania and is described below:

- (A) A public utility gas corporation operating in Pennsylvania;
- (B) A publicly owned natural gas utility operating in Pennsylvania; or
- (C) The operator of an intrastate pipeline not included in section 147.111(c)(1) or section 147.111(c)(2) that distributes natural gas directly to end users. For the purposes of this article, an interstate pipeline is not a natural gas supplier.

“Non-exempt Biomass derived CO<sub>2</sub>” means CO<sub>2</sub> emissions resulting from the combustion of fuel not listed under section 147.152.2(a), or that is not verifiable under the MRR.

“Non-thermal enhanced oil recovery” or “non-thermal EOR” means the process of using methods other than thermal EOR, which may include water flooding or CO<sub>2</sub> injection, to increase the recovery of crude oil from a reservoir.

“Notice of Delegation” means a formal notice used to delegate authority to make an electronic submission to the accounts administrator.

“Offset Material Misstatement” means a discrepancy, omission, misreporting, or aggregation of the three, identified in the course of offset verification services that leads an offset verification team to believe that an Offset Project Data Report contains errors resulting in an overstatement of the reported total GHG emission reductions or GHG removal enhancements greater than 5.00 percent. Discrepancies, omissions, or misreporting, or an aggregation of the three, that result in an understatement of total reported GHG emission reductions or GHG removal enhancements in the Offset Project Data Report is not an offset material misstatement.

“Offset Project” means all equipment, materials, items, or actions that are directly related to or have an impact upon GHG reductions, project emissions, or GHG removal enhancements within the offset project boundary.

“Offset Project Boundary” is defined by and includes all GHG emission sources, GHG sinks or GHG reservoirs that are affected by an offset project and under control of the Offset

Project Operator or Authorized Project Designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the Offset Project Operator or Authorized Project Designee are not included in the offset project boundary.

“Offset Project Commencement” means, unless otherwise specified in a Compliance Offset Protocol, the date of the beginning of construction, work, or installation for an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials. For an offset project that involves the implementation of a management activity, “offset project commencement” means, unless otherwise specified in a Compliance Offset Protocol, the date on which such activity is first implemented.

“Offset Project Data Report” means the report prepared by an Offset Project Operator or Authorized Project Designee each Reporting Period that provides the information, documentation, and attestations required by this article or a Compliance Offset Protocol. An unattested report is not a valid Offset Project Data Report, and therefore will not satisfy any deadlines regarding submittal of an Offset Project Data Report.

“Offset Project Listing” or “Listing” means the information, documentation and attestations required by this article or a Compliance Offset Protocol that an Offset Project Operator or Authorized Project Designee has submitted to DEP or an Offset Project Registry, that has been reviewed for completeness by DEP and/or the Offset Project Registry and publicly listed by DEP or the Offset Project Registry for an initial or renewed crediting period. An Offset Project Listing must include the attestations required by this article in order to be considered complete by DEP or the Offset Project Registry.

“Offset Project Operator” means the entity or entities with legal authority to implement the offset project. Only a Primary Account Representative or Alternate Account Representative, as defined in this article, may sign Listing documents, an Offset Project Data Report, a Request for Issuance, or attestations on behalf of the Offset Project Operator.

“Offset Project Registry” means an entity that meets the requirements of section 147.286 and is approved by DEP that lists offset projects, collects Offset Project Data Reports, facilitates verification of Offset Project Data Reports, and issues registry offset credits for offset projects being implemented using a Compliance Offset Protocol.

“Offset Protocol” means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and calculate the project baseline. Offset protocols specify relevant data collection and monitoring procedures, emission factors, and conservatively account for uncertainty and activity-shifting and market-shifting leakage risks associated with an offset project.

“Offset Verification” means a systematic, independent, and documented process for evaluation of an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report against DEP’s Compliance Offset Protocols and this article for calculating and reporting project baseline emissions, project emissions, GHG reductions, and GHG removal enhancements.

“Offset Verification Services” means services provided during offset verification as specified in sections 147.277.1 and 147.277.2, including reviewing an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report, verifying its accuracy according to the standards specified in this article and applicable Compliance Offset Protocol, assessing the Offset Project Operator’s or Authorized Project Designee’s compliance with this article and applicable Compliance Offset Protocol, and submitting an Offset Verification Statement to DEP or an Offset Project Registry. For purposes of this article, Offset Verification Services begin with the Planning Meeting and end with the issuance of DEP offset credits, and do not include preliminary planning activities such as scheduling meetings and site visits, or preparing contract documents.

“Offset Verification Statement” means the final statement rendered by a verification body attesting whether an Offset Project Operator’s or Authorized Project Designee’s Offset Project Data Report is free of an offset material misstatement, and whether the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol, and containing the attestations required pursuant to this article.

“Offset Verification Team” means all of those working for a verification body, including all subcontractors, to provide offset verification services for an Offset Project Operator or Authorized Project Designee.

“On-purpose hydrogen gas” means molecular hydrogen gas produced as a result of a process or processes dedicated to producing hydrogen, including, without limitation, steam methane reforming and electrolysis.

“Operational Control” for a facility subject to this article means the authority to introduce and implement operating, environmental, health, and safety policies. In any circumstance where this authority is shared among multiple entities, the entity holding the permit to operate from the local air pollution control district or air quality management district is considered to have operational control for purposes of this article.

“Operator” means the entity, including an owner, having operational control of a facility, and shall include any operator listed on a permit.

“Opt-in Covered Entity” means an entity that meets the requirements of 147.111 that does not exceed the inclusion thresholds set forth in section 147.112 and may elect to voluntarily opt-in to the Cap-and-Trade Program and be willing to be subject to the requirements set forth in this article.

“Over-the-Counter” means the trading of carbon compliance instruments, contracts, or other instruments not executed or entered for clearing on any exchange.

“Ozone Depleting Substances” or “ODS” means a compound that contributes to stratospheric ozone depletion.

“Pennsylvania Greenhouse Gas Emissions Allowance” or “PA GHG Allowance” means an allowance issued by DEP and equal to up to one metric ton of CO<sub>2</sub> equivalent.

“Perfluorocarbons” or “PFCs” means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.

“Permanent” means, in the context of offset credits, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least 100 years.

“Permanent Retirement Registry” means the publicly available registry in which the Department will record the retired compliance instruments.

“Petroleum” means oil removed from the earth and the oil derived from tar sands, and/or shale.

“Petroleum Refinery” or “Refinery” means any facility engaged in producing gasoline, gasoline blending stocks, naphtha, kerosene, distillate fuel oils, residual fuel oils, lubricants, or asphalt (bitumen) through distillation of petroleum or through re-distillation, cracking, or reforming of unfinished petroleum derivatives.

“Pipeline Quality Natural Gas” means, for the purpose of calculating emissions under MRR, natural gas having a high heat value greater than 970 Btu/scf and equal to or less than 1,100 Btu/scf, and which is at least ninety percent (90%) methane by volume, and which is less than five percent (5%) carbon dioxide by volume.

“Point of Delivery” or “POD” means the point on an electricity transmission or distribution system where a deliverer makes electricity available to a receiver or available to serve load or where electricity is imported into Pennsylvania.

“Point of Receipt” or “POR” means the point on an electricity transmission or distribution system where an electricity receiver receives electricity from a deliverer.

“Position Holder” means an entity that holds an inventory position in motor vehicle fuel, ethanol, distillate fuel, biodiesel, or renewable diesel as reflected in the records of the terminal operator or a terminal operator that owns motor vehicle fuel or diesel fuel in its terminal. “Position holder” does not include inventory held outside of a terminal, fuel jobbers (unless directly holding inventory at the terminal), retail establishments, or other fuel suppliers not holding inventory at a fuel terminal.

“Positive Emissions Data Verification Statement” means a verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the covered emissions data in the submitted emissions data report is free of material misstatement and that the emissions data conforms to the requirements of MRR.

“Positive Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement

and that the Offset Project Data Report conforms to the requirements of this article and applicable Compliance Offset Protocol.

“Positive Product Data Verification Statement” means a verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the covered product data in the submitted emissions data report is free of material misstatement and that the product data conforms to the requirements of MRR.

“Power” means electricity, except where the context makes clear that another meaning is intended.

“Proceeds” means monies generated as a result of an auction or from sales from the Allowance Price Containment Reserve.

“Process” means the intentional or unintentional reactions between substances or their transformation, including the chemical or electrolytic reduction of metal ores, the thermal decomposition of substances, and the formation of substances for use as product or feedstock.

“Process Emissions” means the emissions from industrial processes (*e.g.*, cement production, ammonia production) involving chemical or physical transformations other than fuel combustion. For example, the calcination of carbonates in a kiln during cement production or the oxidation of methane in an ammonia process results in the release of process CO<sub>2</sub> emissions to the atmosphere. Emissions from fuel combustion to provide process heat are not part of process emissions, whether the combustion is internal or external to the process equipment.

“Process Unit” means the equipment assembled and connected by pipes and ducts to process raw materials and to manufacture either a final or intermediate product used in the onsite production of other products. The process unit also includes the purification of recovered byproducts.

“Producer” means a person who owns leases, operates, controls, or supervises a Pennsylvania production facility.

“Product Data Verification Statement” means the final statement rendered by a verification body attesting whether a reporting entity’s product data in their covered emissions data report is free of material misstatement, and whether the product data conforms to the requirements of the MRR.

“Professional Judgment” means the ability to render sound decisions based on professional qualifications and relevant greenhouse gas accounting and auditing experience.

“Project Area” means the property associated with the geographic boundaries of a forest project, as defined following the requirements of the relevant protocol from section 147.273(a)(2)(C)4.

“Project Baseline” means, in the context of a specific offset project, a conservative estimate of business-as-usual GHG emission reductions or GHG removal enhancements for the offset project’s GHG emission sources, GHG sinks, or GHG reservoirs within the offset project boundary.

“Project Emissions” means any GHG emissions associated with the implementation of an offset project that must be accounted for in the Offset Project Data Report.

“Proof Gallons” means one liquid gallon of distilled spirits that is 50% alcohol at 60 degrees F.

“Propane” is a paraffinic hydrocarbon with molecular formula  $C_3H_8$ .

“Property Right” means any type of right to specific property whether it is personal or real property, tangible or intangible.

“Purchase Limit” means the maximum percentage of allowances that may be purchased by an entity of a group of affiliated entities at an allowance auction.

“Purchasing-Selling Entity” or “PSE” means entity that is identified under GATS or a NERC e-TAG for each physical path segment.

“Qualified Positive Emissions Data Verification Statement” means a statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the covered emissions data in the submitted emissions data report is free of material misstatement and is in conformance with the of MRR, but the emissions data may include one or more other nonconformance(s) with requirements of MRR which do not result in a material misstatement.

“Qualified Positive Offset Verification Statement” means an Offset Verification Statement rendered by a verification body attesting that the verification body can say with

reasonable assurance that the submitted Offset Project Data Report is free of an offset material misstatement, but the Offset Project Data Report may include one or more nonconformance(s) with this chapter and the applicable Compliance Offset Protocol which do not result in an offset material misstatement. Nonconformance, in this context, does not include disregarding the explicit requirements of this article or applicable Compliance Offset Protocol and substituting alternative requirements not approved by the Department.

“Qualified Positive Product Data Verification Statement” means a statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the covered product data in the submitted emissions data report is free of material misstatement and is in conformance with the MRR, but the product data may include one or more other nonconformance(s) with the requirements of MRR which do not result in a material misstatement.

“Qualified Thermal Output” means the thermal energy generated by a cogeneration unit or district heating facility that is sold to particular end-users and reported pursuant to the MRR and the thermal energy used on-site by industrial processes or operations and heating and cooling operations that is not in support of or a part of the electricity generation or cogeneration system and is reported pursuant to the MRR. Qualified thermal output does not include thermal energy that is vented, radiated, wasted, or discharged before it is utilized at industrial processes or operations, or for a facility with a cogeneration unit, any thermal energy generated by equipment that is not an integral part of the cogeneration unit.

“Quantifiable” means, in the context of offset projects, the ability to accurately measure and calculate GHG reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the offset project boundary, while accounting for uncertainty and activity-shifting leakage and market-shifting leakage.

“Quantitative Usage Limit” means a limit on the percentage of an entity’s compliance obligation that may be met by surrendering offset credits or other compliance instruments designated to be subject to the limit under this chapter.

“Radiative Forcing” means the change in the net vertical irradiance at the atmospheric boundary between the troposphere and the stratosphere due to an internal change or a change in

the external forcing of the climate system such as a change in the concentration of carbon dioxide or the output of the Sun.

“Real” means, in the context of offset projects, that GHG reductions or GHG enhancements result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage.

“Reasonable Assurance” means a high degree of confidence that submitted data and statements are valid.

“Reference Level” means the quantity of GHG emission equivalents that have occurred during the normal course of business or activities during a designated period of time within the boundaries of a defined sector and a defined jurisdiction.

“Reformulated Gasoline Blendstock for Oxygenate Blending” or “RBOB” means unleaded gasoline.

“Register,” in the context of a compliance instrument, means the act of assigning the serial number of a compliance instrument into an account.

“Registrant” or “Registered Entity” means an entity that has completed the process for registration.

“Registry Offset Credit” means a credit issued by an Offset Project Registry for a GHG reduction or GHG removal enhancement of one metric ton of CO<sub>2</sub>e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable and may only be issued for offset projects using Compliance Offset Protocols. Pursuant to section 147.281.1, DEP may determine that a registry offset credit may be removed, retired, or cancelled from the Offset Project Registry system and issued as a DEP offset credit.

“Registry Services” means all services provided by a DEP approved Offset Project Registry in section 147.287.

“Regulatory Compliance” means fulfilling all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project

location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol.

“Renewable diesel” means a motor vehicle fuel or fuel additive that is all of the following: registered as a motor vehicle fuel or fuel additive under 40 CFR Part 79; not a mono-alkyl ester; intended for use in engines that are designed to run on conventional diesel fuel; and derived from nonpetroleum renewable resources.

“Renewable Energy” means energy from sources that constantly renew themselves or that are regarded as practically inexhaustible. Renewable energy includes energy derived from solar, wind, geothermal, hydroelectric, wood, biomass, tidal power, sea currents, and ocean thermal gradients.

“Renewable Energy Credit” or “REC” shall mean an alternative energy credit or “AEC” as defined in the Pennsylvania Alternative Energy Portfolio Standards Act and shall have the same meaning in the Renewable Portfolio Standard in any ETS program to which the Pennsylvania cap-and-trade program is linked.

“Renewable Liquid Fuels” means fuel ethanol, biomass-based diesel fuel, other renewable diesel fuel and other renewable fuels.

“Reporting Period” means, in the context of offsets, the period of time for which an Offset Project Operator or Authorized Project Designee quantifies and reports GHG reductions or GHG removal enhancements covered in an Offset Project Data Report. An offset project’s Reporting Period is established in the project listing documentation, but may be modified by notifying DEP in writing or by providing updated listing information with the submittal of the Offset Project Data Report. Modifications to the Reporting Period are only allowed if DEP is notified prior to any deadlines being missed. The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting period and all reporting periods in any renewed crediting period must consist of 12 consecutive months. For offset projects developed using the Compliance Offset Protocol in section 147.273(a)(2)(C)1., there may only be one Reporting Period per offset project. The Reporting Period may not be longer than 12 months and there is no minimum timeframe imposed for the Reporting Period. For offset projects developed using the compliance

offset protocol in section 147.273(a)(2)(C)6., the Reporting Period is approximately 12 months; it may be less than or exceed 12 months.

“Reporting Year” means data year.

“Request for Issuance” refers to a request submitted by an Offset Project Operator or Authorized Project Designee to DEP seeking issuance of DEP offset credits based on an Offset Project Data Report, pursuant to the requirements of sections 147.281 and 147.281.1. A Request for Issuance must include the attestations required pursuant to this article.

“Reserve Price” see “Auction Reserve Price.”

“Reserve Sale Administrator” means the operator of sales from the Allowance Price Containment Reserve account, which may be the Department or an entity designated by the Department.

“Resource Shuffling” means any plan, scheme, or artifice undertaken by a First Deliverer of Electricity to substitute electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions to reduce its emissions compliance obligation. Resource shuffling does not include substitution of electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources when the substitution occurs pursuant to the conditions listed in section 147.152(b)(2)(A).

“Retail Provider” means an entity that provides electricity to retail end users in Pennsylvania.

“Retire” or “Retired” or “Retirement” means that the serial number for a compliance instrument is registered into the Retirement Account under the control of the Department. Compliance instruments registered into this account cannot be removed.

“Reversal” means a GHG emission reduction or GHG removal enhancement for which an DEP offset credit or registry offset credit has been issued that is subsequently released or emitted back into the atmosphere, or that is later determined to have never occurred. A reversal is either intentional or unintentional.

“Secretary” means the Secretary of the Pennsylvania Department of Environmental Protection, or his or her delegate.

“Sector” or “Sectoral,” when used in conjunction with sector-based crediting programs, means a group or subgroup of an economic activity, or a group or cross-section of a group of economic activities, within a jurisdiction.

“Sector-Based Crediting Program” is a GHG emissions-reduction crediting mechanism established by a country, region, or subnational jurisdiction in a developing country and covering a particular economic sector within that jurisdiction. A program’s performance is based on achievement toward an emissions reduction target for the particular sector within the boundary of the jurisdiction.

“Sector-Based Offset Credit” means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.

“Self-Generation of Electricity” means electricity dedicated to serving an electricity user on the same location as the generator. The system may be operated directly by the electricity user or by an entity with a contractual arrangement.

“Serial Number” means a unique number assigned to each compliance instrument for identification.

“Sequestration” means the removal and storage of carbon from the atmosphere in GHG sinks or GHG reservoirs through physical or biological processes.

“Source” means greenhouse gas source; or any physical unit, process, or other use or activity that releases a greenhouse gas into the atmosphere.

“Source of generation” or “generation source” means the generation source identified in GATS or on the physical path of NERC e-Tags.

“Specified Source of Electricity” or “Specified Source” means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility/unit or a written power contract as defined in the MRR to procure electricity generated by that facility/unit. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by DEP.

“Stand-Alone-Electricity Generating Facility” means an electricity generating facility whose primary business and sole industrial operation is electricity generation, and is not a cogeneration or bigeneration facility.

“Stationary” means neither portable nor self-propelled, and operated at a single facility.

“Supplier” means a producer, importer, exporter, position holder, interstate pipeline operator, or local distribution company of a fossil fuel or an industrial greenhouse gas.

“Thermal enhanced oil recovery” or “thermal EOR” means the process of using injected steam to increase the recovery of crude oil from a reservoir.

“Tracking System” means the Compliance Instrument Tracking System Service where DEP compliance instruments are issued, traded, and retired.

“Transaction,” when referring to an arrangement between registered entities regarding compliance instruments, means an understanding among registered entities to transfer the control of a compliance instrument from one entity to another, either immediately or at a later date.

“Transfer” of a compliance instrument means the removal of a compliance instrument from one account and placement into another account.

“Transfer Request” means the communication by an authorized account representative or an alternate authorized account representative to the accounts administrator to register into the tracking system the transfer of allowances between accounts.

“Transferred DEP Project” means an offset project which has been transferred from DEP or one Offset Project Registry, where it was previously listed, to DEP or another Offset Project Registry. The entity to which the offset project is transferred will indicate the applicable offset project status from the following list: “Proposed Project,” “Active DEP Project,” “Active Registry Project,” “Proposed Renewal,” “Active DEP Renewal,” and “Active Registry Renewal.”

“True-up allowance amount” is a quantity of Pennsylvania GHG allowances allocated for changes in production or allocation not properly accounted for in prior allocations pursuant to 147.191(b), 147.191(c)(2)(B), or 147.194(c).

“Unintentional Reversal” means any reversal, including wildfires or disease that is not the result of the forest owner’s negligence, gross negligence, or willful intent. Only trees identified as dead or dying, in the post-event inventory, as a result of the wildfire or disease will be removed from the project’s inventory and compensated from the Forest Buffer Account minus any salvage harvest accounted for under long-term storage.

“Unspecified Source of Electricity” or “Unspecified Source” means a source of electricity that is not a specified source at the time of entry into the transaction to procure the electricity.

“Urban Forest Offset Project” means an offset project that uses or has used either the offset protocols identified in section 147.273(a)(2)(C)3.

“Vented Emissions” means intentional or designed releases of CH<sub>4</sub> or CO<sub>2</sub> containing natural gas or hydrocarbon gas (not including stationary combustion flue gas), including process designed flow to the atmosphere through seals or vent pipes, equipment blowdown for maintenance, and direct venting of gas used to power equipment (such as pneumatic devices).

“Verifiable” means that an Offset Project Data Report assertion is well documented and transparent such that it lends itself to an objective review by an accredited verification body.

“Verification Body” means a firm accredited by DEP, which is able to render an offset verification statement and provide offset verification services for Offset Project Operators or Authorized Project Designees subject to providing an Offset Project Data Report under this article.

“Verifier” or “offset verifier” means an individual accredited by DEP to carry out offset verification services as specified in sections 147.277.1 and 147.277.2.

“Vintage Year” means the budget year to which an individual Pennsylvanian GHG allowance is assigned pursuant to subchapter 6.

“Voluntarily Associated Entity” or “General Market Participant” means any entity which does not meet the requirements of section 147.111 or 147.113 in this chapter and that intends to purchase, hold, sell, or voluntarily retire compliance instruments or an entity operating an offset project.

“Voluntary Renewable Electricity” or “VRE” means electricity produced or RECs associated with electricity, produced by a voluntary renewable electricity generator, and which has not and will not be sold or used to meet any other mandatory requirements in Pennsylvania or any other jurisdiction.

“Voluntary Renewable Electricity Participant” or “VRE Participant” means a voluntary renewable electricity generator, a REC marketer, or entity that purchases voluntary renewable electricity or RECs as an end-user or on behalf of an end-user and is seeking allowance retirement pursuant to section 147.141.1.

“Waste gas” means a natural gas that contains a greater percentage of gaseous chemical impurities than the percentage of methane. For purposes of this definition, gaseous chemical impurities may include carbon dioxide, nitrogen, helium, or hydrogen sulfide.

“Waste-to-Energy Facility” means a facility located in Pennsylvania that combusts eligible municipal or residual waste. The facility must operate in accordance with current air and solid water permits and generate and distribute electricity over the electric power grid for wholesale or retail customers of the grid located in Pennsylvania.

(b) The following acronyms apply:

“AEC” means alternative energy credit.

“AEPS” means the Alternative Energy Portfolio Standard.

“BAU” means business as usual.

“C” means Centigrade.

“CFR” means Code of Federal Regulations.

“CH<sub>4</sub>” means methane.

“CO<sub>2</sub>” means carbon dioxide.

“CO<sub>2e</sub>” means carbon dioxide equivalent.

“Department” “DEP” or means the Pennsylvania Department of Environmental Protection.

“ETS” means Emission Trading System.

“F” means Fahrenheit.

“GHG” means greenhouse gas.

“GHG ETS” means greenhouse gas emissions trading system.

“GWP” means global warming potential.

“HFC” means hydrofluorocarbon.

“LPG” means liquefied petroleum gas.

“MMBtu” means one million British thermal units.

“MRR” means the Pennsylvania Department of Environmental Protection’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions.

“Mscf” means one thousand standard cubic feet.

“MWh” means megawatt-hour.

“MT” means metric tons.

“NAICS” means North American Industry Classification System.

“NGLs” means natural gas liquids.

“NERC” means North American Electric Reliability Corporation.

“N<sub>2</sub>O” means “nitrous oxide.”

“PFC” means perfluorocarbon.

“PSE” or “Purchasing Selling Entity” means the entity that is identified on a NERC e-Tag for each physical path segment or otherwise identified by a similar PJM instrument..

“PUC” means the Public Utilities Commission.

“REC” means Renewable Energy Credit.

“REDD” means reducing emissions from deforestation and degradation.

“RPS” means a Renewable Portfolio Standard.

“SCF” means standard cubic foot.

“SF<sub>6</sub>” means sulfur hexafluoride.

“TEAP” means the Technology and Economic Assessment Panel of the Montreal Protocol.

§ 147.003. Submittal of Required Information.

Different sections of this article identify information that must be submitted to DEP or maintained by the entity. The following general requirements apply to all information submissions unless otherwise specified:

(a) Information that is submitted electronically with electronic signatures, or by means other than original hardcopy with original handwritten signature, will have the same legal effect as if it were submitted in hardcopy form certified by a handwritten signature.

(b) Unless another deadline is specified, information requested by the Department must be submitted within 10 calendar days of the request.

## **Subchapter 2: Mandatory Reporting of Greenhouse Gases Regulation (“MRR”).**

### § 147.100. Incorporation by Reference.

(a) The federal Mandatory Reporting of Greenhouse Gases Regulation set forth in 40 C.F.R. Part 98 (“Federal MRR”) is incorporated herein by reference, subject to the modifications set forth in this subchapter.

(b) Each entity subject to the Federal MRR shall report annual GHG emissions attributable to Pennsylvania sources and entities to the Department on the same schedule as established under the Federal MRR.

(c) All references to the Administrator in the Federal MRR shall be deemed to refer to the Department.

(d) If any definition or other provision in the Federal MRR differs from that in this chapter, the definition or other provision of this chapter shall govern.

### § 147.101. Reporting and Surrender of Allowances by Electricity Distribution Companies.

(a) Each electricity distribution company distributing electricity in Pennsylvania shall report the amount of electricity distributed in Pennsylvania, the sources of the electricity and the emissions attributable to each source electricity.

(b) The electricity distribution company shall be required to submit allowances equal to the emissions attributable to all electricity that is not generated in Pennsylvania or a jurisdiction with an ETS linked to the Pennsylvania cap and trade program under this chapter.

(c) The electricity distribution company shall not be required to surrender any allowances for electricity generated within Pennsylvania or a jurisdiction with an ETS linked to the Pennsylvania cap and trade program under this chapter, provided however, that the electricity distribution company shall be required to surrender allowances if neither generation source in a linked jurisdiction nor its fuel supplier is required to surrender allowances.

(d) If the electricity distribution company is unable to identify the source of generation and the emissions, the electricity generation company shall surrender allowances equal to 2200 pounds of carbon dioxide per megawatt hour.

(e) If the PJM Interconnect adopts a carbon adder program where (1) a carbon adder is included in the bid from each generator located in a jurisdiction that does not have an ETS linked to the Pennsylvania cap-and-trade program, and (2) the carbon adder is equal to the greater of the reserve price for the Pennsylvania auction or the price of allowances in the most recent Pennsylvania auction, then electricity distributors shall not be required to surrender allowances under this section. If the PJM Interconnect adopts such a program, the Department shall reduce the cap by the number of allowances attributable to electricity generated by jurisdictions not linked the Pennsylvania cap and trade program.

§ 147.102. Exceptions

(a) Any source category may apply to the Department for a revision to the method for measuring and reporting GHG emissions. The application must include a description of why the change in method is being proposed, include a detailed description of the data that are affected by the alternative measurement method, and include a demonstration of differences in estimated data under the current and proposed methods. The Department will make an approval determination based on the necessity of the alternative method and whether the accuracy of the method can be sufficiently demonstrated during verification.

(b) Any source that emits fewer than 25,000 metric tons of CO<sub>2</sub>e per year and receives fossil fuel from a supplier that is also required to report GHG emissions under this Chapter may apply to the Department for an exemption, in which case the supplier shall report the emissions and surrender allowances. Any such application shall be filed jointly by the source and the supplier.

§ 147.103. Initial GHG Baseline Report

(a) Every entity subject to the requirements of this chapter shall file an Initial GHG Baseline Report no later than sixty (60) days after publication of this rule as a final rule in the Pennsylvania Bulletin. The Department will use the data submitted with all the Initial GHG Baseline Report to calculate the initial 2016 baseline budget and subsequent budgets based on that baseline.

(b) For entities that report under the Federal MRR, the Initial GHG Baseline Report shall report all emissions reported in the entity's report to EPA under the MRR associated with

sources within Pennsylvania. Sources within Pennsylvania shall be deemed to include the first distribution of fossil fuels required to report within Pennsylvania.

(c) Entities that were not required to report under the Federal MRR shall provide their best estimate of emissions in 2016 that would have been subject to this chapter.

(d) If any entity fails to report as required hereunder, the Department will make an estimate of its 2016 emissions. That estimate shall be replaced with emissions reported in the first report of annual emissions submitted hereunder.

#### § 147.104 Initial Annual Report

(a) Every entity subject to the requirements of this chapter shall file their first annual GHG emissions report at the same time as the first annual report must be filed under the Federal MRR following the publication of this chapter as a final regulation in the Pennsylvania Bulletin.

(b) The initial annual report shall apply to emissions during the calendar year in which this chapter is first published as a final regulation in the Pennsylvania Bulletin.

#### § 147.104 Effect of Potential Stay or Delay in the Effective Date of this Chapter.

The intent of this subchapter is to provide information vital to regulation of GHG emission in this Commonwealth. The reporting obligations in this subchapter shall apply regardless of any stay or delay of the other portions of this chapter, unless otherwise specifically and unambiguously provided in the stay or authority establishing a stay.

#### Subchapter 3: Applicability

This chapter applies to all entities identified in this subchapter.

#### § 147.110. Covered Gases.

This article applies to the following greenhouse gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF<sub>3</sub>), and other fluorinated greenhouse gases.

#### § 147.111. Covered Entities.

This article applies to all of the following entities with associated GHG emissions pursuant to section 147.112:

(a) Operators of Facilities. The operator of a facility within Pennsylvania that has one or more of the following processes or operations:

- (1) Cement production;
- (2) Cogeneration;
- (3) Glass production;
- (4) Hydrogen production;
- (5) Iron and steel production;
- (6) Lead Production;
- (7) Lime manufacturing;
- (8) Nitric acid production;
- (9) Petroleum and natural gas systems, as specified in section 147.152(h);
- (10) Petroleum refining;
- (11) Pulp and paper manufacturing;
- (12) Self-generation of electricity; or
- (13) Stationary combustion.
- (14) Coal mining.

(b) First Deliverers of Electricity.

(1) Electricity generating facilities: the operator of an electricity generating facility located in Pennsylvania; or

(2) Electricity importers.

(c) Suppliers of Natural Gas. An entity that distributes or uses natural gas in Pennsylvania as described below:

- (1) A public utility gas corporation operating in Pennsylvania;
- (2) A publicly owned natural gas utility operating in Pennsylvania; or

(3) The operator of an intrastate pipeline not included in section 147.111(c)(1) or section 147.111(c)(2) that distributes natural gas directly to end users.

(d) Suppliers of RBOB and Distillate Fuel Oil. A position holder of one or more of the following fuels, or an enterer that imports one or more of the following fuels into Pennsylvania outside the bulk transfer/terminal system:

(1) RBOB;

(2) Distillate Fuel Oil No. 1; or

(3) Distillate Fuel Oil No. 2.

(e) Suppliers of Liquefied Petroleum Gas.

(1) The operator of a refinery that produces liquefied petroleum gas in Pennsylvania;

(2) The operator of a facility that fractionates natural gas liquids to produce liquefied petroleum gas; or

(3) An importer of liquefied petroleum gas into Pennsylvania as defined under MRR.

(f) Sections 147.111(c), (d), and (e) apply to suppliers of blended fuels that contain the fuels listed above.

(g) Suppliers of Liquefied Natural Gas and Compressed Natural Gas.

(1) Facilities that make liquefied natural gas products or compressed natural gas products by liquefying or compressing natural gas received from interstate or intrastate pipelines; and

(2) Importers of liquefied natural gas and compressed natural gas.

(h) Carbon dioxide suppliers.

(i) Coal suppliers.

#### § 147.112. Inclusion Thresholds for Covered Entities.

(a) The inclusion threshold for each covered entity is based on the subset of greenhouse gas emissions that generate a compliance obligation for that entity as specified in section 147.152. The entity must report and verify annual emissions pursuant to the MRR.

(b) If an entity's reported or reported and verified annual emissions in any data year from 2010 through 2016 from the categories specified in section 147.152(a) or (b) equal or exceed the thresholds identified below, that entity is classified as a covered entity as of January 1, 2018, and for all future years until any requirement set forth in section 147.135(c) is met.

(c) The requirements apply as follows:

(1) Operators of Facilities. The applicability threshold for a facility is 25,000 metric tons or more of CO<sub>2</sub>e per data year.

(2) First Deliverers of Electricity.

(A) Electricity Generating Facilities. The applicability threshold for an electricity generating facility is based on the annual emissions from which the electricity originated. The applicability threshold for an electricity generating facility is 25,000 metric tons or more of CO<sub>2</sub>e per data year.

(B) Electricity importers. The applicability threshold for an electricity importer is based on the annual emissions from each of the electricity importer's sources of delivered electricity.

1. All emissions reported for imported electricity from specified sources of electricity that emit 25,000 metric tons or more of CO<sub>2</sub>e per year are considered to be above the threshold.

2. All emissions reported for imported electricity from unspecified sources are considered to be above the threshold.

(3) Carbon Dioxide Suppliers. The applicability threshold for a carbon dioxide supplier is 25,000 metric tons or more of CO<sub>2</sub>e per year. For purpose of comparison to this threshold, the supplier must include the sum of the CO<sub>2</sub> that it captures from its production process units for purposes of supplying CO<sub>2</sub> for commercial applications or that it captures from a CO<sub>2</sub> stream to utilize for geologic sequestration, and the CO<sub>2</sub> that it extracts or produces from a CO<sub>2</sub> production well for purposes of supplying for commercial applications or that it extracts or produces to utilize for geologic sequestration.

(4) Petroleum and Natural Gas Facilities. The applicability threshold for a petroleum and natural gas facility is 25,000 metric tons or more of CO<sub>2</sub>e per data year. This threshold is applied for each facility type specified in section 147.152(h).

(5) Coal facilities. All facilities must report without reference to a threshold.

(d) If an entity's annual, assigned, or reported and verified emissions from any data year between 2010-201 equal or exceed the thresholds identified below from the categories specified in sections 147.151(a), (b), and (d) then that entity is classified as a covered entity as of January 1, 2018, for the year in which the threshold is reached and for all future years until all requirements set forth in section 147.135 are met.

(1) Fuel Suppliers. The threshold for a fuel supplier is 25,000 metric tons or more of CO<sub>2</sub>e annually of GHG emissions that would result from full combustion or oxidation of the quantities of the fuels, identified in section 147.111(c) through (g), which are imported and/or delivered to Pennsylvania.

(2) Electricity importers. The threshold for an electricity importer of specified source of electricity is zero metric tons of CO<sub>2</sub>e per year and for unspecified sources is zero MWhs per year as of January 1, 2018.

(3) Waste-to-Energy-Facilities. If a waste-to-energy facility's annual, assigned, or reported and verified emissions from any data year between 2010-2016 equal or exceed 25,000 metric tons or more of CO<sub>2</sub>e annually, then that entity is classified as a covered entity as of January 1, 2018, for the year in which the threshold is reached and for all years until the requirement set forth in section 147.112(e) is met.

#### § 147.113. Opt-In Covered Entities.

(a) An entity that meets the requirements of section 147.111 but does not exceed the inclusion thresholds set forth in section 147.112 may elect to voluntarily opt-in to the Cap-and-Trade Program.

(b) An entity that does not qualify to opt into the Program pursuant to section 147.113(h) and that voluntarily elects to participate in this program under this section must submit its request to the Department for approval by March 1 of the calendar year immediately preceding the first year in which it voluntarily elects to be subject to a compliance obligation

pursuant to this section. The request for approval to be an opt-in covered entity shall specify the first year in which the entity elects to be subject to a compliance obligation. The Department shall evaluate such applications, designate approved applicants as opt-in covered entities, and, for approved applicants, specify the first year in which the opt-in covered entity will be subject to a compliance obligation.

(c) An entity that voluntarily elects to participate in this program under section 147.113(b) may rescind its request to opt in to the program by October 1 of the calendar year prior to the first year in which it voluntarily elects to be subject to a compliance obligation pursuant to section 147.113. An entity that voluntarily elects to participate in the Cap-and-Trade Program under section 147.113(h) may rescind its request to opt in to the Program by October 1 of the calendar year in which it requests approval to be an opt-in covered entity.

(d) An opt-in covered entity is subject to all reporting, verification, enforcement, registration, and compliance obligations that apply to covered entities. An opt-in covered entity's first reporting and verification year shall be the calendar year immediately preceding the first year in which it voluntarily elects to be subject to a compliance obligation pursuant to this section, unless the entity opts in pursuant to section 147.113(h), in which case the entity must continue to report and verify emissions, product data (if applicable), and all other data required by MRR.

(e) Opting out. At the end of any given compliance period, an opt-in covered entity may choose to opt out of the program provided its annual emission levels for any data year remain below the inclusion thresholds set forth in section 147.112. An entity choosing to opt out of the program must either fulfill its compliance obligations as required pursuant to subchapter 7 or surrender allowances equivalent to all the directly allocated allowances it has received from the budget years for the compliance period in question. An opt-in covered entity that wishes to opt-out of this program must apply to the Department by September 1 of the last year of a compliance period.

(f) An entity that was previously a covered entity, meets the requirements of section 147.111, and drops below the inclusion thresholds set forth in section 147.112 for an entire compliance period, may request approval from the Department to voluntarily opt in to the Cap-and-Trade Program. This request must be submitted by June 1 of the first year of the new

compliance period immediately after a compliance period during which the entity's emissions were below the inclusion thresholds. To qualify for opt-in covered entity status under this section (147.113(h)), the entity can only request to be an opt-in covered entity starting in the year the request is submitted.

§ 147.114. Voluntarily Associated Entities and Other Registered Participants.

(a) Voluntarily Associated Entities (VAE). An entity not identified as a covered entity or opt-in covered entity that intends to hold Pennsylvania compliance instruments may apply to the Department pursuant to section 147.130(c) for approval as a voluntarily associated entity.

(1) The following list defines the entities that may qualify as voluntarily associated entities:

(A) An individual, or an entity that does not meet the requirements of sections 147.111 and 147.113, that intends to purchase, hold, sell, or voluntarily retire compliance instruments;

(B) An entity operating an offset project or early action offset project that is registered with DEP pursuant to subchapters 13 or 14. Entities qualifying as voluntarily associated entities under this subparagraph may hold offsets without needing to fulfill the requirements of section 147.130(c)(1)(G). Entities qualifying as voluntarily associated entities under this subparagraph may also hold allowances, but only after fulfilling the requirements of section 147.130(c)(1)(G); or

(C) An entity providing clearing services in which it takes only temporary possession of compliance instruments for the purpose of clearing transactions between two entities registered with the Cap-and-Trade Program. A qualified entity must be a derivatives clearing organization as defined in the Commodities Exchange Act (7 U.S.C § 1a(9)) that is registered with the U.S. Commodity Futures Trading Commission pursuant to the Commodities Exchange Act (7 U.S.C. § 7a-1(a)).

(2) An individual registering as a voluntarily associated entity must have a primary residence in the United States.

(3) Registration and Consulting Activities. An individual who provides cap-and-trade consulting services as described in section 147.223 and also registers as a voluntarily associated entity in the tracking system must disclose to the Department the entities for which the individual is providing consulting services.

(A) The disclosure must be made when the individual registers as a voluntarily associated entity, or within 30 days of initiating the consulting activity if the individual is already registered.

(B) If the individual is associated with an entity providing cap-and-trade consulting services so that in the course of the individual's duties the individual gains access to the market position of another registered entity, then the individual must provide a notarized letter from the entity providing the cap-and-trade consulting services stating that it is aware of the individual's plans to apply as a voluntarily associated entity in the Cap-and-Trade Program and that it has conflict of interest policies and procedures in place which prevent the individual from using information gained from the relationship with the entity for personal gain in the Cap-and-Trade Program. Failure to provide such a letter by the applicable deadline in section 147.114(a)(3)(A) will result in suspension, modification, or revocation of the individual's tracking system account.

(4) An individual who is already registered in the tracking system and intends to provide cap-and-trade program advisory services to other registrant(s) must disclose the proposed relationship with the other registrant(s) to the Department and comply with the requirements of section 147.114(a)(3)(B) prior to providing the advisory services. Failure to provide such a letter by the deadline will result in suspension, modification, or revocation of the individual's tracking system account.

(5) An entity registering as a voluntarily associated entity must be located in the United States, according to the registration information reported pursuant to section 147.130(c).

(6) Individuals identified by registered entities pursuant to sections 147.130(c)(1)(B), (C), (J), and (L) and section 147.132, unless disclosed pursuant to section 147.114(a)(3), are not eligible to register as voluntarily associated entities.

(7) An individual who is an employee of an entity subject to the requirements of MRR or the Cap-and-Trade Program is not eligible to register as a voluntarily associated entity.

(b) Restrictions on Other Registered Participants. The following entities do not qualify to hold compliance instruments and do not qualify as a Registered Participant:

- (1) An offset verifier accredited pursuant to section 147.278;
- (2) A verification body accredited pursuant to section 147.278;
- (3) Offset Project Registries;
- (4) Early Action Offset Programs approved pursuant to subchapter 14; or
- (5) An MRR verifier.

#### **Subchapter 4: Compliance Instruments**

##### § 147.120. Compliance Instruments Issued by Department.

(a) Pennsylvania Greenhouse Gas Emissions Allowances.

(1) The Department shall create Pennsylvania GHG allowances pursuant to the schedule set forth in subchapter 6.

(2) The Department shall assign each Pennsylvania GHG allowance a unique serial number that indicates the annual allowance budget from which the allowance originates.

(3) The Department shall place these allowances into a holding account under the control of the Department pursuant to section 147.131(b).

(b) Offset Credits Issued by DEP.

(1) The Department shall issue and register DEP offset credits pursuant to the requirements of subchapters 13 and 14.

(2) Surrender of DEP offset credits shall be subject to the quantitative usage limit set forth in section 147.154.

(c) Each compliance instrument issued by the Secretary represents a limited authorization to emit up to one metric ton in CO<sub>2</sub>e of any greenhouse gas specified in section 147.110, subject to all applicable limitations specified in this article. No provision of this article may be construed to limit the authority of the Secretary to terminate or limit such authorization to emit. Neither the issuance of a compliance instrument by DEP nor the registration of a compliance interest in an account by the account administrator creates any obligation on the part of the Commonwealth of Pennsylvania or the DEP to maintain this Chapter 147 or the Pennsylvania GHG cap-and-trade program in its current form, and the Commonwealth or DEP may amend or repeal this Chapter 147 or the Pennsylvania GHG cap-and-trade program and the rights and privileges that it creates without any obligation to compensate the holder of a compliance instrument for any diminution of value of a compliance instrument that may occur as a result of such amendment or termination.

(d) The MRR contemplates that compliance instruments are tradeable instruments among persons having an obligation to or otherwise becoming entitled to hold compliance

instruments (“Authorized Holders”). As between Authorized Holders, compliance instruments constitute intangible personal property; contracts for transfer or assignment of compliance instruments are enforceable in Pennsylvania courts; and an Authorized Holder can create and perfect a security interest in a compliance instrument in accordance with the Pennsylvania Uniform Commercial Code. Transfer of a compliance instrument on the books of the accounts administrator or an exchange is intended to constitute physical delivery of the compliance instrument, and a contract for such transfer at a later date is intended to operate as a forward contract and not a future contract under the Commodity Exchange Act. Compliance contracts are not securities subject to the Pennsylvania Securities Act of 1972.

§ 147.121. Compliance Instruments Issued by Approved Programs.

The following compliance instruments may be used to meet a compliance obligation under this article:

- (a) Allowances specified in section 147.242(b) and issued by a program approved by rule under section 147.240 or approved DEP pursuant to section 147.241;
- (b) Offset credits specified in section 147.242(c) and issued by a program approved by DEP pursuant to section 147.241;
- (c) DEP offset credits issued for purposes of early action pursuant to section 147.290;
- (d) Sector-based offset credits recognized pursuant to subchapter 14; and
- (e) Compliance instruments specified in sections 147.121(c) through (d) are subject to the quantitative usage limit set forth in section 147.154.

## **Subchapter 5: Registration and Accounts**

### § 147.130. Registration with DEP.

#### (a) General Provisions.

(1) The Secretary or his or her designate shall serve as accounts administrator or may contract with an entity to serve as accounts administrator.

(2) An entity qualified to register with DEP cannot apply for more than one set of accounts in the tracking system, except as otherwise provided in section 147.130(g)(4).

(3) An entity cannot hold a compliance instrument until the Department approves the entity's registration and the accounts administrator creates an account in the tracking system.

#### (b) Entities Eligible for Registration.

(1) An entity must qualify for registration in the tracking system as a covered entity (pursuant to section 147.111), as an opt-in covered entity (pursuant to section 147.113), or as a voluntarily associated entity (pursuant to section 147.114).

(2) If an entity qualifies for registration pursuant to section 147.111 or 147.113, the facility operator, fuel or CO<sub>2</sub> supplier, electric power entity, or operator of petroleum and natural gas systems, as applicable, must register pursuant to this section and meet all other applicable requirements of this article.

#### (3) Entities Eligible for Initial Registration in a Consolidated Account.

(A) If a group of unregistered entities that qualify for registration and are members of a direct corporate association, then they may choose to register for a consolidated account on behalf of some or all of the group members.

(B) If one entity has control over any of the entities in a group of entities applying for a consolidated account as measured by the indicia of control in section 147.133(a), then the registration process must be initiated and completed by that entity.f

(c) Requirements for Registration. Registration is complete when the Department approves the registration and the accounts administrator informs the entity of the approval.

(1) An entity must complete an application to register with DEP for an account in the tracking system. Applicants must provide the following information:

(A) Name, physical and mailing addresses, contact information, entity type, date and place of incorporation, and ID number assigned by the incorporating agency;

(B) Names and addresses of the entity's directors and officers with authority to make legally binding decisions on behalf of the entity, and partners with over 10 percent of control over the partnership, including any individual or entity doing business as the limited partner or general partner;

(C) Names and contact information for persons controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the entity;

(D) A business number, if one has been assigned to the entity by a Pennsylvania state agency;

(E) A Government issued taxpayer or Employer Identification Number, or for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned;

(F) Identification of the qualifications for registration pursuant to sections 147.111, 147.113, or 147.114;

(G) Disclosure of all other entities with whom the entity has a direct corporate association or indirect corporate association that must be reported pursuant to section 147.133(d), and a brief description of the association. Entities qualifying as voluntarily associated entities under section 147.114(a)(1)(B) must complete this disclosure before they may hold allowances;

(H) An applicant that is a member of a direct corporate association may apply for a consolidated entity account to include other associated registered entities from within the direct corporate association. To do so, the applicant must identify each associated registered entity that will be assigned to its account, and each associated registered entity must provide an attestation signed by its officer or director to confirm that it seeks to be added to the consolidated entity account. The applicant must be able to demonstrate that it has the controlling ownership or authority to act on behalf of all members of the direct corporate association. The applicant cannot be an entity that is a subsidiary to or controlled by another associated entity within the direct corporate association;

(I) An applicant that is a member of a direct corporate association and seeks to apply for its own separate entity account, rather than apply for a consolidated entity account, must provide an allocation of the holding and purchase limits among the separate accounts established for any of its corporate associates per the requirements of section 147.133(d)(1)(E). All members of a direct corporate association must separately confirm the allocation of holding and purchase limits;

(J) Names and contact information for all employees of the entity with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions);

(K) An entity registering as an opt-in covered entity must identify the first year it intends to be subject to a compliance obligation, and the year must match the year for which the Department approved the entity as an opt-in covered entity pursuant to section 147.113(b); and

(L) Information required pursuant to section 147.223 for individuals serving as Cap-and-Trade Consultants and Advisors for entities participating in the Cap-and-Trade Program.

(2) An entity that is applying for registration in the Pennsylvania Cap-and-Trade Program, and that has a direct corporate association with an entity registered in an external GHG emissions trading system to which the Pennsylvania Cap-and-Trade Program has linked pursuant to section 147.240 or section 147.243 may not include that associated registered entity in a consolidated entity account.

(3) To create a consolidated account for entities that are members of a direct corporate association that accept assignment to a consolidated entity account, the Department shall instruct the accounts administrator to create a single consolidated entity account in the tracking system that includes the following:

(A) A holding account as described in section 147.131;

(B) A compliance account only for a consolidated entity account with at least one member entity that is eligible for a compliance account as described in section 147.131; and

(C) An annual allocation holding account only for a consolidated entity account with at least one member entity that is eligible for an annual allocation holding account as described in section 147.131.

(4) An entity must designate a primary account representative and at least one, and up to four, alternate account representatives pursuant to section 147.132. An individual registering as a voluntarily associated entity may elect to have a combined role to serve as both primary and alternate account representatives or designate additional account representatives or account viewing agents as desired.

(5) An individual registering as a voluntarily associated entity and having a primary residence in the United States, but not located in Pennsylvania, must designate an agent for service of process in Pennsylvania. The agent may be an individual who resides in Pennsylvania, or a corporation or other fictitious entity qualified to do business in Pennsylvania and with an bona fide office in Pennsylvania.

(6) An entity applying for registration that is not an individual or an entity supplying exchange clearing services pursuant to section 147.114(a)(1)(C) must designate, pursuant to section 147.132, either:

(A) A primary account representative or at least one alternate account representative with a primary residence in Pennsylvania; or

(B) An agent for service of process in Pennsylvania. For entities registering into Pennsylvania, the agent may be an individual who resides in Pennsylvania or a corporation or other fictitious entity qualified to do business in Pennsylvania and with an bona fide office in Pennsylvania.

(7) Any individual who requires access to the tracking system, including the primary account representative, alternate account representatives, or account viewing agents must first register as a user in the tracking system.

(A) An individual qualified to register as a user in the tracking system cannot apply for more than one user registration.

(B) An individual cannot be designated in a capacity requiring access to the tracking system until the Department approves the user's registration in the tracking system. This prohibition includes all primary account representatives, alternate account representatives, and account viewing agents.

(C) An individual registering in the tracking system must provide all applicable information required by sections 147.132, 147.133, and 147.134.

(D) An individual registering in the tracking system must agree to the terms and conditions contained in Appendix B of this chapter.

(8) An entity or individual applicant may be denied registration:

(A) Based on the information provided;

(B) If the Department determines the applicant has provided false or misleading information;

(C) If the Department determines the applicant has withheld information material to the registration;

(D) If an individual fails to comply with section 147.134 Know-Your-Customer Requirements;

(E) If an individual is already registered and has a user account under the same or a different name. This provision applies to individuals registered in an approved external linked GHG emissions trading system.

(d) Registration Deadlines.

(1) An entity that meets or exceeds the inclusion thresholds in section 147.112 must complete registration within 30 calendar days of the reporting deadline contained in MRR when it first reports to DEP emissions that exceed the inclusion threshold.

(2) An opt-in covered entity that is approved for opt-in covered status pursuant to section 147.113(b) must complete registration by October 1 of the year before the entity is approved to have a compliance obligation.

(3) An entity qualifying as a voluntarily associated entity pursuant to section 147.114 may register at any time.

(e) Updating Registration Information.

(1) When there is a change to the information registrants have submitted pursuant to section 147.130(c)(1)(A)-(E) and (I), (c)(4), (c)(5), or (c)(6)(B), registrants must update the

registration information within 30 calendar days of the change. When there is a change to the information registrants have submitted pursuant to section 147.130(c)(1)(J), registrants must update the registration information within one year of the change.

(2) Updates of information on corporate associations provided pursuant to section 147.130(c)(1)(G) must be updated on the schedule contained in section 147.133(e). An entity qualifying as a voluntarily associated entity under section 147.114(a)(1)(B) that did not complete the disclosure required by section 147.130(c)(1)(G) at the time of registration may choose to complete that disclosure at any time; such an entity will only be allowed to hold allowances upon approval of the disclosure by the Department.

(3) Updates of information on Cap-and-Trade Consultants or Advisors provided pursuant to section 147.130(c)(1)(L) must be updated per the schedule contained in section 147.223(c).

(4) An entity that fails to update registration information by the applicable deadline may be subject to the restriction or revocation of its tracking system accounts pursuant to section 147.221(g)(3).

(f) Information Confidentiality. The following information collected about individuals during the registration process will be treated as confidential by the Department and the accounts administrator to the extent possible, and except as needed in the course of oversight, investigation, enforcement and prosecution:

(1) Information collected pursuant to section 147.130(c)(1)(B), (C), (J) and (L);

(2) Information collected about individuals pursuant to section 147.134; and

(3) Information collected about individuals pursuant to section 147.132.

(g) Linking.

(1) An entity located in Pennsylvania based on the physical location information the entity must provide pursuant to section 147.130(c)(1)(A) must register with Pennsylvania.

(2) An entity located outside of Pennsylvania, but in the United States based on the physical location information the entity must provide pursuant to section 147.130(c)(1)(A) may

only register with Pennsylvania to participate in the Pennsylvania Cap-and-Trade Program unless that entity:

(A) Does not qualify as a covered or opt-in covered entity in Pennsylvania, and

(B) Qualifies as a covered or opt-in covered entity in an external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12.

(3) An entity not located within Pennsylvania, the United States, or a jurisdiction operating an external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12, may register with a jurisdiction in which it qualifies as a covered or opt-in covered entity.

(4) Entities with a Compliance Obligation in More than One Jurisdiction.

(A) If an entity registered with Pennsylvania has a compliance obligation in an external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12, then that entity may also register directly with that jurisdiction pursuant to that jurisdiction's registration requirements or the entity may request that the accounts administrator provide the entity's Pennsylvania registration application to the jurisdiction operating the linked GHG ETS to facilitate registration in the linked jurisdiction. The entity may still need to submit additional registration attestations or other materials specific to the linked jurisdiction's registration requirements.

(B) If an entity registered with an external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 has a compliance obligation with Pennsylvania, then the entity must register with Pennsylvania and provide the information in paragraphs 1. to 6. below:

1. Name, physical and mailing addresses, contact information, entity type, date and place of incorporation, and ID number assigned by the incorporating agency;

2. A Government issued taxpayer or Employer Identification Number, or for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned;

3. Identification of the qualifications for registration pursuant to sections 147.111, 147.113, or 147.114.

4. For all registration information required pursuant to sections 147.130 and 147.133 not listed in paragraphs 1. through 3. above, the entity may submit registration information to the

Pennsylvania accounts administrator or may request that the accounts administrator of the external GHG ETS provide the entity's registration information submitted to the external GHG ETS to the Pennsylvania accounts administrator to facilitate registration in Pennsylvania.

5. Regardless of whether the entity registers with Pennsylvania by completing the process contained in sections 147.130 and 147.133 or by requesting the external GHG ETS to submit the registration application materials to the Pennsylvania accounts administrator to facilitate registration in Pennsylvania, the entity must submit all Pennsylvania-specific registration attestations required by this article.

6. An individual approved by an external GHG ETS with a user account and who intends to be designated as a primary account representative, alternate account representative, or account viewing agent for an entity registering or registered in Pennsylvania must submit all Pennsylvania-specific registration attestations and other applicable information required by sections 147.132, 147.133, and 147.134.

(5) Pennsylvania will recognize the registration of an entity that registers into an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 and allow that entity to participate in the Pennsylvania Cap-and-Trade Program.

§ 147.131. Account Types.

(a) Accounts Created for Registered Entities.

(1) The Department shall not create more than one holding account, one compliance account, one Annual Allocation Holding Account, or one exchange clearing holding account for each entity registered pursuant to 147.130.

(2) Holding Accounts. When the Department approves a registration for a covered entity, an opt-in covered entity, or a voluntarily associated entity, the accounts administrator will create a holding account for the registrant.

(3) Compliance Accounts. When the Secretary approves a registration for a covered entity or opt-in covered entity, the accounts administrator will create a compliance account for the entity.

(A) A covered entity or opt-in covered entity may transfer compliance instruments to its compliance account at any time.

(B) A compliance instrument transferred into a compliance account may not be removed by the entity.

(C) The Department may transfer compliance instruments into a compliance account. The Secretary may remove compliance instruments to satisfy a compliance obligation, or when closing an account.

(4) Exchange Clearing Holding Accounts. When the Department approves registration for an entity identified as a voluntarily associated entity pursuant to section 147.114(a)(3), then the accounts administrator will create an exchange clearing holding account for the entity.

(A) Entities may transfer compliance instruments to exchange clearing accounts only for the purpose of transferring control of the instruments to the entity performing the clearing function.

(B) The clearing entity may only transfer the compliance instruments in its exchange clearing holding account to the account designated by the entity receiving the allowances under the transaction being cleared.

(5) Annual Allocation Holding Account. After the Department has approved an entity's application for a direct allocation under subchapter 9, the accounts administrator will create an annual allocation holding account for the entity.

(A) The Department will place allowances allocated to an entity on a date prior to the vintage year of the allowances into the entity's annual allocation holding account.

(B) Entities may only transfer allowances from an annual allocation holding account to their compliance account. No other transfer of allowances from an annual allocation holding account is permitted.

(C) Allowances transferred from an annual allocation holding account to an entity's compliance account will be subject to the holding limit pursuant to section 147.220(c).

(D) Allocation of allowances to entities whose application for a direct application has been approved will be transferred to the entity's holding account on January 1 of the vintage year of the allowances, unless otherwise provided in the Department's approval of the entity's application.

(b) Accounts under the Control of the Secretary. The accounts administrator will create and maintain the following accounts under the control of the Department:

(1) A holding account to be known as the Allocation Holding Account into which the serial numbers of compliance instruments will be registered when the compliance instruments are created.

(2) A holding account to be known as the Auction Holding Account into which allowances are transferred to be sold at auction from:

(A) The Allocation Holding Account;

(B) The holding accounts of those entities for which allowances are being auctioned on consignment pursuant to section 147.221(g)(3); and

(C) The compliance accounts of entities fulfilling an untimely surrender obligation pursuant to section 147.157(d)(1)(A).

(3) A holding account to be known as the Retirement Account to which the Secretary will transfer compliance instruments from compliance accounts or from holding accounts under the control of the Secretary for the purpose of permanently retiring them. Alternatively, entities may voluntarily retire compliance instruments by transferring the compliance instruments to the Retirement Account.

(A) When compliance instruments are registered into the Retirement Account, these compliance instruments cannot be returned to any other holding or compliance account.

(B) When compliance instruments are registered into the Retirement Account, any External GHG ETS to which Pennsylvania links pursuant to subchapter 12 will be informed of the retirements.

(C) The Department will record the retired instruments in a publicly available Permanent Retirement Registry.

(4) A holding account to be known as the Allowance Price Containment Reserve Account:

(A) Into which the serial numbers of allowances directly allocated to the Allowance Price Containment Reserve pursuant to section 147.170(a) will be transferred; and

(B) From which the Department will authorize the withdrawal of allowances for sale to covered entities pursuant to section 147.213.

(5) A holding account to be known as the Forest Buffer Account:

(A) Into which the Department will place DEP offset credits pursuant to section 147.283(a); and

(B) From which the Department may retire DEP offset credits pursuant to sections 147.283(b)(2), (c)(3), and (c)(4) and place them into to the Retirement Holding Account.

(6) [reserved]

(7) A holding account to be known as the External GHG Program Holding Account, which will process voluntary retirements under the Retirement-Only Agreements listed in section 147.243(d).

(A) Entities that are part of an external GHG program with a Retirement-Only Agreement with Pennsylvania may contract with registered entities to transfer compliance instruments to the External GHG Program Holding Account for retirement for recognition in their external GHG program. To be eligible for recognition, the transfer request must specify the entity identification code assigned to the entity by the external GHG program in which it is registered.

(B) The Department will review each transfer into the External GHG Program Holding Account for compliance with the requirements of this article.

(C) If the transfer conforms to the requirements of this article, the Department will transfer the compliance instruments to the Retirement Account.

(D) The Department will transmit a summary of the retirements to the jurisdiction named in the Retirement-Only Agreement based on the timing specified in the Retirement-Only Agreement.

(c) Additional accounts may be created by the Department to implement the Cap-and-Trade Program.

§ 147.132. Designation of Representatives and Agents.

(a) An application for registration into the Pennsylvania Cap-and-Trade Program for an account must designate a single primary account representative and at least one, but no more than four, alternate account representatives. Any communication between the accounts administrator and an alternate account representative must also be addressed to the primary account representative. A complete application for an account, or a request to designate or redesignate account representatives and agents pursuant to section 147.132(f), shall be submitted to the accounts administrator and shall include the following elements:

(1) Name, business and primary residence addresses, email addresses, and phone numbers of the primary account representative and any alternate account representatives and account viewing agents;

(2) Name of the organization designating the primary account representative or any alternate account representative to represent its ownership interest with respect to the compliance instruments held in the account;

(3) The primary account representative and any alternate account representative must attest, pursuant to section 147.103(a), to DEP as follows: “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that I was selected as the primary account representative or the alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in title 17, article 5, sections 147.100 et seq. on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the accounts administrator or a court regarding the account.”;

(4) An attestation verifying the selection of the primary account representative, alternate account representatives, and account viewing agents, signed by the director or officer of the entity who is responsible for the conduct of the primary account representative, alternate account representatives, and account viewing agents, and who is one of the directors or officers disclosed pursuant to section 147.130(c)(1)(B);

(5) The signature of the primary account representative and any alternate account representative and the dates signed; and

(6) An attestation as follows: “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. I certify under penalty of perjury of the laws of the Commonwealth of Pennsylvania that the statement of information submitted to the Department of Environmental Protection is true, accurate, and complete.”

(b) Unless otherwise required by the Department, documents of agreement referred to in section 147.132(a) in the application for an account shall not be submitted to the accounts administrator. The accounts administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(c) Authorization of primary account representative. Upon receipt by the accounts administrator of a complete application for an account under section 147.130(c):

(1) The accounts administrator will establish an account or accounts for the person or persons for whom the application is submitted pursuant to section 147.131.

(2) The primary account representative and any alternate account representative for the account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each entity that owns compliance instruments held in the account in all matters pertaining to this article, notwithstanding any agreement between the primary account representative or any alternate account representative and such entity.

(3) Any such entity shall be bound by any decision or order issued to the primary account representative or any alternate account representative by the Secretary or a court regarding the account. Any representation, action, inaction, or submission by any alternate account representative shall be deemed to be a representation, action, inaction, or submission by the primary account representative or any alternate account representative.

(d) Each submission concerning the account shall be submitted, signed, and attested to, pursuant to section 147.103(a), by the primary account representative or any alternate account representative for the entity that owns the compliance instruments held in the account. Each such submission shall include the following attestation statement by the primary account representative or any alternate account representative: “I certify under penalty of perjury under

the laws of the Commonwealth of Pennsylvania that I am authorized to make this submission on behalf of the entity that owns the compliance instruments held in the account. I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the statements and information submitted to the Department of Environmental Protection are true, accurate, and complete. I consent to the jurisdiction of Pennsylvania and its courts for purposes of enforcement of the laws, rules and regulations pertaining to Pa. Code Chapter 147, and the Pennsylvania Air Pollution Control Act and I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(e) The accounts administrator will accept or act on a submission concerning the account only if the submission has been made, signed, and attested to in accordance with this section.

(f) Changing primary account representative and alternate account representative.

(1) The primary account representative for an account may be changed at any time upon receipt by the accounts administrator of a designation of a primary account representative for an account under section 147.130(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous primary account representative, or the previous alternate account representative prior to the time and date when the accounts administrator approves the designation of a primary account representative shall be binding on the new primary account representative and the entity that owns the compliance instruments in the account. Except as provided in section 147.132(f)(3), the change of a primary account representative must include completion of an attestation by the individual, submission of an attestation from an active primary or alternate account representative, and an attestation from a director or officer as described in section 147.132(a)(3)-(a)(6).

(2) The alternate account representative for an account may be changed at any time upon the approval by the accounts administrator of a designation of an alternate account

representative for an account under section 147.130(c). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous primary account representative, or the previous alternate account representative, prior to the time and date when the accounts administrator approves the designation of an alternate account representative shall be binding on the new alternate account representative and the entity that owns the compliance instruments in the account. Except as provided in section 147.132(f)(3), the change of an alternate account representative must include completion of an attestation by the individual, submission of an attestation from an active primary or alternate account representative, and an attestation from a director or officer as described in section 147.132(a)(3)-(a)(6).

(3) The primary account representative for an account may be designated as an alternate account representative and an alternate account representative for an account may be designated as the primary account representative at any time upon approval by the accounts administrator of a designation of a primary account representative or alternate account representative for an account under section 147.130(c).

(A) Any prior attestation signed by an active account representative and any signature of a director or officer of the entity responsible for the conduct of the primary account representative and alternate account representative will remain applicable even if account representative roles are swapped.

(B) A new attestation by the primary account representative or an alternate account representative that previously submitted a signed attestation is not required.

(C) A new attestation by a director or officer of the entity responsible for the conduct of the primary account representative and alternate account representatives is not required if the director or officer is disclosed pursuant to section 147.130(c). Otherwise, if the director or officer has not been disclosed pursuant to section 147.130(c), then a new attestation as described in section 147.132(a)(4) verifying the selection of the primary account representative and alternate account representative must be submitted to the accounts administrator.

(4) If a registered entity no longer has at least one primary or alternate account representative, a director or officer disclosed pursuant to section 147.130(c)(1)(B) must identify new representatives and agents with an attestation from the director or officer as described in section 147.132(a)(3)-(4). The Secretary maintains the ability to suspend or revoke the

registration until two account representatives are designated on the entity's tracking system accounts.

(g) Objections Concerning Account Representatives.

(1) Once a complete application for an account under section 147.130(c) has been submitted and received, the accounts administrator will rely on the application unless and until a superseding complete application for an account under section 147.130(c) is received by the accounts administrator.

(2) Except as provided in section 147.132(f)(1), no objection or other communication submitted to the accounts administrator concerning the authorization, or any representation, action, inaction, or submission of the primary account representative or any alternate account representative for an account shall affect any representation, action, inaction, or submission of the primary account representative or any alternate account representative or the finality of any decision or order by the accounts administrator under this article.

(3) The accounts administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the primary account representative or any alternate account representative for an account, including private legal disputes concerning the proceeds of compliance instrument transfers.

(h) Delegation by primary account representative and alternate account representatives.

(1) A primary account representative or an alternate account representative for a registered entity may authorize up to five natural persons per account that may view all information contained in the tracking system involving the entity's accounts, information, and transfer records (account viewing authority). The persons delegated shall not have authority to take any other action with respect to an account on the tracking system.

(2) In order to delegate account viewing authority in accordance with section 147.132(h)(1) the primary account representative or alternate account representative, as appropriate, must submit to the accounts administrator a notice of delegation, that includes the following elements:

(A) The name, address, email address, and telephone number of such primary account representative or alternate account representative;

(B) The name, address, email address, and telephone number of each such natural person, herein referred to as “account viewing agent;” and

(C) An attestation verifying the selection of the account viewing agent, signed by the officer of the entity who is responsible for the conduct of the account viewing agent, and is one of the officers disclosed pursuant to section 147.130(c)(1)(B).

(3) A notice of delegation submitted under section 147.132(h)(2) shall be effective, with regard to the accounts identified in such notice, upon receipt of such notice by the accounts administrator and until receipt by the accounts administrator of a superseding notice of delegation by such primary account representative or alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified account viewing agent, add a new account viewing agent, or eliminate entirely any delegation of authority.

#### § 147.133. Disclosure of Corporate Associations.

(a) Criteria for Determining Corporate Associations.

(1) A corporate association exists when one entity has an ownership interest in or control over a second entity. The following indicia of control determine ownership or control:

(A) Percent of ownership of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;

(B) Percent of common owners, directors, or officers of the other entity;

(C) Percent of the voting power of the other entity;

(D) In the case of a partnership other than a limited partnership, percent of the interests of the partnership;

(E) In the case of a limited partnership, the percent of control over the general partner or the percent of the voting rights to select the general partner; and

(F) In the case of a limited liability corporation, percent of ownership in the other entity regardless of how the interest is held.

(2) An entity has a direct corporate association with another entity, regardless of whether the second entity is registered in the Cap-and-Trade Program or in an external GHG ETS to which Pennsylvania is linked pursuant to subchapter 12, if either one of these entities has any indicia of control described in section 147.133(a)(1) that is greater than 50 percent.

(3) A direct corporate association also exists when two entities are connected through a line of more than one direct corporate association.

(A) An entity (A) has a direct corporate association with another entity (B) if the two entities share a common parent and that parent has a direct corporate association with each entity (A and B) when applying the indicia of control contained in section 147.133(a)(2).

(B) An entity that has a direct corporate association with a second entity also has a direct corporate association with any entity with whom the second entity has a direct corporate association.

(4) An entity has an indirect corporate association with another entity if:

(A) The two entities do not have a direct corporate association; and

(B) The controlling entity's percentage of ownership or any indicia of control identified in section 147.133(a)(1) of the controlled entity is more than 20 percent but less than or equal to 50 percent. If the two entities are connected through a chain of more than one corporate association, the indicia of control identified in section 147.133(a)(1) is calculated by multiplying the percentages at each link in the chain of corporate associations starting with the last entity that is in a direct corporate association. An indirect corporate association exists between the two entities if the total percentage of control is more than 20 percent but less than or equal to 50 percent when multiplying the percentage of control at each link in the chain of corporate associations.

(5) The owner or operator of an electricity generating facility in Pennsylvania has a direct corporate association with the operator of another electricity generating facility in Pennsylvania if the same entity owns or operates both generating facilities.

(6) Direct Corporate Associations and Individuals Who Have Shared Roles. An individual who has access to the market positions (current and/or expected holdings of compliance instruments and current and/or expected covered emissions) of two or more entities

registered in the tracking system or registered in an external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 is considered an individual who has shared roles. For the purposes of this requirement, Account Representatives are defined as having access to the market positions of the entities that they serve.

(A) If any individual with shared roles is an employee of a registered entity for which the individual has a shared role, the entities for which the individual has the shared role will have a direct corporate association.

(B) If any individual is a Cap-and-Trade Consultant or Advisor for the entities for which the individual has a shared role, but is not disclosed pursuant to section 147.223, and the individual can use market position information obtained through the shared role without restriction, the entities for which the individual has shared roles will have a direct corporate association. It is the responsibility of the registered entity employing an individual as a Cap-and-Trade Consultant or Advisor pursuant to section 147.223 to determine if the individual has access to the entity's market position.

(b) Disclosure of Corporate Associations.

(1) Disclosure of Associated Registered Entities. Entities must disclose all direct and indirect corporate associations with entities registered in the Pennsylvania Cap-and-Trade Program or in another external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12.

(2) Disclosure of Unregistered Parent Entities. Entities must disclose all direct corporate associations with entities not registered in the Pennsylvania Cap-and-Trade Program or in another external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 if those entities have the degree of ownership interest in or control over the registered entity to meet the requirements of having a direct corporate association.

(3) Disclosure of Unregistered Entities in a Line of Corporate Associations Between Registered Entities. A registered entity that has a direct or indirect corporate association with another registered entity must disclose the identity of all entities involved in the line of direct or indirect corporate associations between the two registered entities, even if such entities are not registered.

(4) Disclosures of Direct Corporate Associations with Unregistered Entities in the United States or Canada. Entities that have direct corporate associations with unregistered entities in the United States or Canada that are otherwise not required to be disclosed must disclose those associations within 30 calendar days of a request by the Department. The disclosing entity may elect to disclose only those directly associated entities located in the United States or Canada that participate in a market related to the Cap-and-Trade Program.

(A) Entities participating in a market related to the Cap-and-Trade Program include only those that purchase and sell greenhouse gas emissions instruments, natural gas, oil, or electricity; or conduct exchange trades involving derivatives or swaps based on greenhouse gas emission instruments, natural gas, oil, or electricity.

(B) The disclosure of entities in related markets may be accomplished through the submission of the most recent information submitted to another government agency in the United States using one or more of the following official governmental forms or documentation as needed to meet the required disclosure: (1) Exhibit 21 of the Form 10-K submitted to the Securities and Exchange Commission by the registrant or an affiliate of the registrant; (2) the application for market-based rate authority, or update to such application, submitted by the registrant or an affiliate of the registrant to the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 and Order 697; (3) the application for registration with the National Futures Association, or update to such application, submitted by the registrant or an affiliate of the registrant as required by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act; (4) Form 40 or Form 40S filed by the registrant or an affiliate of the registrant in accordance with the Commodity Futures Trading Commission's reporting rules; and/or (5) Part 1A of a Form ADV filed with the Securities and Exchange Commission by a registered investment advisor responsible for managing the registrant.

(5) Disclosures of Other Unregistered Entities Outside the United States and Canada. Entities that have direct corporate associations with other entities outside the United States and Canada that participate in a market related to the Cap-and-Trade Program that are not otherwise required to be disclosed must disclose those associations within 30 calendar days of a request by the Secretary.

(A) Entities participating in a market related to the Cap-and-Trade Program include only those that purchase and sell greenhouse gas emission instruments, natural gas, electricity, or oil; or conduct exchange trades involving derivatives or swaps based on greenhouse gas emission instruments, natural gas, oil, or electricity.

(B) Entities may disclose these associations using the documentation options listed in section 147.133(b)(4)(B).

(c) Disclosure Exemptions.

(1) Any registered entity subject to affiliate compliance rules promulgated by state or federal agencies shall not be required to disclose information or take other action that violates those rules.

(2) An entity registering as a voluntarily associated entity pursuant to section 147.114(a)(1)(B) solely to hold offsets is not required to disclose any direct or indirect corporate associations.

(d) Disclosure Requirements.

(1) Entities disclosing direct or indirect corporate association must provide the following information to identify each reportable corporate association:

(A) Name, contact information, and physical address of the entity;

(B) Tracking system entity identification number, if applicable;

(C) A government issued Taxpayer Identification Number or Employer Identification Number, or for entities located in the United States, a U.S. Federal Tax Employer Identification Number, if assigned; and

(D) Place and Date of Incorporation, if applicable;

(E) For direct corporate associations with registered entities only, the percentage share of the holding limit and purchase limit assigned to each entity opting out of account consolidation pursuant to section 147.130(c)(1)(I); the sum of the shares must equal 100 percent.

(2) Entities that have disclosable corporate associations must identify whether the type of corporate association is direct or indirect.

(A) Entities identifying an indirect corporate association must provide a brief description of the association, including information sufficient to explain the entity's evaluation of the indicia of control in section 147.133(a)(1) that was used to determine the type of corporate association disclosed for each associated entity.

(B) Entities identifying a direct corporate association must identify the nature of the associated entity as a parent, a subsidiary, or an entity with a common parent, but need not include an evaluation of the indicia of control.

(3) Methods of Disclosure. All corporate association disclosures required by this section must be provided in a manner described in section 147.103(a).

(e) Disclosure Timing. The entity must disclose the information pursuant to section 147.133(d):

(1) At the time of registration pursuant to section 147.130;

(2) Within 30 calendar days of the creation of a direct or indirect corporate association or of a change in the type of a corporate association involving registered entities pursuant to sections 147.133(b)(1) or 147.133(a)(6)(B), or registered and unregistered entities pursuant to section 147.133(b)(2) and (3);

(3) Within one year of a modification if the changes in information involve only unregistered entities disclosed pursuant to sections 147.133(b)(4) and (5);

(4) No later than 10 calendar days prior to the auction application deadline established in section 147.212 when disclosing a change related to another entity registered in the Cap-and-Trade Program or to entities registered into the Pennsylvania Cap-and-Trade Program and other external GHG ETS to which Pennsylvania has linked pursuant to subchapter 12, if the disclosing entity intends to participate in the auction; and

(5) Within one year for all other changes.

§ 147.134. Know-Your Customer Requirements.

(a) General Requirements.

(1) The accounts administrator cannot provide access to the tracking system to an individual until the Department has determined the individual applying for participation has complied with the requirements of this section.

(2) The requirements of this section are in addition to any requirements contained elsewhere in this article that apply to the functions the individual will undertake in the tracking system.

(3) All documents submitted to the Department pursuant to this section shall be in English.

(4) Individuals with a criminal conviction in any jurisdiction in the five previous years constituting a felony under U.S. federal law or Pennsylvania law, or the equivalent thereof, are ineligible for registration and participation in the Cap-and-Trade Program.

(b) The individual must provide documentation of the following:

(1) Name;

(2) The address of the primary residence of the applicant, which may be shown by any of the following:

(A) A valid government-issued identity card or government-issued document with an expiration date;

(B) Any other document that is customarily accepted by the Commonwealth of Pennsylvania as evidence of the primary residence of the individual;

(3) Date of birth;

(4) Proof of an open bank account in the United States, except as provided in section 147.134(b)(4)(B) below;

(A) The proof must be in the form of a bank statement dated no earlier than 3 months prior to submission, must identify the individual holding the account, and must contain the name and business address of the bank.

(B) If an applicant will only represent a covered entity located outside of the United States, the applicant may either provide:

1. Proof of an open bank account in the United States, or
2. Documentation of an open bank account in the country in which the covered entity is located. This documentation must be accompanied by a signed attestation of an officer or director of the applicant's employer to DEP as follows: "I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the person requesting access to the market tracking system will be designated as an account representative for this entity. This entity is a covered entity under the Pennsylvania Cap-and-Trade Regulation and has no personnel residing in the United States with the authority to take actions that are binding on all persons who have an ownership interest with respect to compliance instruments held in the account for this entity."

(5) Employment or other relationship to an entity that has registered or has applied to register with the Pennsylvania Cap-and-Trade Program if the individual is or will represent an entity registering or registered pursuant to section 147.130;

(6) A government-issued document providing photographic evidence of identity of the applicant which may include:

(A) A valid government-issued identity card or driver's license with an expiration date and date of birth; or

(B) A passport; and

(7) Any criminal conviction declared in any jurisdiction during the previous five years constituting a felony under U.S. federal law or Pennsylvania law, or the equivalent thereof. This disclosure must include the type of violation, jurisdiction, and year.

(c) An individual who will become an account representative or viewing agent of a covered entity or opt-in covered entity as defined in section 147.002 may choose to provide documentation pursuant to section 147.134(b) directly to their employer instead of to DEP. An entity's director or officer disclosed pursuant to section 147.130(c)(1)(B) must confirm that the individual meets the Know-Your-Customer Requirements described in section 147.134 and that the entity will retain the documentation.

(1) The covered entity or opt-in covered entity must verify the identity of the individual and confirm that the individual does not have a criminal conviction constituting the

equivalent of a felony under U.S. federal law or Pennsylvania law, or the equivalent thereof, in any jurisdiction during the previous five years.

(2) A director or officer disclosed pursuant to section 147.130(c)(1)(B) of the covered entity must complete an attestation to verify the accuracy and veracity of the documentation submitted pursuant to section 147.134(b).

(3) The documents submitted by the individual shall be retained by the entity, and the Secretary or his/her designated representative shall be permitted, at any time, to review and audit the documentation. The covered or opt-in covered entity must provide this documentation to the Secretary or his/her designated representative within 5 calendar days of a request by the Secretary.

(d) Verification of information.

(1) One of the documents submitted pursuant to section 147.134 must be notarized by a notary public no more than three months before submittal.

(2) The notary stamp or seal, the notary public's name, the county or state of the notary public's place of business, and the commission expiration date must be legible.

(3) If a notary is obtained from outside of the United States, an apostille must be submitted to confirm that the individual who notarized the document had valid commission at the time that the document was notarized. The apostille must be attached to the notarized document.

(4) The Secretary may re-verify all documents required pursuant to Section 147.134 at least every two years. To allow verification, upon request and within ten days, the individual must provide updated documentation required pursuant to 147.134(b).

§ 147.135. Changes to Entity Type and Reassignment of Facilities Already Registered to Different Entity Accounts.

(a) Assignment of Facilities to Entity Accounts.

(1) Subdivision of MRR Facilities with Distinct DEP IDs Currently Registered in the Tracking System. The following provisions apply to facilities that are currently registered in the tracking system and wish to change their entity type or account assignment(s):

(A) A facility may not be subdivided without a demonstration of a change to the continuity of its ownership and control to one or more of its constituent units.

(B) The subdivided units must complete all the requirements of MRR before they can be reassigned from existing tracking system accounts, including the assignment of a DEP ID to each subdivided unit.

(C) The subdivided units must complete the disclosure process outlined in section 147.135(b).

(D) The entity seeking the subdivision must either indicate the existing accounts to which the subdivided facilities will be assigned or complete an application for a new account, or for closure of an existing account, if applicable.

(2) Assignment of a New Facility to an Account. The owner or operator of a new facility that has received a DEP ID but that is not yet assigned to a tracking system account must register pursuant to section 147.130 and request either a new account or assignment of the facility to an existing account.

(3) Changing Account Assignments within a Direct Corporate Association. Members of a direct corporate association may request a change to the distribution of facilities within their set of accounts only once per compliance period. Approved changes to consolidate or opt-out of account consolidation pursuant to section 147.130(b)(3) will be effective at the beginning of the next compliance period provided that the request is made by June 30 of the year immediately preceding that next compliance period.

(b) Change of Facility Ownership. When the ownership of a facility changes, the following information must be submitted to DEP within 30 calendar days of finalization of the ownership change:

(1) A description of the merger or acquisition and the effective date of the change of ownership, including whether the merger or acquisition is the purchase of a facility or facilities from another entity or the purchase of an entity that owns a facility or facilities;

(2) Both the legal and operating names and the tracking system entity IDs of the entities owning the facility or facilities prior to the change of ownership;

(3) The legal name, operating name, and the tracking system entity ID of the purchasing entity, if any;

(4) Written direction regarding whether the purchased facility or facilities will be added to a consolidated entity account or whether the purchased facility or facilities will be associated with an entity that will opt-out of account consolidation pursuant to section 147.130(b)(3);

(5) Documentation with signatures (original or electronic pursuant to section 147.103(a)) by a director or officer from the entity the facility or facilities and from the purchasing entity, notifying DEP of the change of ownership;

(6) Any changes to disclosures or new disclosures pursuant to section 147.133;

(7) Direction regarding the disposition of compliance instruments that must be transferred by the jurisdiction to the purchasing entity. Compliance instruments can be transferred only between accounts of the same type (e.g., from a compliance account to a compliance account) and any administrative transfers required may be requested as a one-time occurrence scheduled to occur within five business days after the facility or facilities are transferred in the tracking system to the purchasing entity;

(8) It is the responsibility of the entities participating in the change of ownership to transfer any compliance instruments from tracking system holding accounts that they control prior to closure. Prior to closure, the Secretary may transfer compliance instruments from an entity's compliance account to its holding account upon request by the entity. If a covered entity no longer owns or operates any active facility in its tracking account due to a change of facility ownership, then that covered entity may exit the Program and close its tracking system accounts within five business days after the facility or facilities are transferred in the tracking system to the purchasing entity.

(c) Eligibility for a Change of Entity Type.

(1) Eligibility of an Opt-In Covered Entity to Change Its Entity Type.

(A) After a compliance period, an opt-in covered entity may choose to exit the Program or apply for a new tracking system account to change its entity type to a voluntarily associated entity provided that it meets the requirements specified in section 147.113(g).

(B) An opt-in covered entity choosing to exit the Program must fulfill its compliance obligations as required pursuant to subchapter 7 and report and verify emissions data, product data, and any other data required pursuant to MRR for its final year with a compliance obligation to allow for any true-up allocations pursuant to subchapters 8 and 9 before requesting a change of entity type.

(2) Eligibility of a Covered Entity or Opt-In Covered Entity to Change Its Entity Type.

(A) Effect of Reduced Emissions on a Covered Entity's Compliance Obligation. A covered entity that reports annual covered GHG emissions less than 25,000 metric tons of CO<sub>2</sub>e per year during one entire compliance period may request a change to its entity type from the Department by the deadlines specified in section 147.135(e)(1). If the covered entity does not complete the change in entity type by the deadline and if the covered entity is not an opt-in covered entity, then the Department will consider the entity as a voluntarily associated entity for the assignment of purchase limit and holding limit, if applicable. If the entity does not apply to change its entity type by the deadline, then the Department maintains the ability to suspend or revoke the registration and any compliance instruments remaining in the entity's tracking system accounts will be consigned on the entity's behalf or transferred pursuant to section 147.135(f) or 147.190(k).

(B) Effect of a Facility Shutdown on a Covered Entity's Compliance Obligation. Once a covered or opt-in covered entity has fully met the reporting cessation requirements of the MRR due to ceasing to operate, full facility shutdown, and cessation of all activities subject to reporting under the MRR, DEP will begin the account closure process pursuant to section 147.135(f). Fuel suppliers and electric power entities may not claim eligibility for a change of entity type under this provision, and may only request to close their accounts if no further activity is expected.

(C) A fuel supplier or electric power entity that is eligible for a change in entity type that will result in its no longer being a covered entity and has fully met the reporting and verification requirements of the MRR may exit the Cap-and-Trade Program pursuant to section 147.135(f).

(3) A voluntarily associated entity is eligible to request to exit the Cap-and-Trade Program at any time.

(4) The Department may close the account of a voluntarily associated entity if no compliance instruments are transferred into or out of the account for a period of two years.

(d) Options for Changing Entity Type. When an entity qualifies for a change in entity type pursuant to section 147.135(c), the following shall apply:

(1) A covered entity may elect to remain in the Cap-and-Trade Program as an opt-in covered entity pursuant to section 147.113(h) and does not need to apply for a new set of tracking system accounts; or

(2) A covered entity or an opt-in covered entity may elect to remain in the Cap-and-Trade Program and apply for a new tracking system account as a voluntarily associated entity pursuant to section 147.114; or

(3) An entity that has fully met the reporting cessation requirements of section 95101(i) of MRR may elect to exit the Cap-and-Trade Program pursuant to section 147.135(f).

(e) If a covered entity or opt-in covered entity qualifies for a change in entity type, it may request a change by completing the following requirements:

(1) Request Deadlines.

(A) A covered entity requesting a change in entity type pursuant to section 147.135(c)(2)(A) must make the request to the Secretary by September 30 of the first calendar year after the end of a compliance period.

(B) A covered entity or opt-in covered entity requesting a change in entity type pursuant to section 147.135(c)(2)(B) has 30 days from the completion of the MRR cessation of reporting provisions per section 95101(i), or within 30 calendar days of the finalization of the ownership change, whichever is sooner, to request to remain in the Program and apply as a voluntarily associated entity.

(C) A covered entity whose request to be an opt-in covered entity pursuant to section 147.113(h) was approved by the Department must request a change in entity type by September 30 of the same year as the deadline specified in section 147.113(h).

(D) An opt-in covered entity that intends to exit the program entirely must make a request to the Department by September 30 of the first calendar year immediately after the end of a compliance period.

(2) A covered entity or opt-in covered entity that qualifies for account closure pursuant to section 147.135(c)(2)(B) must, after fulfilling its compliance obligation for its final year of operations pursuant to section 147.156 and addressing final allocation provisions pursuant to section 147.135(f), elect one of the following options:

(A) Request to close its tracking system accounts, comply with MRR cessation of reporting provisions pursuant to section 95101(h) or (i), and apply to be in the tracking system as a voluntarily associated entity as defined in section 147.114; or

(B) Request to consolidate its holding and compliance accounts with an existing account held by another entity pursuant to section 147.130(b)(3) with whom it has a direct corporate association and comply with MRR cessation of reporting provisions pursuant to section 95101(h) or (i); or

(C) Request to close its tracking system accounts within 30 calendar days after the entity is qualified to request an account closure, comply with MRR cessation of reporting provisions per section 95101(h), and exit the Program.

(f) Account Closure for Entities Exiting the Program.

(1) Return of Initial Allocation for Entities Exiting the Program. An entity may not exit the Program pursuant to section 147.135 until the entity has satisfied the requirements in 147.190(k). If an entity has met the cessation requirements and remains in the Program solely to meet the requirements of section 147.190(k), then the entity need not report and verify data pursuant to MRR for any time period after which the MRR cessation requirements have been met.

(2) When an entity requests that the Department close its accounts in the tracking system, it must arrange to transfer all compliance instruments out of its accounts before the accounts can be closed. If the entity has compliance instruments in its compliance or holding account when a request for account closure is submitted, then the entity may request a one-time administrative transfer for DEP to either:

(A) Transfer the compliance instruments from its compliance account to the entity's holding account to allow the entity to transfer the allowances out of its account; or

(B) Transfer the compliance instruments from its compliance and holding accounts to the account of another registered entity or to the Retirement Account at the request of the entity closing the account.

(3) When the entity's accounts are clear of compliance instruments then the accounts will be closed.

## **Subchapter 6: Pennsylvania Greenhouse Gas Allowance Budgets**

### § 147.140. Compliance Periods.

Duration of Compliance Periods is as follows:

(a) The first compliance period starts on January 1, \_\_\_\_\_ [of the year following the publication of this regulation in the Pennsylvania] and ends on either December 31, 2020, or December 31, 2023, if the compliance period starts after January 1, 2020.

(b) Each subsequent compliance period shall commence on the first day of January following the end of the last compliance period and last for three years.

### § 147.141. Annual Allowance Budgets.

(a) The Pennsylvania GHG Allowance Budget for the year 2018 shall be equal 0.97 times the 2016 GHG emissions from all sources and other entities required to surrender allowances under this regulation as determined by the Department (“E<sub>2016</sub>”) and shall decrease by 0.03 E<sub>2016</sub> in each subsequent year.

(b) The Pennsylvania GHG Allowance Budget for the first year that this regulation becomes effective shall be as determined under section 147.141(a) notwithstanding the fact that the regulation may become effective for a calendar year after 2018.

(c) The Department shall publish notice of the budget for the first year in which compliance will be required under this chapter within sixty (60) days of receiving the Initial Baseline Report. Any auction that occurs before the budget is determined shall be based on the Department’s initial estimate of the budget published in the Pennsylvania Bulletin with notice of the final rule adopting this chapter.

### § 147.141 Impact of Delay or Stay of Effective Date

(a) The annual allowance budgets set forth in this subchapter are indented to result in the emissions reductions that the Intergovernmental Panel on Climate Change has determined are necessary to prevent to most severe adverse impacts of climate disruptions resulting from anthropogenic emissions of greenhouse gases. Failing to achieve the emissions reductions contemplated by the allowance (and emissions budgets) for 2040 and 2050 will cause severe and

irreparable adverse impacts on health and the resources with respect to which the Commonwealth has a duty as a trustee under Article I, § 27 of the Constitution.

(b) No delay in the effective date of this chapter, whether caused by the duration of the rulemaking process or judicial or legislative action, shall affect the scheduled reductions in the allowance budgets set forth in this subchapter. Thus, the emissions reductions contemplated by this subchapter for 2030 shall be required notwithstanding any delay in the first effective date of this regulation.

(c) If this regulation takes effect after January 1, 2020, the Department shall reduce the emissions budgets for the years remaining through December 31, 2030 by the amount that emissions between January 1, 2020 and January 1 of the year in which this chapter takes effect exceed the allowance budgets for that period.

## **Subchapter 7: Compliance Requirements for Covered Entities**

### § 147.150. General Requirements.

(a) Reporting Requirements. Each covered entity identified in section 147.111 is subject to MRR.

(b) An entity's compliance obligation is based on the emissions number for the emissions subject to a compliance obligation for every metric ton of CO<sub>2e</sub> for which a positive or qualified positive emissions data verification statement is issued, rounded to the nearest whole ton, or for which there are assigned emissions pursuant to MRR.

(c) Record Retention Requirements. Each entity must retain all of the following records for at least 10 consecutive years and must provide such records within 20 calendar days of receiving a written request from DEP, including:

- (1) Copies of all data and reports submitted under this chapter;
- (2) Records used to calculate a compliance obligation as specified in section 147.153;
- (3) Emissions data and product data verification statements the MRR; and
- (4) Detailed verification reports as required pursuant to the MRR.

### § 147.151. [reserved]

### § 147.152. Emission Categories Used to Calculate Compliance Obligations.

(a) Operators of Facilities.

(1) An operator of a facility covered under sections 147.111(a) and 147.112(c)(1) has a compliance obligation for every metric ton of CO<sub>2e</sub> for which a positive or qualified positive emissions data verification statement is issued in accordance with the MRR, including process emissions, stationary combustion emissions and vented emissions. If DEP has assigned emissions for the sources subject to a compliance obligation pursuant to this section, the facility will have a compliance obligation equal to the value of every metric ton of CO<sub>2e</sub> assigned emissions. The entity's compliance obligation will be assessed at the facility level unless otherwise noted under section 147.112(c).

(2) Combustion emissions resulting from burning RBOB, distillate fuel oils, or liquefied petroleum gas which are required to surrender allowances under this regulation are not included when calculating an operator's compliance obligation.

(b) First Deliverers of Electricity. A first deliverer of electricity covered under sections 147.111(b) and 147.112(c)(2) has a compliance obligation for every metric ton of CO<sub>2</sub>e emissions calculated pursuant to section 147.152(b)(1) for which a positive or qualified positive emissions data verification statement is issued pursuant to MRR, or for which there are assigned emissions, when such emissions are from a source in Pennsylvania or in a jurisdiction where a GHG emissions trading system has not been approved for linkage or linked by rule pursuant to subchapter 12.

(1) Calculation of emissions for compliance obligation.

(A) For first deliverers that are operators of an electricity generating facility in Pennsylvania, the calculation for compliance obligation includes all emissions reported and verified or assigned pursuant to MRR, except emissions without a compliance obligation pursuant to section 147.152.2.

(B) For first deliverers that are electricity importers, emissions with a compliance obligation are calculated using the following equation:

$$\text{CO}_2\text{e}_{\text{covered}} = \text{CO}_2\text{e}_{\text{unspecified}} + \text{CO}_2\text{e}_{\text{specified}} - \text{CO}_2\text{e}_{\text{linked}}$$

Where:

$\text{CO}_2\text{e}_{\text{covered}}$  = Annual metric tons of CO<sub>2</sub>e with a compliance obligation.

$\text{CO}_2\text{e}_{\text{unspecified}}$  = Annual metric tons of CO<sub>2</sub>e from unspecified imported electricity.

$\text{CO}_2\text{e}_{\text{specified}}$  = Annual metric tons of CO<sub>2</sub>e from imported electricity from specified sources that meet the requirements of MRR section 95111(b)(2).

$\text{CO}_2\text{e}_{\text{linked}}$  = Annual metric tons of CO<sub>2</sub>e from electricity with a first point of receipt located in a jurisdiction where a GHG emissions trading system has been approved for linkage or linked by rule pursuant to subchapter 12.

(C) All deliveries of electricity not meeting the requirements for specified sources pursuant to MRR will have emissions calculated using the default emission factor for unspecified electricity where  $CO_2e_{unspecified} = MWh * TL * EF_{unsp}$

Where:

$CO_2e$  = Annual  $CO_2$  equivalent mass emissions from the unspecified electricity deliveries at each point of receipt identified (MT of  $CO_2e$ ).

MWh= Megawatt hours of unspecified electricity deliveries at each point of receipt identified.

$EF_{unsp} = 0.48$  MT of  $CO_2e$ /MWh, the default emission factor for unspecified electricity imports

TL = 1.02, a transmission loss correction factor to account for transmission losses.

(2) Resource shuffling is prohibited and is a violation of this chapter.

(3) The following criteria must be met for electricity importers to claim a compliance obligation for delivered electricity based on a specified source emission factor or asset controlling supplier emission factor.

(A) Electricity deliveries must be reported to DEP and emissions must be calculated.

(B) The electricity importer must be the facility operator or have right of ownership or a written power contract to the amount of electricity claimed and generated by the facility or unit claimed; and

(C) The electricity must be directly delivered to the Pennsylvania grid.

(4) If PJM or another electricity regulatory body imposes a carbon adder to electricity generated in jurisdictions other than those ETS programs linked to the Pennsylvania cap-and-trade program and the adder is equivalent to the estimated price of allowances that the generator would have been required to surrender in Pennsylvania, imported electricity shall be exempt from the requirement to surrender allowances under this chapter.

(c) Suppliers of Natural Gas. A supplier of natural gas covered under sections 147.111(c) and 147.112(d) has a compliance obligation for every metric ton  $CO_2e$  of GHG

emissions that would result from full combustion or oxidation of all fuel delivered to end users in Pennsylvania contained in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned, less the fuel that is delivered to covered entities, as follows:

(1) Suppliers of natural gas shall report the total metric tons CO<sub>2</sub>e of GHG emissions delivered to all end users in Pennsylvania pursuant to the MRR;

(2) DEP shall calculate the metric tons CO<sub>2</sub>e of GHG emissions for natural gas delivered to covered entities which are customers of the supplier. The emissions will be calculated using the reconciled reported deliveries (in MMBtu) contained in natural gas supplier emissions data reports that received a positive or qualified positive emissions data verification statement. Natural gas received data (in MMBtu) contained in covered facility emissions data reports that received positive or qualified positive emissions data verification statements will be used to reconcile delivery data reported by natural gas suppliers, and will serve as a second source of data in instances of missing supplier data. In the event that a natural gas supplier receives an adverse verification statement, DEP will calculate the supplier's assigned emission level;

(3) DEP shall provide the supplier of natural gas a listing of all customers and aggregate natural gas (in MMBtu) and emissions calculated from the supplier's natural gas delivered to covered entities; and

(4) DEP shall calculate the metric tons CO<sub>2</sub>e for which the supplier will be required to hold a compliance obligation based on the supplier's reported emissions less DEP's calculated emissions from deliveries to covered entities that are customers of the supplier. The Department shall provide this value to the supplier of natural gas within 30 days of the verification deadline in the MRR.

(d) Suppliers of RBOB and Distillate Fuel Oils. A supplier of petroleum products covered under sections 147.111(d) or 147.112(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of the quantities of the following fuels that are removed from the rack in Pennsylvania, sold to entities not licensed in

Pennsylvania as a fuel supplier, or imported into Pennsylvania and not directly delivered to the bulk-transfer/terminal system, except for products for which a final destination outside Pennsylvania can be demonstrated:

- (1) RBOB;
- (2) Distillate Fuel Oil No. 1; and
- (3) Distillate Fuel Oil No. 2.
- (e) Suppliers of Liquefied Petroleum Gas:

(1) A producer of liquefied petroleum gas covered under sections 147.111(e) and 147.112(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of all fuel sold, distributed, or otherwise transferred for consumption in Pennsylvania; and

(2) An importer of liquefied petroleum gas covered under section 147.111(e) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of all fuel imported into Pennsylvania.

(f) Suppliers of Blended Fuels. An entity that supplies any of the fuels covered under sections 147.111(f) and 147.112(d) as blended fuels has an aggregated compliance obligation for every metric ton of CO<sub>2</sub>e of GHG emissions based on the separate constituents of the blend included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of the fuel.

(g) Carbon Dioxide Suppliers. An entity that supplies carbon dioxide, “Carbon Dioxide Supplier” or “CO<sub>2</sub> Supplier”, covered under sections 147.111(h) and 147.112(c)(3), has an aggregated compliance obligation based on the sum of MT CO<sub>2</sub> included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned minus exported CO<sub>2</sub> that is not geologically sequestered,

and minus CO<sub>2</sub> verified to be geologically sequestered through use of a Department-approved carbon capture and geologic sequestration quantification methodology that ensures that the emissions reductions are real, permanent, quantifiable, verifiable, and enforceable. Emissions of CO<sub>2</sub> already covered with a compliance obligation upstream are not included.

(h) Petroleum and Natural Gas Systems. Operators of petroleum and natural gas production facilities, natural gas processing plants, natural gas transmissions compression facilities, underground natural gas storage facilities, and liquified natural gas storage, import and export facilities, and natural gas distribution facilities (collectively “Petroleum and Natural Gas Systems”) have a compliance obligation for every metric ton of CO<sub>2e</sub> from CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following source types:

- (1) Metered natural gas pneumatic device and pump venting;
- (2) Non-metered natural gas pneumatic device venting;
- (3) Acid gas removal vents;
- (4) Dehydrator vents;
- (5) Well venting for liquids unloading;
- (6) Gas well venting during well completions and workovers;
- (7) Equipment and pipeline blowdowns;
- (8) Dump valves;
- (9) Well testing venting and flaring;
- (10) Associated gas venting and flaring;
- (11) Flare stack or other destruction device emissions;
- (12) Centrifugal compressor venting;
- (13) Reciprocating compressor venting;
- (14) EOR injection pump blowdown;
- (15) Crude oil, condensate and produced water CO<sub>2</sub> and CH<sub>4</sub>;

(16) Equipment leaks from valves, connectors, open ended lines, pressure relief valves, pumps, flanges, and other equipment leak sources (such as instruments, loading arms, stuffing boxes, compressor seals, dump lever arms, and breather caps);

(17) Equipment leaks at below grade transmission-distribution transfer stations;

(18) Equipment leaks at above grade metering-regulating stations that are not above grade transmission-distribution transfer stations;

(19) Equipment leaks at below grade metering-regulating stations.

(20) Distribution main equipment leaks;

(21) Distribution services equipment leaks;

(22) Stationary fuel combustion sources;

(23) CO<sub>2</sub> and CH<sub>4</sub> emissions from customer meters (N<sub>2</sub>O emissions excluded);

and

(24) CO<sub>2</sub> and CH<sub>4</sub> emissions from pipeline dig-ins (N<sub>2</sub>O emissions excluded).

(i) The compliance obligation for sources specified in sections 147.152(a) through (h), and 147.152.1 is calculated based on the sum of the following, as applicable:

(1) Emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O which resulted from combustion of fossil fuel;

(2) Emissions of CH<sub>4</sub> and N<sub>2</sub>O which resulted from combustion of all biomass-derived fuel;

(3) Emissions of CO<sub>2</sub> which resulted from combustion of biomass-derived fuels that do not meet the requirements in section 147.152.2(a);

(4) Emissions of CO<sub>2</sub> which resulted from combustion of biomass-derived fuels pursuant to section 147.152.1; and

(5) All process and vented emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O except for those listed in section 147.152.2(b).

(j) Suppliers of Liquefied Natural Gas and Compressed Natural Gas. A supplier of liquefied natural gas and/or compressed natural gas covered under sections 147.111(g) or

147.112(d) has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of the quantities of liquefied natural gas or compressed natural gas imported into Pennsylvania and/or produced in Pennsylvania from gas received from an interstate pipeline, excluding products for which a final destination outside Pennsylvania can be demonstrated, less the emissions from liquefied natural gas delivered to other covered entities as determined by DEP based on end-user delivery information reported by the supplier.

(k) Supplier of Coal. A supplier of coal covered under this chapter has a compliance obligation for every metric ton CO<sub>2</sub>e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that would result from full combustion or oxidation of the quantities of coal imported into Pennsylvania and/or produced in Pennsylvania, excluding products for which a final destination outside Pennsylvania can be demonstrated, less the emissions from coal to other covered entities as determined by DEP based on end-user delivery information reported by the supplier.

#### § 147.152.1. Compliance Obligations for Biomass-Derived Fuels.

An entity that has emissions from combustion of biomass-derived fuels is required to report and verify its emissions and has a compliance obligation for every metric ton of CO<sub>2</sub>e emissions:

- (a) From combustion of fuel types that are not listed under section 147.152.2; or
- (b) From combustion of fuels sourced from outside Pennsylvania that do not meet the requirements of section 147.152.1.1; or
- (c) That are reported as non-exempt biomass derived CO<sub>2</sub> under MRR.

§ 147.152.1.1. Eligibility Requirements for Biomass-Derived Fuels. An entity may not sell, trade, give away, claim, or otherwise dispose of any of the carbon credits, carbon benefits, carbon emissions reductions, carbon offsets or allowances, howsoever entitled, attributed to the fuel production that would, when combined with the CO<sub>2</sub> emissions from complete combustion of the fuel, result in more CO<sub>2</sub>e emissions than would have occurred in the absence of the fuel

production. In the case of biomethane or biogas produced from digesters or landfills, the resulting credit for avoided methane emissions may not exceed the global warming potential plus 2.75 in metric tons of CO<sub>2</sub>e per ton of captured methane. All calculations of CO<sub>2</sub>e emissions are based on the 100-year global warming potentials included in MRR. Generation of Renewable Energy Credits is excluded from this analysis and will not prevent a biomass-derived fuel that meets the requirements in this section from being exempt from a compliance obligation.

§ 147.152.2. Emissions without a Compliance Obligation.

Emissions from the following source categories and from the combustion of the following fuel types count toward applicable reporting thresholds, but do not count toward a covered entity's compliance obligation set forth in this article unless those emissions are reported as non-exempt biomass-derived CO<sub>2</sub> under MRR. Emissions without a compliance obligation include:

- (a) CO<sub>2</sub> emissions from combustion of the following biomass-derived fuels:
  - (1) The biogenic fraction of solid waste materials as reported under MRR;
  - (2) Waste pallets, crates, dunnage, manufacturing and construction wood wastes, tree trimmings, mill residues, and range land maintenance residues;
  - (3) All agricultural crops or waste;
  - (4) Wood and wood wastes identified to follow all of the following practices:
    - (A) Harvested pursuant to an approved timber management plan prepared in accordance with a locally or nationally approved plan, or a plan consistent with the FSF or SFI certification program; and
    - (B) Harvested for the purpose of forest fire fuel reduction or forest stand improvement.
  - (5) Biodiesel:
    - (A) Agri-biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, cramble, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(B) Biodiesel is defined as monoalkyl esters of long chain fatty acids derived from the following plant or animal matter that meets the requirements of the American Society of Testing Materials (ASTM) D6751:

1. Waste oils;
2. Tallow; or
3. Virgin oils.

(6) Fuel ethanol (including denaturant):

(A) Cellulosic biofuel produced from lignocellulosic or hemicellulosic material that has a proof of at least 150 without regard to denaturants;

(B) Corn starch; or

(C) Sugar cane.

(7) The biogenic fraction of municipal solid waste as reported under MRR, including MSW directly combusted or converted to a cleaner-burning fuel;

(8) Biomethane and biogas from the following sources:

(A) All animal, plant and other organic waste; or

(B) Landfills and wastewater treatment plants;

(9) Renewable diesel.

(b) The following additional process, vented, and fugitive emissions:

(1) Vented and fugitive emissions from storage tanks used in petroleum and natural gas production and natural gas transmission;

(2) Vented and fugitive emissions reported the MRR by local distribution companies that report the MRR;

(3) Vented and fugitive emissions from natural gas transmission storage tanks used in petroleum and natural gas production and natural gas transmission, and from produced water;

- (4) Emissions reported by petroleum refineries from asphalt blowing operations, equipment leaks, storage tanks, and loading operations;
  - (5) Emissions from intermittent-bleed pneumatic devices;
  - (6) Vented emissions from well-site centrifugal and reciprocating compressors with a rated horsepower less than 250hp;
  - (7) Sources for which fugitive emissions are estimated using leak detection and leaker emission factors and sources for which vented and fugitive emissions are estimated using a population count and emissions factors;
  - (8) Carbon dioxide that is exported for purposes other than geologic sequestration or enhanced oil recovery;
  - (9) Carbon dioxide used in the carbonation process during sugar production in facilities with NAICS code 311313;
  - (10) Carbon dioxide from fermentation that occurs during the production of food and beverages; and
  - (11) For fuel cells powered by biomass-derived fuels as defined in section 147.152.1.1, process emissions from the oxidation of the biomass-derived fuel are exempt from a compliance obligation.
- (c) The exemptions provided under this section do not apply where the biomass or carbon dioxide originates from carbon dioxide emissions from fossil fuels or carbonate rock that has been captured and used where no allowances have been surrendered for the original emissions.

§ 147.153. Calculation of Covered Entity's Full Compliance Period Compliance Obligation.

- (a) A covered entity that exceeds the threshold in section 147.112 in any of the four data years preceding the start of a compliance period is a covered entity for the entire compliance period. The covered entity's full compliance period compliance obligation in this situation is calculated as the total of the emissions with a compliance obligation that received a positive or

qualified positive emissions data verification statement, or were assigned emissions to correct omissions or errors in their emissions data from all data years of the compliance period.

(b) A covered entity that initially exceeds the threshold in section 147.112 in the first year of a compliance period is a covered entity for the entire compliance period. The covered entity's full compliance period compliance obligation in this situation is calculated as the total of the emissions that received a positive or qualified positive emissions data verification statement, or were assigned emissions to correct omissions or errors in their emissions data from all data years of the compliance period.

(c) A covered entity that initially exceeds the threshold in section 147.112 in the second year of a compliance period is a covered entity for the second and any remaining years of this compliance period. The covered entity's full compliance period compliance obligation in this situation is calculated as the total of the emissions that received a positive or qualified positive emissions data verification statement or were assigned emissions to correct omissions or errors in their emissions data for the second and any remaining data years of the compliance period.

(d) A covered entity that initially exceeds the threshold in section 147.112 in the final year of a later compliance period has a compliance obligation for its emissions that received a positive or qualified positive emissions data verification statement or were assigned emissions to correct omissions or errors in their emissions data for that year, but the entity's full compliance period compliance obligation for the current compliance period is not due the following year. Instead the entity's reported and verified or assigned emissions for this year will be added to the entity's full compliance period obligation for the subsequent compliance period.

§ 147.154. Quantitative Usage Limit on Designated Compliance Instruments— Including Offset Credits.

(a) Compliance instruments identified in section 147.120(b) and sections 147.121(b), (c), and (d) are subject to a quantitative usage limit when used to meet a compliance obligation.

(b) The total number of compliance instruments identified in section 147.154(a) that each covered entity may surrender to fulfill the entity's compliance obligation for a compliance period must conform to the following limit:

O<sub>o</sub>/S must be less than or equal to L<sub>o</sub>

In which:

O<sub>o</sub> = Total number of compliance instruments identified in section 147.154(a) submitted to fulfill the entity's compliance obligation for the compliance period.

S = Covered entity's compliance obligation.

L<sub>o</sub> = Quantitative usage limit on compliance instruments identified in section 147.154(a), set at 0.08.

§ 147.155. Annual Compliance Obligation.

(a) An entity has an annual compliance obligation for any year when the entity is a covered entity except for the condition specified in section 147.153(d); and

(b) The annual compliance obligation for a covered entity equals 30 percent of emissions with a compliance obligation reported from the previous data year that received a positive or qualified positive emissions data verification statement or were assigned emissions to correct omissions or errors in their emissions data.

§ 147.156. Timely Surrender of Compliance Instruments by a Covered Entity.

(a) A covered entity must surrender one compliance instrument for each metric ton of CO<sub>2e</sub> of GHG emissions for the annual and full compliance period compliance obligations calculated pursuant to this subchapter beginning with the emissions reported in the emissions data report for the first year in which this chapter becomes effective and each subsequent year in which the covered entity has a compliance obligation.

(b) Compliance Instruments Valid for Surrender.

(1) A compliance instrument listed in subchapter 4 may be used to satisfy a compliance obligation.

(2) To fulfill a compliance obligation, a compliance instrument issued pursuant to sections 147.120(a) and 147.121(a) must be issued from an allowance budget year within or before the year for which an annual compliance obligation is calculated or the last year of a compliance period for which a full compliance period compliance obligation is calculated, unless:

(A) The allowance was purchased from a Pennsylvania Allowance Price Containment Reserve sale, is any other Pennsylvania-issued non-vintage compliance instrument, or is an Allowance Price Containment Reserve Allowance or other non-vintage allowance issued by a program approved by DEP pursuant to section 147.241 as specified in section 147.121(a);

(B) The allowance is used to satisfy an excess emissions obligation; or

(C) The allowance is eligible for compliance use pursuant to sections 147.156(h)(1)(D) and 147.156(h)(2)(D).

(c) A covered entity must transfer from its holding account to its compliance account a sufficient number of valid compliance instruments to meet the compliance obligation set forth in sections 147.153 and 147.155.

(d) **Deadline for Surrender of Annual Compliance Obligations.** For any year in which a covered entity has an annual compliance obligation pursuant to section 147.155, it must fulfill that obligation: by November 1, 5 p.m. Eastern Standard Time of the calendar year following the year for which the obligation is calculated. Transfers to compliance accounts may be restricted during the time the tracking system is processing the surrender of the annual compliance obligation.

(e) **Determination of Full Compliance Period Compliance Obligation.**

(1) When a positive or qualified positive emissions data verification statement or assigned emissions for any year is received by DEP, then those emissions for the source categories in section 147.152 equal the full compliance period compliance obligation pursuant to section 147.153.

(2) If a positive or qualified positive emissions data verification statement for any year of the compliance period is not received by DEP by the applicable verification deadline, DEP will assign emissions based upon past reports or reasonable engineering judgment regarding the party's emissions. The assigned emissions value then equals the compliance obligation.

(f) **Surrender of Full Compliance Period Compliance Obligation.**

(1) The covered entity must transfer sufficient valid compliance instruments to its compliance account to fulfill its full compliance period compliance obligation by November 1, 5 p.m. Eastern Standard Time of the calendar year following the final year of the compliance

period. Transfers to compliance accounts may be restricted during the time the tracking system is processing the surrender of the full compliance period compliance obligation.

(2) The total number of compliance instruments submitted to fulfill the full compliance period compliance obligation is subject to the quantitative use limit pursuant to section 147.154.

(3) The surrender of compliance instruments must equal the full compliance period compliance obligation calculated pursuant to section 147.153 less compliance instruments surrendered to fulfill the annual compliance obligation for the years in the compliance period.

(g) In determining whether the covered entity has fulfilled its compliance obligations, the Department shall:

(1) In the case of annual and full compliance period compliance obligations, determine the status of compliance with the annual or full compliance period compliance obligation by evaluating the number and types of compliance instruments in the Compliance Account; and

(A) Retire the compliance instruments surrendered; and

(B) Inform programs to which Pennsylvania is linked or recognizes, pursuant to subchapters 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

(h) Annual and Full Compliance Period Compliance Instrument Requirements.

(1) When a covered entity or opt-in covered entity surrenders compliance instruments to meet its annual compliance obligation pursuant to section 147.156(d), the Secretary will retire them from the Compliance Account in the following order:

(A) Offset credits specified in section 147.120(b) and sections 147.121(b) through (d), up to eight percent of the emissions with a compliance obligation pursuant to section 147.154;

(B) Allowances purchased from a Pennsylvania Allowance Price Containment Reserve sale followed by Allowance Price Containment Reserve Allowances and then other non-vintage allowances issued by a program approved by DEP pursuant to section 147.241 as specified in section 147.121(a);

(C) Allowances specified in section 147.120(a) and 147.121(a) with earlier vintage allowances retired first; and

(D) The current calendar year's vintage allowances and allowances allocated just before the annual surrender deadline up to the true-up allowance amount as determined in sections 147.191(b), 147.191(c)(2)(B), or 147.194(c) if an entity was eligible to receive true up allowances pursuant to section 147.191(b), 147.191(c)(2)(B), or 147.194(c).

(2) When a covered entity or opt-in covered entity surrenders compliance instruments to meet its full compliance period compliance obligation pursuant to section 147.156(f), the Secretary will retire them from the Compliance Account in the following order:

(A) Offset credits specified in section 147.120(b) and sections 147.121(c) and (d) with oldest credits retired first and subject to the quantitative usage limit set forth in section 147.154:

(B) Allowances purchased from a Pennsylvania Allowance Price Containment Reserve sale followed by Allowance Price Containment Reserve Allowances and then other non-vintage allowances issued by a program approved by DEP pursuant to section 147.241 as specified in section 147.121(a);

(C) Allowances specified in section 147.120(a) and 147.121(a) with earlier vintage allowances retired first; and

(D) The current calendar year's vintage allowances and allowances allocated just before the full compliance period surrender deadline up to the true-up allowance amount as determined in section 147.191(b), 147.191(c)(2)(B), or 147.194(c) if an entity was eligible to receive true up allowances pursuant to section 147.191(b), 147.191(c)(2)(B), or 147.194(c).

(3) An entity that is not eligible to receive true up allowances pursuant to section 147.191(b), 147.191(c)(2)(B), or 147.194(c) cannot use the current calendar year's vintage allowances or allowances allocated just before the current surrender deadline to meet the timely surrender of compliance instrument requirements in section 147.156.

(4) An electric distribution utility will not be in violation of section 147.192(d)(5) when the Secretary retires compliance instruments, if the electric distribution utility has a sufficient quantity of eligible compliance instruments not allocated pursuant to section 147.170(d) in its compliance account, at the time the timely surrender of compliance instruments

by a covered entity is due pursuant to section 147.156, that is at least equal to its compliance obligation for any transactions for which the use of allocated allowance value is prohibited under section 147.192(d)(5).

§ 147.157. Untimely Surrender of Compliance Instruments by a Covered Entity.

(a) Applicability.

(1) A covered entity or opt-in covered entity that does not meet the compliance deadline for surrendering its annual or full compliance period compliance obligation pursuant to section 147.156 is subject to the compliance obligation for untimely surrender as described in this section; and

(2) The compliance obligation for untimely surrender (“excess emissions”) will not apply to a covered entity or opt-in covered entity which is determined to have transferred insufficient instruments to meet the compliance obligations of section 147.156 solely because of the invalidation of a DEP offset credit by the Secretary pursuant to section 147.285 until six months after notice of invalidation.

(b) Calculation of the Untimely Surrender Obligation. The untimely surrender obligation is the number of compliance instruments that an entity must surrender if it does not meet its original annual or full compliance period compliance obligation. The untimely surrender obligation replaces any unfulfilled portion of an entity’s annual or full compliance period compliance obligation.

(1) The quantity of excess emissions is the difference between the compliance obligation calculated pursuant to this section and any compliance instruments timely surrendered by the entity;

(2) The entity’s compliance obligation for untimely surrender is calculated as four times the entity’s excess emissions;

(3) At least three-fourths of an entity’s compliance obligation for untimely surrender may only be fulfilled with PA GHG allowances or allowances issued by a GHG ETS pursuant to subchapter 12;

(4) Up to one-fourth of an entity's compliance obligation for untimely surrender may be fulfilled with DEP offset credits or compliance instruments listed in sections 147.121(b), (c), and (d);

(5) The sum of the offset credits submitted by the entity in a timely manner to fulfill its full compliance period compliance obligation plus any offset credits submitted as part of the untimely surrender obligation must be less than or equal to the number of offsets that the entity is allowed to submit when the quantitative usage limit on offset credits is applied to the entity's full compliance period obligation; and

(6) The untimely surrender obligation is due within five days of settlement of the first auction or reserve sale conducted by DEP following the applicable surrender date, whichever is the latter, and for which the registration deadline has not passed when the untimely surrender obligation is assessed. Future vintage allowances are eligible for complying with the untimely surrender obligation.

(c) If an entity with an untimely surrender obligation fails to satisfy this obligation pursuant to section 147.157(b)(6) then:

(1) DEP will determine the number of violations pursuant to section 147.314;

(2) If a portion of the untimely surrender obligation is not surrendered as required, the entity will have a new untimely surrender obligation equal to the amount of the previous untimely surrender obligation which was not satisfied by the deadline stated in section 147.157(b)(6) upon which the number of violations will be calculated pursuant to section 147.314. The new untimely surrender obligation is due immediately; and

(3) There will be no additional untimely surrender obligation amount assessed beyond the new untimely surrender obligation determined pursuant to section 147.157(c)(2).

(d) When the covered entity or opt-in covered entity meets its untimely surrender obligations pursuant to sections 147.157(a) through (c), DEP shall:

(1) Transfer the compliance instruments used to fulfill the untimely surrender obligation in the following manner:

(A) At least three fourths of the compliance instruments to the Auction Holding Account. The three fourths of the compliance instruments transferred to the Auction Holding Account shall only be comprised of allowances; and

(B) The remaining one fourth of compliance instruments to the Retirement Account.

(2) Inform programs to which Pennsylvania is linked or recognizes, pursuant to subchapters 12 and 14, of the retirements, including the serial numbers of the compliance instruments retired.

§ 147.158. Compliance Obligation for Under-Reporting in a Previous Compliance Period.

If, after an entity has surrendered its compliance instruments to fulfill a compliance obligation pursuant to sections 147.156 or 147.157, the Department determines, through an audit or other information, that the entity under-reported its emissions for any emissions sources that form the basis for the entity's compliance obligation, then the following shall apply:

(a) If the difference between the emissions used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to sections 147.155 or 147.156 and the emissions determined by the Department to be under-reported for the sum of those emissions is less than five percent of the emissions number used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to sections 147.155 or 147.156, then the entity is not required to take any further action.

(b) If the difference between the emissions used to calculate the compliance obligation and subsequently calculate the number of compliance instruments surrendered pursuant to sections 147.155 or 147.156 and the emissions determined by the Department to be under-reported for the sum of those emissions is more than five percent of the emissions number used to calculate the compliance obligation and subsequently used to calculate the number of compliance instruments surrendered pursuant to sections 147.155 or 147.156, then the entity must surrender compliance instruments in the following amount:

$$Cla = EMd - CO - (CO * 0.05)$$

Where:

“Cla” is the number of additional compliance instruments that must be surrendered to DEP to cover under-reported emissions;

“CO” is the emissions number used to determine the compliance obligation surrendered pursuant to sections 147.155 or 147.156; and

“EMd” is the number of the emissions determined by the Secretary for the sum of the emissions sources subject to a compliance obligation.

(c) The entity must surrender additional compliance instruments as determined pursuant to this section for under-reporting emissions under MRR at the next compliance event scheduled pursuant to section 147.156. The provisions of sections 147.157 and 147.314 shall not apply until after the date of that compliance event. The entity may use any compliance instruments acceptable for that compliance event to meet these requirements.

(d) Any determination that an entity under-reported its emissions shall be made by the Secretary no later than eight years from the applicable verification deadline for the emissions data report which contained the under-reporting of emissions.

## **Subchapter 8: Disposition of Allowances**

### § 147.170. Disposition of Allowances.

(a) Allowance Price Containment Reserve. Upon creation of the Allowance Price Containment Reserve Account, the Department shall transfer four percent of each year's annual allowances to the Allowance Price Containment Reserve.

(b) Advance Auction. The Department may create an Advance Auction, in which case it shall create an Auction Holding Account, the Secretary and transfer 10 percent of the allowances from first five predicted budget years to the Auction Holding Account.

(1) These allowances will be eligible to be sold pursuant to section 147.213(f)(5).

(2) All Advance Auction allowances not sold pursuant to section 147.213(f)(5) will be auctioned pursuant to section 147.210.

(3) The proceeds from the sale of these allowances will be deposited in the General Fund unless otherwise directed by the General Assembly and except as provided in section 147.170(b)(3).

(4) If any municipality with an air program including this cap-and-trade program that has been approved by the Department wishes to have the Department conduct an auction of the allowances governed by the municipality's approved program, the Department shall distribute the proceeds from the sale of allowances to the municipality or as otherwise directed by the municipality.

(b) Allocation to Account for Distribution to Parties Approved for a Direct Allocation.

(1) Upon the Department's approval of a party's application for direct allocation of allowances, the Department shall transfer the next year's allocation of allowances for that party to the Approved Direct Allocation Account for that year.

(2) The Department shall transfer any allowances for which a party is entitled to a direct allocation from the Direct Allocation Account to the Party's account upon application by the party after transfer of the allowances into the Direct Allocation Account and upon payment

by the party of any price required by the terms of the Department's approval of the party's application. If any payment is required by the terms of the Department

(3) Allowances in the annual allocation holding account are transferred to the Holding Account on January 1 of the vintage year of the allowances.

(c) All allowances not transferred to the Cost Containment Reserve Allocation to Account for Distribution to Approved Parties shall be made available for auction.

(d) Auction Proceeds and Receipts from the Sale of Directly Allocated Allowances

(1) All proceeds from the sale of allowances shall be transferred to the General Fund, unless another disposition is approved by the General Assembly, or to a municipality with an approved program.

(2) If the General Assembly provides authorization for the transfer of proceeds from allowance sales to any party or fund other than the General Fund, those proceeds shall be transferred as authorized and the transfer of funds to the General Fund pursuant to § 147.170(d)(1) reduced accordingly.

## **Subchapter 9: Direct Allocations of Pennsylvania GHG Allowances**

### § 147.190. Eligibility Requirements for Direct Allocations.

(a) In order to receive a direct allocation of Pennsylvania GHG allowances, an entity must (i) be required to submit allowances under this chapter, (ii) satisfy the eligibility requirements set forth in this section, (iii) have submitted a timely and complete application pursuant to section 147.190, (iv) have been approved or conditionally approved by the Department, and (v) not have changed circumstances by reducing production from the levels one year prior to the effective date of this regulation or closed or partially closed production.

(b) To receive a direct allocation from the Department, the party must demonstrate to the Department that (i) it is involved in the production of goods through industrial or agricultural processes, as determined by the Department; (ii) it is subject to competition from businesses in other states or nations that do not impose a price on CO<sub>2e</sub> emissions, and (iii) unless the party receives a direct allocation, that competition could reasonably be anticipated to result in “Leakage” as defined herein.

(c) “Leakage” means increased emission of CO<sub>2e</sub> that occurs as a result of a business activity subject to regulation under this chapter partially or wholly moving to jurisdictions subject to less stringent regulation of those emissions than occurs in Pennsylvania after reducing or ceasing those activities in Pennsylvania.

(d) The following activities shall be ineligible for a direct allocation of allowances:

(1) Generation of electricity for delivery to the grid other than where the process is engaged in the co-generation of electricity and steam for uses other than electricity generation (“Cogeneration”). Processes engaged in Cogeneration otherwise meeting the criteria for a direct allocation of allowances shall be entitled to a direct allocation only to the extent of the CO<sub>2e</sub> emissions that would have occurred if no electricity generation had occurred, as determined by the Department. In determined the extent of eligibility for Cogeneration, the Department may rely upon the formulae developed by the State of California.

(2) Production, transportation, or distribution of any fossil fuel.

### § 147.191. Applications for Direct Allocation of Allowances.

(a) Applications for direct allocations of allowances shall be submitted to the Department's central office in Harrisburg, Pennsylvania, at least six (6) months before the first year in which the applicant wishes the direct allocation to take place.

(b) Each application shall contain, at a minimum, the following information:

(1) Identification of the activity or activities (e.g. process or processes) requiring the surrender of allowances.

(2) A demonstration, for each such activity (or process) that the applicant is subject to competition in jurisdictions that do not regulate the emissions of CO<sub>2</sub>e in a manner that will impose a cost equivalent to that imposed by this chapter and that this can reasonably be anticipated to result in Leakage unless the applicant is granted a direct allocation of allowances.

(3) The most recent five (5) years of production data that is available for the activity (or process) for which the direct allocation is sought (or fewer if the activity commenced less than five years previously).

(4) The emissions of CO<sub>2</sub>e that would require the surrender of allowances associated with each of those years of production.

(5) The applicant's agreement to supplement and update the information provided annually, even where not required to report.

(6) Such other information as the Department shall deem necessary or appropriate.

§ 147.192. Applications for Direct Allocation of Pennsylvania GHG Allowances for Activities Commencing or Increasing After the Effective Date of this Chapter.

(a) Entities wishing to commence or expand an activity that will require the surrender of allowances under this chapter must satisfy any pertinent eligibility requirements of section 147.191 and submit an application to the Department containing any the information set forth in section 147.192, to the extent available. The application must contain projected production and projected emissions data and must demonstrate that the proposed process employs the best

available system of control technology for the prevention or reduction of greenhouse gas emissions.

§ 147.194. Department Action on Applications for Direct Allocation of Pennsylvania GHG Allowances.

(a) Upon receipt of an application for direct allocation of Pennsylvania GHG Allowances, the Department shall publish notice of the application in the Pennsylvania Bulletin and provide a twenty day comment period.

(b) The Department will consult with the Department of Community and Economic Development in connection with any application under this section and consider these comments and any public comments before acting on any such application.

(c) If the Department has not acted on any application submitted at least 180 days before the date for the surrender of allowances, it shall make the direct allocation requested without a charge, subject to the requirement that the applicant surrender any excess allowances and pay all charges pursuant to section 147.196 following the Department's action on any application.

(d) The Department's final action under this section is appealable to the Pennsylvania Environmental Hearing Board.

§ 147.195. Conditions to and Limitations Upon the Direct Allocation of Pennsylvania GHA Allowances.

(a) No direct allocation of allowances may continue after [Insert date], the 20<sup>th</sup> anniversary of the effective date of this chapter.

(b) Every direct allocation shall be reduced by five percent (5%) of the original allocation per annum.

(c) The Department shall impose the maximum price per ton on the direct allocation, up to the greater of the reserve auction price or the average clearing price of the last two auction, to the extent feasible consistent with the prevention of Leakage. The Department shall reassess

the price each year and adjust it consistent with the objectives of preventing leakage and obtaining a reasonable income for the beneficiaries of the Article I, §27 trust.

(d) Except as provide in subsection (e), DEP shall not approve a direct allocation that is greater than that to which a “Best Sector Performer” would be entitled. The Best Sector Performer is the facility in Pennsylvania in the applicable category or subcategory set forth in 40 C.F.R. part 60 (standards of performance for new stationary sources established under section 111 of the Clean Air Act) that has achieved the lowest rate of GHG emissions per unit of production. The maximum allocation, other than an allocation under subsection (e) of this section would be calculated as follows:

$$A_n = BSR_R * P_n$$

Where  $A_n$  is the maximum direct allocation to which a given party “n” is entitled;  $A_n = BSR_R$  is the rate of GHG emissions per unit of production in CO<sub>2</sub>e that has been achieved by the Best Sector Performer and  $P_n$  is the annual production of the given party “n”.

(e) If DEP determines that a direct allocation based on subsection (d) would result in Leakage with respect to any facility (underperforming facility or “UPF”) it may provide for an additional direct allocation. If DEP provides any party with an additional direct allocation, then it shall provide all other Pennsylvania facilities in the same category or subcategory in 40 C.F.R. part 60 with an additional direct allocation according to the following formula:

$$A_n = (A_{UPF}/P_{UPF}) * P_n$$

Where  $A_n$  is the allocation to which other facilities in the category or subcategory are entitled;  $A_{UPF}$  is the direct allocation that is provided to the underperforming facility;  $P_{UPF}$  is the production upon which the underperforming facility’s direct allocation is based  $P_n$  is the production rate for the facility “n” receiving the increased allocation.

#### §147.196. Return of Allocation.

(a) If a covered entity or opt-in covered entity received a direct allocation of allowances for a year in which it ceased production or reduced production by more than five percent in the activity upon which its direct obligation is based, the entity must fulfill the following requirements. The entity must either (i) return N allowances by November 1 of the calendar year  $t + 1$ , where  $t$  is the year for which the entity received an allowance allocation but

reduced or ceased production or (ii) pay the difference between the price that it paid and the clearing price for allowances in the year in which the entity received a direct allocation.

(b) The entity's obligation to return or pay for allowances shall be based on the following formula:

$$N = n - p_1/p_0$$

Where  $n$  = the number of direct allowances awarded for the year in which production ceased or was reduced by more than five percent of the production in the year in which production was reduced or ceased and  $p_0$  is the level of production on which the direct allocation is based.

(c) To return allowances to the Department, an entity must place the appropriate number of allowances into its compliance account and notify the Department. The allowances are considered to be returned only after they have been removed from the compliance account by the Department. To pay for allowances, the entity must make payment in the same manner as if it had purchased the allowances at auction. If an entity fails to return allowances or make additional payment, then DEP will determine the number of violations pursuant to section 147.314.

## **Subchapter 10: Auction and Sale of Pennsylvania Greenhouse Gas Allowances**

### **§ 147.210 Auction of Pennsylvania GHG Allowances.**

(a) **Timing of the Allowance Auctions.** Auctions shall be conducted on the schedule pursuant to Appendix C. The schedule may be adjusted by a maximum of 4 business days from the dates listed in Appendix C.

(b) **General Requirements.** An allowance may be designated for auction prior to or after its vintage year.

(c) Allowances from future vintages will be auctioned separately from allowances from current and previous vintages each quarter.

(1) **Auction of Allowances from the Current and Previous Budget Years.**

(A) This auction will be known as the Current Auction.

(B) One quarter of the allowances allocated for auction from the current calendar year's budget will be designated for sale at each Current Auction.

(C) The Current Auction may include allowances consigned to auction that have a vintage equal or prior to the current budget year.

(D) Allowances from the current budget year and fifty percent of Allowances from previous budget years which remained unsold at previous auctions and have not been transferred to the Cost Containment Reserve or retired will be designated for the Current Auction.

(E) Fifty percent of the Allowances from previous budget years that remained unsold shall be permanently retired.

(2) **Auction of Allowances from Future Budget Years.**

(A) This auction will be known as the Advance Auction.

(B) One quarter of the allowances allocated for Advance Auction from the budget year three years subsequent to the current calendar year will be designated for sale at each Advance Auction.

(C) The Advance Auction may include allowances which were returned to the Auction Holding Account following an Advance Auction which resulted in unsold allowances, and which are designated for auction pursuant to section 95911(f)(3).

(d) Auction of Consigned Allowances.

(1) When the Executive Officer withdraws compliance instruments from accounts containing allowances in excess of the holding limit, or from accounts suspended or revoked:

(A) Allowances shall be consigned to the next auction;

(B) If, after review, the Executive Officer determines that any offset credits, or offset credits issued from a GHG ETS to which Pennsylvania has linked pursuant to subchapter 12, remaining in the entity's accounts are valid, the Executive Officer will remove the offset credits from any holding or compliance account needed to fulfill the entity's compliance obligation. If offset credits remain in the entity's compliance account thereafter, the Executive Officer will return them to the entity's holding account.

(C) The Executive Officer will retire any withdrawn allowances issued by the Department or by a GHG ETS to which Pennsylvania has linked pursuant to subarticle 12 that have no vintage, offer an equal number of current budget year vintage allowances from the Auction Holding Account, and consign those allowances to the next Current Auction in place of the retired allowances that have no vintage.

(D) The Executive Officer will retain in the Auction Holding Account any withdrawn allowances that have a vintage that is later than the current budget year, offer an equal number of current budget year vintage allowances from the Auction Holding Account, and consign those allowances to the next Current Auction in place of the retained future vintage allowances.

(2) Each consigning entity agrees to accept the auction settlement price for allowances sold at auction.

(3) Deadline for Consignment. Allowances designated for consignment pursuant must be transferred to the Auction Holding Account at least 75 days before the auction as scheduled in Appendix C.

(e) Auction of Allowances Used to Fulfill an Untimely Surrender Obligation. When the Executive Officer transfers compliance instruments used to fulfill an untimely surrender obligation to the Auction Holding Account:

(1) Allowances with a vintage year corresponding to the current or previous budget years will be designated to the Current Auction;

(2) Allowances with a vintage year corresponding to a budget year three years subsequent to the current calendar year will be designated to the Advance Auction;

(3) Allowances with a vintage corresponding to a budget year one year or two years subsequent to the current year will remain in the Auction Holding Account until their vintage corresponds to the current calendar year. They will then be designated for the Current Auction.

(4) The Executive Officer will retire any allowances issued from the Department or a GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 that have no vintage.

§ 147.211. Format for Auction of Pennsylvania GHG Allowances.

(a) Auction Bidding Format.

(1) The auction will consist of a single round of bidding.

(2) Bids will be sealed.

(3) Bid quantities must be submitted as multiples of 1,000 Pennsylvania GHG allowances.

(4) Entities registered into the Pennsylvania Cap-and-Trade Program must submit bids in whole U.S. dollars and whole cents.

(5) The allowances for auction in section 147.211(a)(3) will also include allowances from a jurisdiction operating an External GHG ETS system to which Pennsylvania has linked pursuant to subchapter 12.

(b) Auction Reserve Price Schedule.

(1) Each auction will be conducted with an auction reserve price.

- (2) No allowances will be sold at bids lower than the auction reserve price.
- (c) Method for Setting the Auction Reserve Price.

(1) The Auction Reserve Price shall be on a the greater of the reserve price using the method set forth in section 147.211(c)(2) and the highest reserve price established for any External GHG ETS system to which Pennsylvania has linked pursuant to subchapter 12.

(2) Unless the Auction Reserve Price is set equal to a higher price established for any External GHG ETS system linked to Pennsylvania pursuant to subchapter 12, the reserve price shall be based upon a reserve price for calendar year 2020 equal to ten dollars (\$10.00), and shall increase each calendar year by the rate of inflation plus 10 percent as provided in section 147.211(c), provided, however, that the auction reserve price established by this method shall not exceed the highest reserve price established for any of the programs identified in section 147.240(b) of this chapter. Beginning in 2020, and each year thereafter, the Auction Reserve Price for auctions to be conducted the following calendar year will be established and announced on the first day in December that is a business day in Pennsylvania. The Reserve Price shall be stated in U.S. dollars. The Auction Reserve Price will be calculated and announced by the Auction Administrator.

(3) The Auction Reserve Price shall be determined and announced using the following procedure.

(A) The Auction Reserve Price in U.S. dollars shall be the greater of (i) U.S. dollar Auction Reserve Price for the previous calendar year increased annually, beginning in 2021, by 10 percent plus the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers and (ii) the highest auction reserve price established by any External GHG ETS system linked to Pennsylvania pursuant to subchapter 12.

(B) Prior to the opening of the auction window on the day of the auction, the Auction Administrator shall announce the Auction Reserve Price.

(4) The Auction Reserve Price will be announced prior to the opening of the auction window at 10 a.m. Eastern Standard Time (or Eastern Daylight Time when in effect) on the day of the auction and will be in effect until the window closes at 1 p.m. Eastern Standard Time (or Eastern Daylight Time when in effect).

(5) The Auction Reserve Price will be announced on the first day in December that is a business day in Pennsylvania and in any jurisdiction operating an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 and the Reserve Price shall also be stated in the currency (or currencies) used in an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12.

(d) Auction Purchase Limit.

(1) The auction purchase limit is the maximum number of allowances offered at each Current and Advance Auction which can be purchased by any entity or group of entities with a direct corporate association.

(2) Purchase Limit Values.

(A) The purchase limit for covered entities, electrical distribution utilities, opt-in covered entities, or direct corporate associations containing any of these types of entities will be 25 percent of the allowances offered for auction at both the Current and Advance Auctions.

(B) The purchase limit for voluntarily associated entities or direct corporate associations comprised entirely of these entities is four percent of the allowances offered for auction at the Current and Advance Auctions.

(3) Auction Purchase Limits for Members of a Direct Corporate Association.

(A) Entities that are part of a direct corporate association must allocate a specified percentage share of the association's purchase limit to each member of the direct corporate association. The sum of the percentage shares allocated among the entities must equal one hundred percent. The purchase limit for each associated entity is its allocated percentage share multiplied by the auction purchase limit assigned to the association.

(B) For voluntarily associated entities that are part of a corporate association containing covered entities, opt-in covered entities, or electrical distribution utilities, the total purchase limit assigned to voluntarily associated entities within the corporate association must be less than or equal to four percent of the allowances to be auctioned at Current and Advance Auctions.

(e) Determination of Winning Bidders and Settlement Price. The following process shall be used to determine winning bidders, amounts won, and a single auction settlement price:

(1) Each bid will consist of a price and the quantity of allowances, in multiples of 1,000 PA GHG Allowances, desired at that price.

(2) Each bidder may submit multiple bids.

(3) Beginning with the highest bid price, bids from each bidder will be considered in declining order by price, and the auction operator shall reject a bid for a bundle of 1,000 allowances:

(A) If acceptance of the bid would result in violation of the purchase limit pursuant to sections 147.211(d) and 147.214;

(B) If acceptance of the bid would result in violation of the holding limit pursuant to section 147.220(b); or

(C) If acceptance of the bid would result in a total value of accepted bids for an auction participant greater than the value of the bid guarantee submitted by the auction participant pursuant to section 147.212(j).

(4) Bids from all bidders will be ranked from highest to lowest by price. Beginning with the highest bid and proceeding to successively lower bids, entities submitting bids at each price will be sold allowances until:

(A) The next lower bid price is less than the auction reserve price, in which case the current price becomes the auction settlement price; or

(B) The total quantity of allowances contained in the bids at the next lower bid price is greater than or equal to the number of allowances yet to be sold, in which instance, the next lower bid price becomes the auction settlement price and the procedure for resolution of tie bids in section 147.211(e)(5) shall apply.

(5) Resolution of tie bids. If the quantity of allowances contained in the bids placed at the auction settlement price is greater than the quantity of allowances available to be sold at that price, then:

(A) The Auction Administrator will calculate the share of the remaining allowances to be distributed to each entity bidding at the auction settlement price by dividing the quantity bid

by that entity and accepted by the auction administrator by the total quantity of bids at the settlement price which were accepted by the Auction Administrator;

(B) The Auction Administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share calculated in section 147.211(e)(5)(A) above by the number of allowances remaining, rounding the number down to the nearest whole number; and

(C) To distribute any remaining allowances, the Auction Administrator will assign a random number to each entity bidding at the auction settlement price. Beginning with the lowest random number, the Auction Administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.

(f) If the quantity of bids accepted by the Auction Administrator is less than the number of allowances offered for sale then some allowances will remain unsold.

(1) If allowances remain unsold at auction, the Auction Administrator will fulfill winning bids with allowances from consignment sources in the following order:

(A) Allowances consigned to auction pursuant to section 147.210(d)(2);

(B) Allowances redesignated to the auction pursuant to section 147.211(f)(3); and

(C) Allowances designated by DEP for auction pursuant to section 147.210(c)(1)(B) and (c)(2)(B) and (c)(2)(C).

(2) When there are insufficient winning bids to exhaust the allowances from a consignment source in section 147.211(f)(1), the auction administrator will sell an equal proportion of allowances from each consigning entity in that source as follows:

(A) The auction administrator will calculate the number of allowances sold on behalf of each consigning entity by multiplying the consigning entity's share of the total consigned allowances by the number of consigned allowances sold, rounding the number down to the nearest whole number; and

(B) To distribute any remaining allowances, the auction administrator will assign a random number to each entity consigning allowances. Beginning with the lowest random

number, the auction administrator will assign one allowance to each entity until the remaining allowances have been assigned.

(3) Disposition of Allowances Designated by DEP for Auction Which Remain Unsold.

(A) Allowances designated by DEP pursuant to section 147.210(c)(1)(B) and (c)(2)(B) and (c)(2)(C) for an auction which remain unsold shall be kept in the Auction Holding Account for later auction or retired as provided herein.

(B) Allowances designated by DEP for auction which remain unsold will be re-designated for auction after two consecutive auctions have resulted in an auction settlement price above the Auction Reserve Price. If future vintage allowances remain unsold at the end of the calendar year for which they were designated for sale at Advance Auction, they will remain in the Auction Holding Account until their vintage year. They will then be designated for the Current Auction.

(C) The number of allowances re-designated to a subsequent Current or Advance Auction will not exceed 25 percent of allowances already designated by DEP for that auction. Allowances which remain unsold above that level will be held in the Auction Account for later auction.

(D) Allowances designated for Advance Auction which remain unsold until their vintage year equals the current calendar year will be designated for Current Auction pursuant to section 147.210(c)(1)(B).

(4) Disposition of Consigned Allowances Remaining Unsold at Auction. Allowances consigned to auction pursuant to section 147.221(g)(3) that remain unsold at auction will be held in the Auction Holding Account and offered for sale at each auction until sold, transferred to the Allowance Price Containment Reserve (Reserve) or retired.

(g) Transfer of Unsold Allowances to the Allowance Price Containment Reserve or retirement. Current vintage allowances designated by DEP for auction pursuant to section 147.211(f)(3) that remain unsold in the Auction Holding Account for more than 24 months will be transferred to the Reserve or retired. At least fifty percent (50%) of allowances that remain unsold after the expiration of their vintage year shall be permanently retired. The remainder

shall be transferred to the Reserve. The number of allowances in the Reserve shall be limited to 25% of the annual allowance budget for the Pennsylvania GHG Cap-and-Trade program and shall decrease as that budget decreases. Any excess allowances in the Reserve or unsold allowances exceeding the limits in the Reserve shall be permanently retired. Current vintage allowances designated by DEP pursuant to this section do not include allowances consigned to auction pursuant to section 147.210(d).

(h) The auction bidding window may be delayed, rescheduled, or cancelled due to technical systems failures.

(1) The opening of the auction bidding window may be delayed or paused for no more than one hour by the Secretary due to technical systems failures.

(2) The bidding window may be rescheduled by the Secretary due to technical systems failures.

(3) Rescheduled Auctions.

(A) The auction bidding window must be rescheduled to ensure the financial services administrator can use any bid guarantees submitted pursuant to section 147.212 prior to the expiration date required by section 147.212.

(B) No additional auction applications may be accepted.

(C) The financial services administrator will keep all bid guarantees to complete financial settlement of the auction after the rescheduled bidding window.

(D) No bid guarantees provided pursuant to section 147.212 may be amended.

(E) If technical systems failures cannot be resolved and a bidding window cannot be rescheduled to meet the requirements of this section, then the Secretary will cancel the auction bidding window.

§ 147.212. Auction Administration and Participant Application.

(a) Administration of the Auctions.

(1) The Secretary or a designated DEP Deputy Secretary may serve as Auction Administrator or the Secretary may designate an entity to serve as Auction Administrator.

(2) The Secretary or a designated DEP Deputy Secretary may serve as financial services administrator or the Secretary may designate a qualified financial services administrator to conduct all financial transactions required by this article.

(b) Other Jurisdictions.

(1) The Department may direct that the Pennsylvania GHG allowances designated for auction be offered through an auction conducted jointly with other jurisdictions to which Pennsylvania links pursuant to subchapter 12, provided the joint auction conforms to this article.

(2) Where the Department has approved a municipal program for the Pa GHG cap-and-trade program pursuant to 25 Pa. Code Chapter 133, that program may administer its own program for allowances attributable to that program or the local program may elect to have the Auction Administrator administer an auction of the allowances attributable to that program and distribute the auction revenues to the municipality or as otherwise provided under the approved municipal program.

(c) Auction Notification. At least 60 days prior to each auction, the Auction administrator shall publish the following information:

- (1) The date and time of the auction;
- (2) Auction application requirements and instructions;
- (3) The form and manner for submitting bids;
- (4) The procedures for conducting the auction;
- (5) The administrative requirements for participation; and
- (6) The number of allowances from Pennsylvania that will be available at the auction.

(7) For the announcement of the first quarter auction, the number of allowances to be available for sale during the calendar year and the Auction Reserve Price in effect for the calendar year pursuant to section 147.211(c).

(8) If Pennsylvania has linked to a jurisdiction operating an External GHG ETS pursuant to subchapter 12, the number of allowances in section 147.212(c)(6) will also include

the allowances made available by the linked jurisdiction, if any, as well as any allowances made available by approved municipal Pa GHG cap-and-trade programs.

(d) Auction Participation Application Requirements.

(1) The Department must approve an entity's auction participant application before that entity may participate in an auction.

(2) An entity applying for approval as an auction participant must be registered into the Cap-and-Trade Program as provided in section 147.130.

(3) An entity whose holding account has been revoked or is currently suspended pursuant to section 147.311 cannot participate in an auction. An individual associated pursuant to section 147.130, 147.132, and 147.133 with an entity whose holding account has been revoked or is currently suspended pursuant to section 147.311 cannot participate in an auction.

(4) An entity will be required to complete an auction participant application at least 30 days prior to an auction in which it intends to participate. The entity must provide information and documentation including:

(A) Information and documentation regarding the corporate identity, ownership, and capital structure of the applicant;

(B) The existence of any direct or indirect corporate associations pursuant to sections 147.133 and 147.214(d);

(C) An allocation of the purchase limit among associated entities as defined in section 147.133, or a change in the existing allocation of the purchase limit among associated entities, if applicable;

(D) An allocation of the holding limit among associated entities as defined in section 147.133, or a change in the existing allocation of the holding limit among associated entities, if applicable; and

(E) An attestation disclosing the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market for the entity participating in the auction, and all other entities with whom the

entity has a direct corporate association pursuant to section 147.133 that participate in a GHG, carbon, fuel, or electricity market. The attestation must be updated to reflect any change in the status of an investigation that has occurred since the most recent auction application attestation was submitted.

(5) An entity with any changes to the auction application information listed in subsection 147.212(d)(4) within 30 days prior to an auction may be denied participation in the auction. For the purposes of changes to indirect and direct corporate associations, this section only applies to those corporate associates with entities registered in the tracking system.

(6) Prior to participating in an auction, any primary or alternate account representative that will be submitting bids on behalf of entities eligible to participate in an auction must have already:

(A) Complied with the Know-Your-Customer requirements of section 147.134; and

(B) Submitted the additional information required by the financial services administrator contained in Appendix A of this subchapter.

(e) Maintenance and Modification of Auction Participation Approval.

(1) Once the Department has approved an entity's auction participant application, the entity need not complete another application for subsequent auctions unless there is a material change to the information contained in the approved application pursuant to section 147.212(d)(4) there is a material change in the entity's Cap-and-Trade Program registration pursuant to section 147.130, or the Department has made a determination restricting an entity's auction participation pursuant to section 147.214.

(2) An entity approved for auction participation must inform the Auction Administrator at least 30 days prior to an auction when reporting a change to the information disclosed, otherwise the entity may not participate in that auction. The change should be reported by 5 p.m. Eastern Standard Time (or Eastern Daylight Time, when in effect) on the 30th day before an auction.

(f) Auction Intent to Bid Notification Requirements. An entity that intends to participate in an auction must inform the Auction Administrator at least 30 days prior to an auction of its intent to bid in an auction, otherwise the entity may not participate in that auction.

(g) An entity approved for auction participation may not communicate information on auction participation with any entity that is not part of an association disclosed pursuant to section 147.214, except as requested by the Auction Administrator to remediate an auction application.

(h) Protection of Confidential Information. To the extent permitted by state law, the Department, the Auction Administrator, and the financial services administrator will treat the information contained in the auction application and not listed for release pursuant to section 147.212(k)(5) as confidential business information.

(i) All bids will be considered binding offers for the purchase of allowances under the rules of the auction.

(j) Auction participants must provide a bid guarantee to the financial services administrator at least 12 days prior to the auction.

(1) The bid guarantee must be in one or a combination of the following forms:

(A) Cash in the form of a wire transfer; or

(B) An irrevocable letter of credit; or

(C) A bond.

(D) All forms of bid guarantee must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices.

(2) The bid guarantee submitted by any entity registered with Pennsylvania will be in U.S. dollars.

(3) A bid guarantee submitted in any form other than cash must be payable within three business days of payment request.

(4) The bid guarantee will be in the currency used by the jurisdiction with which the entity has registered.

(5) The amount of the bid guarantee must be greater than or equal to the maximum value of the bids to be submitted.

(A) The value of a set of bids equals the cumulative quantity of bids submitted at or above a price times that price. The value of the set of bids is calculated at each price at which the bidder will submit a bid.

(B) The maximum value of a set of bids is the highest value of a set of bids calculated at each price at which the bidder will submit a bid.

(C) The auction participant submits a single bid guarantee to cover bids in both the Current and Advance Auctions and the amount of the single bid guarantee must be greater than or equal to the combined maximum value of the Current and Advance Auction bids to be submitted.

(6) The bid guarantee will be made payable to the financial services administrator.

(7) The bid guarantee will expire no sooner than 26 days after the auction date.

(8) The financial services administrator will evaluate the bid guarantee and inform the auction administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Department.

(9) If an entity has submitted more than one form of bid guarantee then the financial services administrator will apply the instruments to the unpaid balance in the order the instruments are listed in section 147.212(j)(1).

(10) The auction administrator will apply the value of the bid guarantee to the Current Auction first when accepting bids pursuant to section 147.211(e)(3). The remaining value of the bid guarantee will be used to determine acceptance of bids into the Advance Auction.

(k) After the Auction Administrator has notified the Department of the results of the auction the Department will:

(1) Review the conduct of the auction by the Auction Administrator, then certify whether the auction met the requirements of this article;

(2) After certification, direct the auction administrator to notify each winning bidder of the auction settlement price, the number of allowances that the bidder purchased, the bidder's total purchase cost, and the deadline and method for submitting payment.

(3) After certification, direct the financial services administrator to:

(A) Collect cash payments from winning bidders within seven days of notifying them of the auction results;

(B) Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make cash payment within seven days after bidders are notified of results and place the proceeds into the Pennsylvania Treasury, such other fund as the General Assembly may hereafter designate consistent with its duty as a trustee under Article I, §27 of the Pennsylvania Constitution, or the accounts designated by a municipalities with delegated programs;

(C) Deposit auction proceeds from sales of DEP allowances sold at auction into the Pennsylvania Treasury, such other fund as the General Assembly may hereafter designate consistent with its duty as a trustee under Article I, §27 of the Pennsylvania Constitution, or the accounts designated by municipalities with delegated programs;

(D) Distribute auction proceeds to entities that consigned allowances for auction pursuant to section 147.210(d) ;

(E) Return any unused cash bid guarantee; and

(F) Return any bid guarantee form other than cash after receipt of payment for allowances awarded.

(G) A bid guarantee in a form other than cash may be held by the financial services administrator for multiple auctions or reserve sales upon agreement by the financial services administrator and bidder.

(4) Upon determining that the payment for allowances has been deposited into the Treasury, or transferred to entities or local governments with approved programs that consigned allowances, transfer the allowances purchased into each winning bidder's Holding Account, or to its Compliance Account if needed to comply with the holding limit;

(5) Inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances purchased at auction; and

(6) Following the auction, the Department will publish at [www.\\_\\_\\_\\_\\_](http://www._____) the following information:

(A) The names of the bidders;

(B) Auction settlement price; and

(C) Aggregated or distributional information on purchases with the names of the entities withheld.

§ 147.213. Sale of Allowances from the Allowance Price Containment Reserve.

(a) The Secretary or a Deputy Secretary may serve as reserve sale administrator to conduct sales from the Allowance Price Containment Reserve (Reserve) or designate an entity to serve as reserve sale administrator. The financial services administrator designated by the Secretary pursuant to section 147.212(a) will conduct the financial transactions required to operate sales from the Reserve.

(b) Entities registered in an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 are not eligible to purchase from the Pennsylvania Reserve.

(c) Only entities registered into the Pennsylvania GHG Cap-and-Trade Program as provided in sections 147.111 or 147.113 shall be eligible to purchase allowances from the Reserve. Prior to participating in a Reserve sale, any primary or alternate account representative that will be submitting bids on behalf of entities eligible to participate in Reserve sales must have already submitted any additional information required by the financial services administrator.

(d) Timing of Reserve Sales.

(1) Reserve sales shall be conducted pursuant to the schedule in Appendix C.

(A) Except for the Reserve sale immediately preceding the compliance obligation instrument surrender deadline on November 1, a Reserve sale will only be offered if the Current Auction held in the preceding quarter results in an auction settlement price greater than or equal to 60% of the Reserve Sale Price.

(B) The Reserve sale immediately preceding the compliance obligation instrument surrender on November 1 of each year will always be offered.

(C) A Reserve sale will be conducted only if at least one entity that intends to participate in the Reserve sale informs the Reserve Sale Administrator at least 20 days prior to the scheduled Reserve sale and submits a bid guarantee to the financial services administrator at least 12 days before the scheduled Reserve sale.

(2) For any Reserve sale that will be offered, the Reserve sale administrator shall provide all eligible participants with notice of the number of allowances available for sale and the terms of the sale at least 30 days prior to the sale.

(e) Reserve Sale Intent to Bid Notification Requirements. An entity that intends to participate in a reserve sale must inform the Reserve Sale Administrator at least 20 days prior to a reserve sale of its intent to bid in that reserve sale, otherwise the entity may not participate in that reserve sale.

(f) Operation of the Reserve.

(1) Determination of the Reserve Sale Price.

(A) Beginning in 2021, each year DEP will set a U.S. dollar Base Reserve Sale Price equal to the annual auction reserve price determined for that year pursuant to section 147.211(c)(3)(A), plus a fixed dollar amount. In 2021 the fixed dollar amount will equal the difference between the highest Reserve tier price for the California cap-and-trade program determined in 2020 and the Annual Auction Reserve Price for the California program determined in 2020, increased by the rate of inflation for 2020 as measured by the most recently available twelve months of the Consumer Price Index for all Urban Consumers. In each subsequent year the fixed dollar amount will be the previous year's fixed dollar amount adjusted for the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for all Urban Consumers.

(B) The Reserve Sale Price used each year will be the larger of the U.S. dollar Base Reserve Sale Price as provided in subsection (A) and the highest Reserve Sale Price (converted into U.S. dollars) in any ETS trading system to with the Pennsylvania cap-and-trade program is linked.

(2) This provision only applies to the Reserve sale immediately preceding the compliance obligation instrument surrender deadline on November 1. Pursuant to sections 147.170(i)(1) and 147.171(h)(1), allowances will be made available at the Reserve Sale Price if the amount of accepted bids exceeds the number of allowances available in the Reserve.

(A) If the quantity of allowances from sections 147.170(a) and 147.171(a) is equal to or greater than the quantity of accepted bids then all accepted bids will be filled.

(B) If the quantity of accepted bids exceeds the allowances from sections 147.170(a) and 147.171(a) allowances in the Reserve through the procedure outlined in this section.

(C) The accepted bids will be filled first with allowances from sections 147.170(a) and 147.171(a) if available.

(3) The allowances in the Reserve will be sold until all accepted bids are filled or until all the allowances in the Reserve have been sold.

(4) Allowances sold pursuant to this section are immediately eligible to satisfy any compliance obligation, regardless of the vintage of the allowance.

(g) At least 12 days before the scheduled sale, an entity intending to participate in a Reserve sale must submit to the financial services administrator a bid guarantee, payable to the financial services administrator, in an amount greater than or equal to the sum of the maximum value of the bids to be submitted by the entity.

(1) The maximum value of a set of bids is the quantity bid times the Reserve Sale Price.

(2) The bid guarantee must be in one or a combination of the following forms:

(A) Cash in the form of a wire transfer; or

(B) An irrevocable letter of credit; or

(C) A bond.

(D) All forms of bid guarantee must be in a form that may be accepted by the financial services administrator consistent with U.S. banking laws and bank practices.

(3) A bid guarantee submitted in any form other than cash must be payable within three business days of payment request.

(4) The bid guarantee will be made payable to the financial services administrator.

(5) The bid guarantee will expire no sooner than 26 days after the Reserve sale.

(6) The financial services administrator will evaluate the bid guarantee and inform the Reserve sale administrator of the value of the bid guarantee once it is found to conform to this section and is accepted by the Secretary.

(7) The Department may revise the timing of reserve sales intent to bid notification requirements and bid guarantee submittal requirements to ensure a minimum of four business days is available between the intent to bid notification and bid guarantee submittal due dates.

(h) Sale Operations.

(1) The Reserve sales window will open at 10 a.m. Eastern Standard Time (or Eastern Daylight Time, when in effect) on the day of the sale, and bids may be submitted until the window closes at 1 p.m. Eastern Standard Time (or Eastern Daylight Time, when in effect).

(A) Each bid will consist of a quantity of allowances in multiples of 1,000 allowances.

(B) An entity may submit multiple bids.

(2) The reserve sale administrator will only accept a bid for a bundle of 1,000 allowances:

(A) If acceptance of the bid would not result in violation of the holding limit pursuant to section 147.220(b); or

(B) If acceptance of the bid would not result in a total value of accepted bids for an entity greater than the value of the bid guarantee submitted by the entity pursuant to section 147.213(g).

(3) Filling Accepted Bids.

(A) For a Reserve sale not occurring immediately preceding the compliance instrument surrender on November 1, the Reserve sale will continue until either all allowances are sold from the Reserve or all the accepted bids are filled.

(B) If the sum of bids accepted by the Reserve Sale Administrator is greater than the number of allowances in the Reserve, the Reserve Sale Administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share of the total number of accepted bids by the number of allowances in the Reserve, rounding the number to the nearest whole number. To distribute any remaining allowances, the Reserve Sale Administrator will assign a random number to each entity bidding in the Reserve sale. Beginning with the lowest random number, the Reserve Sale Administrator will assign one allowance to the last bundle purchased by each entity until the remaining allowances have been assigned.

(i) Resolution of Sales.

(1) After reviewing the conduct of the sale by the Reserve sale administrator, the Department will certify whether the Reserve sale met the requirements of this article.

(2) After certification of the sale results, the Department will direct the reserve sale administrator to notify Reserve sale participants of their purchases and total purchase cost.

(3) After certification of the sale results, the Department will direct the financial services administrator to:

(A) Process cash payments from participants and deposit proceeds into the Treasury up to seven days after bidders are notified of results;

(B) Use the bid guarantee to cover payment for allowance purchases by any entity that fails to make payment within seven days after bidders are notified of results and place the proceeds into the Treasury;

(C) Return any unused cash bid guarantee; and

(D) Return any bid guarantee in a form other than cash after receipt of payment for allowances awarded.

(E) A bid guarantee in a form other than cash may be held by the financial services administrator for multiple auctions or reserve sales upon agreement by the financial services administrator and bidder.

(4) Upon determining that the financial services administrator has deposited the payment for allowances into the Treasury, the Department shall transfer the allowances purchased from the Allowance Price Containment Reserve sale into each winning bidder's compliance account.

(5) The Department shall inform each approved external GHG emissions trading system and the associated tracking system of the serial numbers of allowances sold; and

(6) The Department shall publish the sale results at [www.\\_\\_\\_\\_\\_](http://www._____).

(j) Entities registered in an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12 are not eligible to purchase from the Reserve.

§ 147.214. Auction Participation and Limitations.

(a) The Department may cancel or restrict a previously approved auction participation application or reject a new application if the Department determines that an entity has:

(1) Provided false or misleading facts;

(2) Withheld material information from its application or account application information listed in section 147.130, with material meaning information that could influence a decision by the Department;

(3) Violated any part of the auction rules pursuant to subchapter 10;

(4) Violated the registration requirements pursuant to subchapter 5; or

(5) Violated the rules governing trading pursuant to subchapter 11.

(b) If the Department determines an entity has committed any of the violations listed in section 147.214(a), then:

(1) The Department may instruct the Auction Administrator to cancel a previously approved auction application or to not accept auction applications from the entity;

(2) The Department may instruct the Auction Administrator to restrict the auction application approval for any corporate associate of the entity to prevent the purchase of allowances at auction for subsequent transfer to the violator;

(3) Any cancellation or restriction imposed by the Department may be permanent or for a specified number of auctions; and

(4) The cancellation or restriction imposed by the Department shall be in addition to any other penalties, fines, and additional remedies available at law.

(c) Disclosure of Auction Participation Information.

(1) Except as provided in section 147.214(c)(2), all entities registered into the Cap-and-Trade Program pursuant to section 147.130, their direct and indirect corporate associations, and consultants and advisors as identified in section 147.223 shall not release any of the following information regarding auction participation or reserve sale participation, as applicable:

- (A) Intent to participate, or not participate, at auction, and auction approval status;
  - (B) Bidding strategy at any auctions, including the specification of an auction settlement price or range of potential auction settlement prices at which an entity is willing to buy or sell allowances;
  - (C) Bid price or bid quantity information at past or future auctions; and
  - (D) Information on the amount of any bid guarantee provided to the financial services administrator.
- (2) Auction participation information listed in section 147.214(c)(1) may be released under the following conditions:
- (A) When the release is to other members of a direct corporate association not subject to auction participation restriction or cancellation pursuant to section 147.214(b),
  - (B) When the release is to a Cap-and-Trade Consultant or Advisor who has been disclosed to the Department pursuant to section 147.214(c)(3).
  - (C) When the release is made by a publicly-owned utility only as required by public accountability rules, statute, or rules governing publicly-owned utilities.
  - (D) When the release is to an agency that has regulatory jurisdiction over privately owned utilities in the Commonwealth of Pennsylvania of information regarding compliance instrument cost and acquisition strategy and other disclosures specifically required or authorized by the regulatory agency pursuant to any of its applicable rules, orders, or decisions. In the event of a disclosure pursuant to this section, and upon the request of the Secretary, the entity must provide within 10 business days the statutory or regulatory reference or the general order, decision, or ruling to DEP that requires the disclosure of the specific information related to bidding strategy.
  - (E) When the release is to PJM, subject to PJM's requirements regarding confidential business information.
- (3) If an entity participating in an auction has retained the services of a Cap-and-Trade Consultant or Advisor, as defined in section 147.223, regarding auction bidding strategy, then:

(A) The entity must ensure against the Consultant or Advisor transferring the entity's information to other auction participants or coordinating the bidding strategy among participants;

(B) The entity will inform the Consultant or Advisor of the prohibition of sharing information to other auction participants and ensure the Consultant or Advisor has read and acknowledged the prohibition under penalty of perjury;

(C) The Consultant or Advisor must provide the Secretary the following information:

1. Names of the entities participating in the Cap-and-Trade Program that are being advised;
2. Description of advisory services being performed; and
3. Assurance under penalty of perjury that advisor is not transferring to or otherwise sharing information with other auction participants.

(D) The information must be received by the Secretary at least 15 days prior to an auction.

## **Subchapter 11: Trading and Banking**

### § 147.220. Trading.

(a) The holding limit is the maximum number of Pennsylvania GHG allowances that may be held by an entity or jointly held by a group of entities with a direct corporate association, as defined in section 147.133 at any point in time.

#### (b) Application of the Holding Limit.

(1) The holding limit will apply to each entity registered as a covered, opt-in covered, or voluntarily associated entity pursuant to section 147.130.

(2) The holding limit calculation will not include allowances contained in exchange clearing holding accounts created pursuant to section 147.131.

(3) The holding limit calculation will not include allowances contained in Annual Allocation Holding Accounts.

(4) If the Department determines that a reported transfer request not yet recorded into the tracking system would result in an entity's holdings exceeding the applicable holding limit, then the Department shall not approve the transfer request pursuant to section 147.221(a)(1).

(5) If an entity is in compliance with the current vintage holding limit on December 31 of any year and the reclassification of future vintage allowances as current vintage allowances pursuant to section 147.220(c)(1)(C) causes it to exceed the holding limit on January 1 of the next compliance year, then:

(A) The accounts administrator will inform the entity; and

(B) The entity will have five business days to bring its account balances within the holding limit. After that, the Secretary may transfer allowances in excess of the holding limit to the Auction Holding Account for consignment to auction pursuant to section 147.210(d)(2).

(C) Allowances transferred to the Auction Holding Account for consignment will be drawn first from the entity's Holding Account and, if necessary, from the entity's Compliance Account. The order for removing allowances for consignment will be the opposite of the retirement order in section 147.156(h)(1).

#### (6) Penalties for Holding Limit Violations.

(A) For an entity that is out of compliance with the holding limit only as a result of the circumstances described in section 147.220(b)(5), penalties may be applied if the entity fails to bring its account balances under the holding limit within the five business day period allowed pursuant to section 147.220(b)(5)(B). Otherwise, penalties may be applied whenever the holding limit is exceeded.

(B) Penalties may be applied if the violation of the holding limit is not discovered until after a transfer that would exceed the holding limit is registered into the tracking system.

(c) The holding limit will be separately calculated to holdings of:

(1) Current Vintage Allowances. This category of allowances consists of:

(A) Allowances with a vintage year corresponding to the current or previous calendar years;

(B) Allowances from any vintage purchased from the Allowance Price Containment Reserve pursuant to section 147.213;

(C) Allowances originally purchased at the Advance Auction but of a vintage year equal or prior to the current calendar year; and

(D) Allowances issued by a GHG ETS program approved by DEP pursuant to section 147.241 that have no vintage;

(2) Future Vintage Allowances. This category of allowances consists of:

(A) Allowances that were purchased at the Advance Auction and still have a vintage year greater than the current calendar year; and

(B) Allowances with a vintage year greater than the current calendar year that were obtained through true-up allocation.

(d) The holding limit will be calculated for allowances qualifying pursuant to section 147.220(c)(1) as the sum of:

(1) The number given by the following formula:

$$\text{Holding Limit} = 0.1 \times \text{Base} + 0.025 \times (\text{Annual Allowance Budget} - \text{Base})$$

In which:

“Base” equals 25 million metric tons of CO<sub>2</sub>e.

“Annual Allowance Budget” is the number of allowances issued for the current budget year.

(2) Limited Exemption from the Holding Limit.

(A) The limited exemption from the holding limit (limited exemption) is the maximum number of allowances that will not be included in the holding limit calculated pursuant to section 147.220(c)(1). To qualify for inclusion within the limited exemption, allowances must be placed in the entity’s Compliance Account. The limited exemption is available to covered entities and opt-in covered entities but not to voluntarily associated entities.

(B) Calculation of the limited exemption. The limited exemption for an entity that registers as a covered entity or opt-in covered entity after the effective date of this Chapter will be calculated as twice the annual emissions contained in the emissions report for the first year that the entity has a compliance obligation, provided that the emissions data report has received a positive or qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to section 147.151.

(C) The limited exemption will be increased on November 2 of each year by the amount of emissions that generate a compliance obligation pursuant to section 147.151 that are included in the emissions data report received that year that have received a positive or qualified positive emissions data verification statement.

(D) If DEP has assigned emissions to an entity, for any year, in the absence of a positive or qualified positive emissions data verification statement, the limited exemption will be calculated using the assigned emissions. If the emission reports scheduled to be used to increase the limited exemption are not available at the time of a scheduled increase and DEP has not assigned emissions to the entity, the limited exemption will be increased by the amount of the most recently received report that has received a positive or qualified positive emissions data verification statement. If this procedure is used, the limited exemption will not be adjusted using data in the reports scheduled to be received that year until the next scheduled change in the limited exemption.

(E) After DEP has evaluated an entity's surrender of compliance instruments pursuant to section 147.156, an entity's limited exemption will be reduced to reflect any emissions obligation due during that calendar year. Following an annual surrender deadline, the limited exemption will be reduced by the amount of the annual surrender obligation due that calendar year. Following a compliance period surrender deadline, the limited exemption is reduced, starting with the oldest emissions report used to calculate the limited exemption, by the amount of emissions contained in the number of years for which a compliance obligation was due that calendar year, including emissions carried over from a previous compliance period pursuant to section 147.153(d), but not including any emissions already removed from the limited exemption following an annual surrender deadline.

(3) Petition to Adjust the Limited Exemption.

(A) Prior to October 1 of any year, a covered entity may submit to the Department evidence demonstrating an increase in emissions for that year over the previous year and request a temporary increase in the limited exemption until verified data for that year are available.

(B) The amount of the increase must be at least 250,000 metric tons CO<sub>2</sub>e on an annualized basis.

(C) The Department will review the evidence and determine whether an adjustment is needed.

(D) If an adjustment is granted, then the limited exemption for that covered entity will be increased immediately by the amount determined by the Department.

(E) When the verified emissions data are received for the year for which an adjustment was granted, the Department will use the verified emissions value when calculating the limited exemption.

(e) The holding limit will be calculated separately for each vintage year for allowances qualifying pursuant to section 147.220(c)(2) as the number given by the following formula:

$$\text{Holding Limit} = 0.1 \times \text{Base} + 0.025 \times (\text{Annual Allowance Budget} - \text{Base})$$

In which:

“Base” equals 25 million metric tons of CO<sub>2</sub>e.

“Annual Allowance Budget” is the number of Pennsylvania GHG allowances issued for a budget year.

(f) Application of Corporate Association Provisions to the Holding Limit.

(1) The total number of allowances held by a group of entities with a direct corporate association pursuant to section 147.133 must sum to less than or equal to the holding limits pursuant to sections 147.220(d) and (e).

(2) Calculation of the Limited Exemption for a Direct Corporate Association.

(A) An entity with a direct corporate association that is not part of a consolidated account will calculate its limited exemption as described in section 147.220(d).

(B) The limited exemption for a consolidated account is the sum of the limited exemption calculation for the entities consolidated into the account.

(3) Entities that are part of a direct corporate association that choose to opt out of account consolidation pursuant to sections 147.130(c)(1)(I) or 147.135(a) or (b) must allocate shares of the holding limit among themselves. This holding limit allocation results in each entity having a specified percentage share of the group’s holding limit. The sum of the percentage shares allocated among the entities must sum to one hundred percent.

(A) The primary account representatives or alternate account representatives of each of the associated entities must inform the accounts administrator of the allocation of the holding limit when registering pursuant to section 147.133.

(B) The holding limit allocation will remain in effect until the primary account representatives or alternate account representatives of each of the associated entities informs the accounts administrator of subsequent changes to the allocation of the holding limit.

(g) The holding limit in section 147.220(a) shall include holdings of any allowances issued by a jurisdiction operating an External GHG ETS to which Pennsylvania has linked pursuant to subchapter 12.

(h) The “Annual Allowance Budget” in section 147.220(d) is calculated as the sum for the current budget year of the annual compliance budgets of Pennsylvania and all External

GHG ETS programs to which Pennsylvania has linked pursuant to subchapter 12. The “Annual Allowance Budget” in section 147.220(e) is calculated as the sum for a budget year of the annual compliance budgets of Pennsylvania and all External GHG ETS programs to which Pennsylvania has linked pursuant to subchapter 12.

§ 147.221. Conduct of Trade.

(a) Transfers of Compliance Instruments Between Accounts.

(1) Except when a transfer is undertaken by the Department, the accounts administrator will not register a transfer of compliance instruments between accounts into the tracking system until the administrator receives a transfer request that the Department has determined meets the requirements of this article.

(A) To initiate the process, the primary account representative or an alternate account representative of the source account for the transfer must submit a transfer request to the accounts administrator.

(B) The primary account representative or another alternate account representative for the same entity must confirm the transfer request to the accounts administrator within two days of the initial submission of the transfer request.

(C) The primary account representative or an alternate account representative for the destination account must confirm the transfer request to the accounts administrator within the time remaining in the three days following the initial submission of the transfer request in section 147.221(a)(1)(A).

(D) The Department must determine whether the transfer request and the transaction for which the transfer request was submitted meet the requirements of this chapter based on the information available at the time of approval.

(2) The following transfers do not require confirmation by an account representative of the destination account pursuant to section 147.221(a)(1)(C).

(A) Transfers initiated by the Department.

(B) Transfers between a single entity’s holding and compliance accounts.

(3) The parties to a transfer will be in violation and penalties may apply if the above process is completed:

(A) More than three days after the initial submission of the transfer request; or

(B) More than three days after the expected termination date of the transaction agreement for which the transfer request is submitted.

(4) Except for transfers between direct corporate associates disclosed pursuant to section 147.133, an entity may not submit a transfer request to another registered entity without an existing written or recorded oral transaction agreement between the registered entities authorizing a transfer.

(b) Information Requirements for Transfer Requests. The following information must be reported to the accounts administrator as part of a transfer request before any transfer of allowances can be recorded on the tracking system:

(1) The following information must be entered into the tracking system for all transfer requests:

(A) Holding account number of the source account and identification of two individuals who are the primary account representative and/or alternate account representatives initiating the transfer request.

(B) Account number of destination account.

(C) Type, quantity, and vintage of compliance instrument.

(2) The transfer request must identify the type of transaction agreement for which the transfer request is being submitted, selecting one of the following three types:

(A) Over-the-counter agreement for the sale of compliance instruments for which delivery will take place no more than three days from the date the parties enter into the transaction agreement.

(B) Over-the counter agreement for the sale of compliance instruments for which delivery is to take place more than three days from the date the parties enter into the transaction agreement or that involve multiple transfers of compliance instruments over time or the bundled sale of compliance instruments with other products.

(C) Exchange agreements for the sale of compliance instruments through any contract arranged through an exchange or Board of Trade.

(3) A transfer request submitted for an over-the-counter agreement for the sale of compliance instruments for which delivery will take place no more than three days from the date the parties enter into the transaction agreement must provide the following information:

(A) Date the entity entered into the transaction agreement.

(B) Expected Termination Date of the transaction agreement. If completion of the transfer request process is the last term of the transaction agreement to be completed, the date the transfer request is submitted should be entered as the Expected Termination Date. If there are financial, contingency, or other terms to be settled after the transfer request is completed, the date those terms are expected to be settled should be entered as the Expected Termination Date. If the transaction agreement does not specify a date for the settlement of financial, contingency, or other terms that would be completed after the transfer request is completed, the entity may enter the Expected Termination Date as “Not Specified”.

(C) Price of the compliance instrument in U.S. dollars or Canadian dollars.

(4) A transfer request submitted for an over-the-counter agreement for the sale of compliance instruments for which delivery is to take place more than three days from the date the parties enter into the transaction agreement or that involves multiple transfers of compliance instruments over time or incorporates compliance instrument requirements with other product sales or purchases, must provide the following information:

(A) Date the entity entered into the transaction agreement.

(B) Expected Termination Date of the transaction agreement. If completion of the transfer request process is the last term of the transaction agreement to be completed, the date the transfer request is submitted should be entered as the Expected Termination Date. If there are financial, contingency, or other terms to be settled after the transfer request is completed, the date those terms are expected to be settled should be entered as the Expected Termination Date. If the transaction agreement does not specify a date for the settlement of financial, contingency, or other terms that would be completed after the transfer request is completed, the entity may enter the Expected Termination Date as “Not Specified”.

(C) Whether the transaction agreement provides for further compliance instrument transfers after the current transfer request is completed.

(D) Whether the transaction agreement provides for transfers of other products.

(E) If the transaction agreement specifies a fixed price for the compliance instruments, provide the price in U.S. dollars or Canadian dollars.

(F) If the transaction agreement sets the price as a cost base plus a margin, then provide the cost base and the margin.

(G) If the transaction agreement does not determine the price using one of the above formats, provide a brief description of the pricing method as well as the price resulting from the pricing method for the specific transfer.

(5) A transfer request submitted for an Exchange Agreement must provide the following information:

(A) Identify the exchange where the transaction is conducted.

(B) Identify the contract description code assigned by the exchange to the contract.

(C) Date of close of trading for the contract.

(D) Price at close of trading for the contract.

(6) If the transaction agreements do not contain a price for compliance instruments, entities may enter a price of zero into the transfer request if the transfer request is submitted to fulfill one of the following transaction agreement types and the entity discloses the agreement type in the transfer request.

(A) The proposed transfer is between entities with a direct corporate association.

(B) The proposed transfer is from an entity's holding account to its compliance account.

(C) The proposed transfer results from a transaction agreement that incorporates compliance instrument requirements with other product sales or purchases, and specifies a total cost or cost basis for the transaction but does not specify a price or cost basis for the sale of the compliance instruments alone.

(D) The proposed transfer is from an electricity user to an entity operating a generation facility from which the utility obtains electricity pursuant to a long term power purchase agreement.

(E) The proposed transfer is to satisfy a transaction agreement that requires the production of a new DEP-issued offset credit and the transaction agreement does not specify a price for the DEP-issued offset credit.

(c) Parties to the transfer request agree to provide documentation about the transaction agreement for which the transfer request was submitted within five days of a request of the Department.

(1) The request for documentation may include the transaction agreement and related transaction confirmations that resulted in the transfer and must be sufficient to verify the information entered by the account representative into the fields required for the transfer request.

(2) The Department will treat the documentation as confidential business information to the extent permitted by law.

(d) Transfers Involving Exchange Clearing Holding Accounts.

(1) A request to transfer compliance instruments to an exchange clearing holding account will list the exchange clearing holding account as the destination account.

(2) All of the compliance instruments received by an exchange clearing holding account must be transferred to one or more destination accounts within five days of receiving them.

(3) A request to transfer compliance instruments to or from an exchange clearing holding account does not require confirmation by an account representative of the destination account pursuant to section 147.221(a)(1)(C).

(4) The entity receiving a transfer from an exchange clearing holding account is solely responsible for violations of the holding limit. If a transfer from an exchange clearing holding account results in a violation of the holding limit, then the Department will prevent the receiving entity from transferring allowances to another entity until the Department has investigated and determined the cause of the violation. The accounts administrator will allow the entity to transfer allowances to its compliance account if the entity can accommodate them

within its limited exemption. If the exchange clearing holding account cannot complete a transfer to a destination account, the operator of the exchange clearing holding account will notify DEP of the circumstances of the transfer within 3 calendar days of the failure to complete the transfer.

(e) Protection of Confidential Information. The Department will protect confidential information to the extent permitted by law by ensuring that the accounts administrator:

(1) Releases information on the transfer price and quantity of compliance instruments in a manner that is timely and maintains the confidentiality of the parties to a transfer;

(2) Except as needed for market oversight and investigation by the Department, protects as confidential all other information obtained through transfer requests;

(3) Protects as confidential the quantity and serial numbers of compliance instruments contained in individual entity holding accounts; and

(4) Releases information on the quantity of compliance instruments contained in compliance accounts in a timely manner that maintains the confidentiality of the identity of account holders.

(f) General Prohibitions on Trading.

(1) An entity may purchase and hold compliance instruments for later transfer to members of a direct corporate association. However, an entity cannot acquire allowances and hold them in its own holding account on behalf of another entity, including the following restrictions:

(A) An entity may not hold allowances in which a second entity has any ownership interest.

(B) An entity may not hold allowances pursuant to an agreement that gives a second entity control over the holding or planned disposition of allowances while the instruments reside in the first entity's accounts, or control over the acquisition of allowances by the first entity. Provisions specifying a date to deliver a specified quantity of compliance instruments, or specifying a procedure to determine a quantity of compliance instruments for delivery and/or a delivery date, do not violate the prohibition.

(2) A trade involving, related to, or associated with any of the following are prohibited:

(A) Any manipulative or deceptive device in violation of this chapter;

(B) A corner or an attempt to corner the market for a compliance instrument;

(C) Fraud, or an attempt to defraud any other entity;

(D) A false, misleading or inaccurate report concerning information or conditions that affects or tends to affect the price of a compliance instrument;

(E) An application, report, statement, or document required to be filed pursuant to this chapter which is false or misleading with respect to a material fact, or which omits to state a material fact necessary to make the contents therein not misleading; or

(F) Any trick, scheme, or artifice to falsify or conceal a material fact, including use of any false statements or representations, written or oral, or documents made by or provided to an entity on or through which transactions in compliance instruments occur, are settled, or are cleared.

(G) A fact is material if it could probably influence a decision by the Department.

(g) Restrictions on Registered Entities. If an entity registered pursuant to section 147.130 violates any provision specified in this article the Department may:

(1) Reduce the number of compliance instruments a covered entity or opt-in covered entity may have in its holding account below the amount allowed by the holding limit pursuant to section 147.220;

(2) Increase the annual surrender obligation for a covered entity or an opt-in covered entity to a percentage of its reported and verified or assigned emissions above the 30% obligation pursuant to section 147.155;

(3) Suspend or revoke the registration of opt-in covered entities, voluntarily associated entities, and other entities registered pursuant to section 147.130;

(A) A registered entity that has had its holding account revoked or suspended may not hold compliance instruments or register with the accounts administrator for another set of accounts in any capacity. If registration is revoked or suspended the entity must sell or

voluntarily retire all compliance instruments in its holding account within 30 days of revocation; and

(B) If registration is revoked or suspended and the entity fails to sell or voluntarily retire all compliance instruments in its holding account within 30 days of revocation, the accounts administrator will transfer the remaining instruments into the Auction Holding Account for sale at auction on behalf of the entity pursuant to section 147.210(d);

(4) Limit or prohibit transfers in or out of the holding account; or

(5) All of the above.

(h) Information Reporting by Holders of Exchange Clearing Holding Accounts.

(1) Holders of exchange clearing holding accounts must make the exchange's transaction records underlying the submission of a transfer request on CITSS available to the Department within 10 calendar days of the Department's request.

(2) Holders of exchange clearing holding accounts must retain transaction records containing the information listed in 147.221(b) for 10 years.

(3) Holders of exchange clearing holding accounts are not required to include the information listed in 147.221(b)(3), (4), and (6) in transfer requests to the accounts administrator.

(i) Transfer Request Deficiencies

(1) If the accounts administrator detects a deficiency in a transfer request before it is recorded into the tracking system:

(A) The accounts administrator will inform the entities submitting the request that the transfer request is deficient and inform the Department of the deficiency;

(B) The accounts administrator will inform the entity responsible for the deficiency of the specific problem to be remedied.

(C) The entities submitting the transfer request may resubmit the request with the deficiency corrected within the time limit set pursuant to sections 147.221(a)(1)(C), 147.221(a)(3), or 147.221(a)(4); and

(D) If the entities fail to submit an acceptable transfer request within the time limit, then they must either withdraw the transfer request or submit a new transfer request. Penalties may still apply pursuant to sections 147.221(a)(3) or (a)(4).

(2) If the accounts administrator detects a deficiency in a transfer request after it is recorded into the tracking system:

(A) The accounts administrator will inform the entities submitting the request that the transfer request is deficient and inform the Department of the deficiency;

(B) If the deficiency is based on the information submitted by the representative of the source account, the Department will inform the submitting representative of the specific deficiency;

(C) If the deficiency is a violation of the holding limit, the Department will inform the primary account representative for the account listed on the transfer request as the destination account of the deficiency; and

(D) If the entities that submitted the transfer request cannot correct the deficiency within five business days after notification by the accounts administrator, the Department may instruct the accounts administrator to reverse the transfer. The correction of the deficiency within five business days ensures the Secretary will not immediately reverse the transfer, but does not prevent the Department from applying penalties for the underlying violations.

#### § 147.222. Banking, Expiration, and Voluntary Retirement.

(a) Allowances Issued for a Current or Previous Compliance Period. A PA GHG allowance or an allowance issued by an approved GHG ETS pursuant to subchapter 12 may be held (“banked”) by an entity registered pursuant to section 147.130.

(b) Allowances Issued for a Future Compliance Period. A PA GHG Allowance or an allowance approved pursuant to subchapter 12 issued from an allowance budget year within a future compliance period may be held by an entity registered pursuant to section 147.130.

(c) Expiration of Compliance Instruments. A Pennsylvania compliance instrument does not expire and is not retired in the tracking system until:

- (1) It is surrendered by a covered entity or opt-in covered entity and retired by the Secretary;
- (2) An entity voluntarily submits the instrument to the Secretary for retirement;
- (3) The instrument is retired by an approved external GHG emissions trading system to which the Cap-and-Trade Program is linked pursuant to subchapter 12; or
- (4) It is a compliance instrument that has not been sold at auction or otherwise distributed and is retired as otherwise provided in this chapter.

(d) Voluntary Retirement of Compliance Instruments.

(1) An entity registered pursuant to section 147.130 may voluntarily submit any compliance instrument for retirement.

(2) To voluntarily retire a compliance instrument, the registered entity submits a transfer request naming the DEP Retirement Account as the destination account.

(A) For the sole purpose of a voluntary transfer to the Retirement Account, a transfer request may be based on a transaction agreement with an unregistered entity as long as that entity is not registered into an external GHG program or ETS, regardless of whether the external GHG program or ETS has a Retirement-Only Agreement with DEP.

(B) An entity may not transfer more than 10,000 allowances per year to the Retirement Account based on transaction agreements with a single entity without the prior approval of the Department. This limitation shall not apply to any transfer occurring pursuant to a supplemental environmental project approved by a court, the Department, the United States Environmental Protection Agency, or any other state or province or other regulatory authority with an ETS program linked to the Pennsylvania cap-and-trade program and such transfers shall be deemed approved without further Department approval.

(C) A transfer request that is based on a transaction agreement with an unregistered entity that requires immediate delivery to the Retirement Account does not violate the prohibitions contained in section 147.221(f)(1).

§ 147.223. Disclosure of Cap-and-Trade Consultants and Advisors.

(a) A “Cap-and-Trade Consultant or Advisor” is a person or entity that is not an employee of an entity registered in the Cap-and-Trade Program, but is providing the services listed in section 147.279(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation in relation to the Cap-and-Trade Program or MRR and specifically for the entity registered in the Cap-and-Trade Program, regardless if the Consultant or Advisor is acting in the capacity of an offset or MRR verifier.

(b) An entity employing Cap-and-Trade Consultants or Advisors defined pursuant to 147.223(a) must disclose the following information for each Cap-and-Trade Consultant or Advisor:

(1) Information to identify the Cap-and-Trade Consultant or Advisor, including:

(A) Name;

(B) Contact information;

(C) Physical work address of the Cap-and-Trade Consultant or Advisor; and

(D) Employer, if applicable.

(c) The entity must disclose the information pursuant to section 147.223(b) to the Secretary:

(1) When registering pursuant to section 147.130;

(2) Within 30 days of entering into a contract with a Cap-and-Trade Consultant or Advisor pursuant to section 147.223(a);

(3) Within 30 days of a change to the information disclosed on Consultants or Advisors.

## **Subchapter 12: Linkage to External Greenhouse Gas Emissions Trading Systems**

### § 147.240. General Requirements.

(a) A compliance instrument issued by an external greenhouse gas emissions trading system (GHG ETS) may be used to meet the requirements of this Article if the external GHG ETS and the compliance instrument have been approved pursuant to this section, including approval by rule, or section 147.241.

(b) Compliance instruments issued by the following authorities or jurisdictions may be used to meet the requirements of this Article without further action under section 147.241 provided those authorities or jurisdictions agree to accept PA GHG allowances to satisfy compliance obligations under their respective programs (subject to section 147.240(d)), as long as the Department determines that these programs continue to reduce their respective emissions caps on a trajectory to achieve a balance of GHG emissions and natural uptake of GHGs or sequestration in long term sinks (i.e. net zero emissions) by the fifth decade of the Twenty-first Century and the requirements of the programs do not change in a way that would promote leakage:

(1) The states participating in the Regional Greenhouse Gas Initiative (“RGGI”);

(2) The State of California and linked programs, including, without limitation the Canadian Provinces of Quebec and Ontario, so long as they remain linked with the California cap-and-trade program;

(3) The State of Virginia’s cap-and-trade program, so long as it is adopted in a form that permits trading with entities subject to the RGGI program; and

(4) Any authority or jurisdiction with an ETS program that has been accepted by California, RGGI or Virginia as a linked or equivalent program such that the ETS compliance instruments issued by that authority or jurisdiction may be used to satisfy the requirements of the California, RGGI or Virginia programs.

(c) The Department shall make a finding that the programs identified under this section continue to meet the requirements of section 147.240(b) and have not changed in a way that the findings under section 147.241(a) could not be satisfied six months before the commencement of each compliance period. The Department shall publish the finding in the

Pennsylvania Bulletin. If the Department finds that any external GHG ETS program no longer meets said requirements, compliance instruments issued by said external GHG ETS program after said finding may no longer be used to satisfy the requirements of this Chapter.

(d) The Department shall, until the end of the first full three-year compliance period following the effective date of this chapter, accept compliance instruments issued by any authority or jurisdiction identified in section 147.240(b), without a requirement that that authority or jurisdiction accept Pennsylvania compliance instruments, if the compliance instruments of the other jurisdiction or authority may satisfy requirements for the surrender of compliance instruments applicable to electricity generating units supplying electricity within PJM. The compliance instruments governed by this subsection shall be limited to compliance instruments with a vintage year after the effective date of this chapter and before the end of the first full compliance period. Any compliance instruments accepted pursuant to this subsection shall be permanently retired in accordance with the requirements of the program that issued those compliance instruments.

§ 147.241. Procedures for Approval of Other External GHG ETS.

(a) The Department may approve a linkage with an external GHG ETS in addition to those set forth in section 147.240(b) after making the following findings and publishing the findings in the Pennsylvania Bulletin:

(1) The external GHG ETS includes an emissions cap that is reduced on a trajectory to achieve a balance of GHG emissions and natural uptake of GHGs or sequestration in long term sinks (i.e. net zero emissions) by the fifth decade of the Twenty-first Century;

(2) At a minimum, the external GHG ETS requires the surrender of compliance instruments from all fossil-fuel-fired electricity generating units in the jurisdiction;

(3) The external GHG ETS does not authorize the creation and use of emissions offsets from sectors that are not subject to the requirement for surrender of compliance instruments under the external program but are subject to the requirements of this chapter unless the external program's emissions cap for covered sectors is reduced commensurately with the provision for the creation and use of offsets;

(4) The external GHG ETS will accept Pennsylvania allowances to satisfy its requirements;

(5) Linkage with the external GHG ETS will not result in leakage that will undermine the effectiveness of the Pennsylvania program;

(6) The external GHG ETS includes controls on issuance, transfers and holding of compliance instruments consistent with those in this Chapter, so that linkage will not undermine the effectiveness of the Pennsylvania program.

(b) Compliance instruments issued by a linked GHG ETS may be used to meet a compliance obligation under this chapter subject to any conditions or limitations established by the Department in its approval.

(c) The Department shall make a finding that the programs identified under this section continue to meet the requirements of section 147.240(b) and have not changed in a way that the findings under section 147.241(a) could not be satisfied six months before the commencement of each compliance period. The Department shall publish the finding in the Pennsylvania Bulletin. If the Department finds that any external GHG ETS program no longer meets said requirements, compliance instruments issued by said external GHG ETS program after said finding may no longer be used to satisfy the requirements of this Chapter.

§ 147.242. Interchange of Compliance Instruments with Linked External Greenhouse Gas Emissions Trading Systems.

(a) Once a linkage is approved (including automatic approval by rule), a compliance instrument issued by the approved external GHG ETS, as specified in this section, may be used to meet a compliance obligation under this Chapter.

(b) An allowance issued by an approved external GHG ETS and specified in this section is not subject to the quantitative usage limit specified in section 147.154.

(c) An offset credit or sector-based credit issued by an external GHG ETS is subject to the quantitative usage limit specified in section 147.154, when used to meet a compliance obligation under this Article.

(d) Once a linkage is approved, a compliance instrument issued by Pennsylvania may be used to meet a compliance obligation within the approved External GHG ETS.

(e) Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in Pennsylvania.

(f) The administrator of the approved External GHG ETS must agree to inform the Department of any of the serial numbers of Pennsylvania compliance instruments that the External GHG ETS accepts for compliance.

(g) The Department will agree to inform the appropriate official in the approved External GHG ETS of any of the serial numbers of compliance instruments accepted by Pennsylvania for compliance.

(h) The Department will register into the Retirement Account compliance instruments issued by Pennsylvania that are used for compliance within the approved External GHG ETS, along with information identifying the External GHG ETS actually retiring the compliance instruments.

§ 147.243. Linked External GHG ETS or External GHG Program.

(a) Covered or opt-in covered entities may use compliance instruments issued by an external GHG ETS to which the Department has approved a Retirement-Only Limited Linkage pursuant to section 147.244 to meet their compliance obligation under this chapter.

(b) Entities registered in an external GHG Program may arrange to retire Pennsylvania compliance instruments for purposes of compliance in their own external GHG program if DEP has approved a Retirement-Only Agreement with the external GHG Program pursuant to section 147.245.

§ 147.244. Retirement-Only Limited Linkage.

(a) The Department may approve a Retirement-Only Limited Linkage with an external GHG ETS pursuant to the procedure in section 147.241.

(1) A Retirement-Only Limited Linkage allows Pennsylvania covered or opt-in covered entities to arrange for the retirement of compliance instruments in the linked GHG ETS and to obtain approval from the Department for credit towards their compliance obligation.

(2) The Department approval will specify the types of compliance instruments from the linked GHG ETS that may be used to meet a compliance obligation under this chapter.

(3) The Department approval may specify limitations on the use of compliance instruments from the linked GHG ETS, such as quantitative use restrictions.

(b) Administration.

(1) The linkage agreement will ensure that purchases, transfers, and retirements of compliance instruments by Pennsylvania registered entities in the linked GHG ETS will follow the rules of that system.

(2) The linkage agreement will require the external GHG ETS to provide the accounts administrator with documentation on the compliance instruments retired by Pennsylvania entities on the linked GHG ETS at the time of each Pennsylvania compliance event.

§ 147.245. Retirement-Only Agreements With External GHG Program.

(a) The Department may approve a Retirement-Only Agreement with an external GHG program.

(1) A Retirement-Only Agreement allows entities registered with an external GHG program to arrange retirement of Pennsylvania compliance instruments for credit towards their compliance obligation in the external GHG program.

(2) The Retirement-Only Agreement will specify the types of compliance instruments eligible for retirement.

(3) The Retirement-Only Agreement may contain limitations on the retirement of Pennsylvania compliance instruments by entities registered with the external GHG program.

(b) Administration.

(1) The Accounts Administrator will create an External GHG Program Holding Account under the control of the Department pursuant to section 147.131(b)(7).

(2) Entities registered with an external GHG program may not register with Pennsylvania for the purpose of retiring Pennsylvania compliance instruments for compliance credit with their own GHG program, regardless of whether that program has a Retirement-Only Agreement or other linkage agreement with Pennsylvania.

(c) Conduct of Transactions Agreements and Transfer Requests Under a Retirement-Only Agreement.

(1) An entity registered with an external GHG program with a Retirement-Only Agreement may enter into a purchase transaction agreement with an entity registered in Pennsylvania requiring the Pennsylvania entity to transfer a number of eligible Pennsylvania compliance instruments to the External GHG Program Holding Account.

(2) The Pennsylvania entity will file a transfer request identifying the External GHG Program Holding Account as the destination account. The transfer request will include a field containing the purchasing entity's ID code as specified by the entity's external GHG program.

(3) Upon receipt and verification that the transfer has met the requirements of this Article, the Department will transfer the compliance instruments to the Retirement Account. This transfer request will include the purchasing entity's ID code as specified by the entity's external GHG program.

(4) The accounts administrator will provide the administrator of the external GHG program with documentation on the compliance instruments retired in Pennsylvania's tracking system by entities registered into the external GHG program when the administrator of the external GHG program needs the information to conduct a compliance event.

### **Subchapter 13: DEP Offset Credits and Registry Offset Credits**

#### § 147.270. General Requirements for DEP Offset Credits and Registry Offset Credits.

An Offset Project Operator or Authorized Project Designee must ensure the requirements for DEP offset credits and registry offset credits are met as follows:

- (a) A registry offset credit must:
  - (1) Represent a GHG emission reduction or GHG removal enhancement that is real, additional, quantifiable, permanent, verifiable, and enforceable;
  - (2) Result from the use of a Compliance Offset Protocol that meets the requirements of section 147.272 and is either approved by the Department pursuant to section 147.271 approved by any ETS trading system to with the Pennsylvania cap-and-trade program is linked;
  - (3) Result from an offset project that meets the requirements specified in section 147.273;
  - (4) Result from an offset project that is listed pursuant to section 147.275;
  - (5) Result from an offset project that follows the monitoring, reporting and record retention requirements pursuant to section 147.276;
  - (6) Result from an offset project that is verified pursuant to sections 147.277 through 147.278; and
  - (7) Be issued pursuant to section 147.280.1 by an Offset Project Registry approved pursuant to section 147.286.
- (b) A DEP offset credit must meet the requirements in sections 147.270(a)(1) through (a)(6) and:
  - (1) Be issued pursuant to section 147.281.1;
  - (2) Be registered pursuant to section 147.282; and
  - (3) When used for compliance under this article, be subject to the quantitative usage limit pursuant to section 147.154.

#### § 147.271. Procedures for Approval of Compliance Offset Protocols.

(a) The Department shall provide public notice of and opportunity for public comment prior to approving any Compliance Offset Protocols, including updates or modifications to existing Compliance Offset Protocols.

(b) All Compliance Offset Protocols shall be reviewed and periodically revised, if needed, in compliance with the Pennsylvania Administrative Procedure Act, if applicable.

§ 147.272. Requirements for Compliance Offset Protocols.

(a) To be approved by the Department, a Compliance Offset Protocol must:

(1) Accurately determine the extent to which GHG emission reductions and GHG removal enhancements are achieved by the offset project type;

(2) Establish data collection and monitoring procedures relevant to the type of GHG emissions sources, GHG sinks, and GHG reservoirs for that offset project type;

(3) Establish a project baseline that reflects a conservative estimate of business-as-usual performance or practices for the offset project type;

(4) Account for activity-shifting leakage and market-shifting leakage for the offset project type, unless the Compliance Offset Protocol stipulates eligibility conditions for use of the Compliance Offset Protocol that eliminate the risk of activity-shifting and/or market-shifting leakage;

(5) Account for any uncertainty in quantification factors for the offset project type;

(6) Ensure GHG emission reductions and GHG removal enhancements are permanent;

(7) Include a mechanism to ensure permanence of GHG removal enhancements for sequestration offset project types;

(8) Establish the length of the crediting period pursuant to section 147.272(b) for the relevant offset project type;

(9) Demonstrate that the emissions reductions created by the project will not otherwise reduce demand for allowances; and

(10) Establish the eligibility and additionality of projects using standard criteria, and quantify GHG reductions and GHG removal enhancements using standardized baseline assumptions, emission factors, and monitoring methods.

(b) Crediting Periods. The crediting period for a non-sequestration offset project must be no less than 7 years and no greater than 10 years, unless specified otherwise in a Compliance Offset Protocol. The crediting period for a sequestration offset project must be no less than 10 years and no greater than 30 years.

(c) Geographic Applicability. A Compliance Offset Protocol must specify where the protocol is applicable. The geographic boundary must be within the United States or United States Territories.

§ 147.273. Requirements for Offset Projects Using DEP Compliance Offset Protocols.

(a) General Requirements for Offset Projects. To qualify under the provisions set forth in this article, an Offset Project Operator or Authorized Project Designee must ensure that an offset project:

(1) Meets all the requirements in a Compliance Offset Protocol approved by the Board pursuant to section 147.271;

(2) Meets the following additionality requirements, as well as any additionality requirements in the applicable Compliance Offset Protocol, as of the date of Offset Project Commencement:

(A) The activities that result in GHG reductions and GHG removal enhancements are not required by law, regulation, or any legally binding mandate applicable in the offset project's jurisdiction, will not reduce demand for allowances in any other respect, and would not otherwise occur in a business-as-usual scenario;

(B) The Offset Project Commencement date occurs after the effective date of this chapter, unless otherwise specified in the applicable Compliance Offset Protocol, except as provided in section 147.273(c); and

(C) The GHG reductions and GHG removal enhancements resulting from the offset project exceed the project baseline calculated by the applicable version of the Compliance Offset

Protocol under which the offset project has been listed pursuant to section 147.275 as set forth in the following:

1. California Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011, and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014, which are hereby incorporated by reference;
2. California Compliance Offset Protocol Livestock Projects, October 20, 2011, and Compliance Offset Protocol Livestock Projects, November 14, 2014, which are hereby incorporated by reference;
3. California Compliance Offset Protocol Urban Forest Projects, October 20, 2011, which is hereby incorporated by reference;
4. California Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014, and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015, which are hereby incorporated by reference;
5. California Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014, which is hereby incorporated by reference;
6. Offset Projects approved by the RGGI program to the extent that they relate to projects that they relate to projects' whose emissions are not covered by this regulation and will not otherwise reduce demand for allowances, including those for landfill methane capture, sulfur hexafluoride, forestry or afforestation, end-use efficiency in a jurisdiction that does not require the surrender of allowances for fossil fuel distribution, and avoided agricultural methane;
7. A compliance offset protocol that DEP shall develop before the effective date of this regulation for offsets created by abandoned minelands reclamation, including the control of mine fires and the control and prevention of fires in abandoned gob and culm piles, which may include the credit for projects initiated before the effective date of this chapter;
8. A compliance offset protocol that DEP shall develop within two years of the proposal of this regulation for offsets created by the capture and geologic sequestration of emissions from the combustion of biomass;
9. All Offset Project hereafter approved by any ETS trading system to with the Pennsylvania cap-and-trade program is linked, provided that the project does not result in double

counting by providing an allowance for a project whose implementation will otherwise reduce demand for that allowance.

(D) The Offset Project Operator or Authorized Project Designee may transition an offset project to the most recently incorporated version of the Compliance Offset Protocol by updating the listing information in an Offset Project Data Report pursuant to section 147.276. Projects may only transition at the initial submission of the Offset Project Data Report for a reporting period to DEP or the Offset Project Registry. An offset project that transitions to a new version of the Compliance Offset Protocol during a crediting period will continue in the same crediting period and not start a new crediting period.

(E) The offset project must meet all the requirements in this Regulation for the applicable version of the Compliance Offset Protocol under which the offset project has been listed pursuant to 147.275 or under which the offset project has been transitioned to pursuant section 147.273(a)(2)(D).

(F) The applicable version of the Compliance Offset Protocol is the version under which the offset project has been listed pursuant to section 147.275 or transitioned to pursuant section 147.273(a)(2)(D).

(G) If any law, regulation, or legally binding mandate requiring GHG emission reductions or GHG removal enhancements comes into effect in Pennsylvania, in a linked jurisdiction pursuant to section 147.243, or in a jurisdiction outside Pennsylvania, affecting the offset project, during an offset project's crediting period, then the offset project is eligible to continue to receive DEP offset credits for those GHG emission reductions and GHG removal enhancements for the remainder of the offset project's crediting period, but the offset project may not renew that crediting period. If an offset project has not been listed prior to the law, regulation, or legally binding mandate going into effect, or the law, regulation, or legally binding mandate goes into effect before the offset project's crediting period renews, then only emission reductions or removal enhancements that are in excess of what is required to comply with those laws, regulations, and/or legally binding mandates are eligible for DEP offset credits.

(3) Is located in the United States or United States Territories.

(b) Local, Regional, State, and National Regulatory Compliance and Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, state, and national requirements on environmental impact assessments that apply based on the offset project location. In addition, an offset project must also fulfill all local, regional, state, and national environmental and health and safety and land use laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period, although whether such enforcement action has occurred is not the only consideration DEP may use in determining whether a project is out of regulatory compliance.

(1) An offset project using a protocol from sections 147.273(a)(2)(C)1., 2., or 5. that is out of regulatory compliance is not eligible to receive DEP or registry offset credits for GHG reductions or GHG removal enhancements that occurred during the period that the offset project is out of regulatory compliance. The Offset Project Operator or Authorized Project Designee must provide documentation indicating the beginning and end of the time period that the offset project is out of regulatory compliance to the satisfaction of DEP.

(A) The time period that the offset project is out of regulatory compliance begins on the date that the activity which led to the offset project being out of regulatory compliance actually began and not necessarily the date that the regulatory oversight body first became aware of the issue. For determining the initial date of the offset project being out of regulatory compliance the Offsets Project Operator or Authorized Project Designee must provide one or more of the following to DEP:

1. Documentation from the relevant local, state, or federal regulatory oversight body that expressly identifies the precise start date of the offset project being out of regulatory compliance. Documentation must include evidence of the start date such as CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable method to aid in the identification of the precise start date; or

2. Documentation of the date of the last inspection by the relevant local, state, or federal regulatory oversight body that did not indicate the offset project was out of regulatory

compliance for the activity in question. The project will be considered out of regulatory compliance beginning the day after the inspection.

3. If the last inspection described in section 147.273(b)(1)(A)2. above was prior to the beginning of the Reporting Period, or if documentation regarding the date the project was out of regulatory compliance is not provided as set forth in sections 147.273(b)(1)(A)(1) or (2) above to the satisfaction of DEP, then the time period that the offset project is out of regulatory compliance, for purposes of the Reporting Period, commences at the beginning of the Reporting Period.

(B) For determining the end date when the offset project returned to regulatory compliance, the Offset Project Operator or Authorized Project Designee must provide documentation from the relevant local, state, or federal regulatory oversight body stating that the offset project is back in regulatory compliance. The date when the offset project is deemed to have returned to regulatory compliance is the date that the relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance. This date is not necessarily the date that the activity ends or the device is repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the regulatory oversight body, as determined by the regulatory oversight body. If the relevant regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of DEP, then for purposes of the applicable Reporting Period, the Offset Project Operator or Authorized Project Designee must use the end of the Reporting Period for the end date when the offset project returned to regulatory compliance.

(C) Nothing in this section precludes the invalidation of DEP offset credits issued for previous or subsequent Reporting Periods if DEP determines that the offset project was out of regulatory compliance in previous or subsequent Reporting Periods. The offset project will continue to be deemed out of regulatory compliance in subsequent Reporting Periods until the Offset Project Operator or Authorized Project Designee provides the documentation demonstrating regulatory compliance identified in section 147.273(b)(1)(B) to DEP.

(D) DEP's written determination and any supporting documents from the regulatory oversight body relating to the offset project being out of regulatory compliance and the timeframe identified for removal from the Reporting Period will be made public.

(E) For determining GHG emission reductions or GHG removal enhancements for the Reporting Period as modified to reflect any period the offset project was out of regulatory compliance, the Offset Project Operator or Authorized Project Designee must remove the days when the project was out of regulatory compliance from the modeled or measured project baselines for projects using a protocol in sections 147.273(a)(2)(C)2. or 5. The entire calendar day during which any portion of the project was not in regulatory compliance must be removed from the project baseline. For projects using a protocol in section 147.273(a)(2)(C)1., the entire destruction(s) under a Certificate of Destruction that contains any time the project is out of regulatory compliance must be removed.

(2) An offset project using a protocol from sections 147.273(a)(2)(C)3., 4., or 6., is not eligible to receive DEP or registry offset credits for GHG reductions or GHG removal enhancements for the entire Reporting Period if the offset project is not in compliance with regulatory requirements directly applicable to the offset project during the Reporting Period.

§ 147.274. Authorized Project Designee.

(a) General Requirements for Designation of Authorized Project Designee. An Offset Project Operator may designate an entity as an Authorized Project Designee at the time of offset project listing or any time after offset project listing as long as it meets the requirements of section 147.274(b).

(1) The Offset Project Operator may assign ownership rights of DEP offset credits or registry offset credits to the following entities at the time of registry offset credit or DEP offset credit issuance pursuant to sections 147.280.1 and 147.281, respectively:

- (A) Authorized Project Designee; or
- (B) Any other third party not otherwise prohibited by this article.

(2) The director or officer, as identified in section 147.130(c)(1)(B), of the Offset Project Operator may delegate responsibility to the Authorized Project Designee for performing or meeting all the requirements of sections 147.275, 147.276, 147.277, 147.277.1, 147.277.2,

147.280, 147.280.1, 147.281, 147.281.1, and, where the Authorized Project Designee is specifically identified, the requirements in sections 147.283, 147.285, on behalf of the Offset Project Operator.

(A) If an Authorized Project Designee is designated, the Authorized Project Designee will be responsible for performing all activities to meet the requirements in section 147.274(a)(2) and will be the main point of contact with regard to the offset project for the Offset Project Registry and DEP. The Offset Project Operator, however, is ultimately responsible for ensuring compliance with the requirements of this article and the applicable Compliance Offset Protocol. In addition, the Offset Project Operator retains its ability to perform any activities required under this article, including signing documents and attestations.

(B) If an Authorized Project Designee is designated, the Offset Project Operator must designate an individual of the Authorized Project Designee as a Primary Account Representative or Alternate Account Representative on the Offset Project Operator's tracking system account before the Authorized Project Designee may act on behalf of the Offset Project Operator or submit any documentation to the Offset Project Registry and DEP. Only an individual authorized on the Offset Project Operator's tracking system account may sign any documents or attestations to DEP on behalf of the Offset Project Operator for an offset project.

(C) Consultants. An Offset Project Operator or Authorized Project Designee may use a consultant to prepare documents for submittal by the Offset Project Operator or Authorized Project Designee to the Offset Project Registry or DEP. However, a consultant may not sign any documents or attestations on behalf of the Offset Project Operator or Authorized Project Designee. A consultant may only communicate with DEP or the Offset Project Registry in conjunction with the Offset Project Operator or Authorized Project Designee, and the Offset Project Operator or Authorized Project Designee must be included in all communications, whether written or verbal, between DEP or the Offset Project Registry and the consultant regarding the offset project.

(b) Modifications to Authorized Project Designee and Activities. An Offset Project Operator may modify or change an Authorized Project Designee, or any other third party authorized pursuant to section 147.274(a)(1) for a listed offset project once within each calendar

year after the offset project has been listed by DEP or an Offset Project Registry by submitting a request, in writing, to DEP or an Offset Project Registry.

§ 147.275. Listing of Offset Projects Using DEP Compliance Offset Protocols.

(a) General Requirements for Offset Project Operators or Authorized Project Designees Who Are Submitting an Offset Project for Listing. Before an offset project can be listed by DEP or an Offset Project Registry the Offset Project Operator and its Authorized Project Designee, if applicable, must:

- (1) Register with DEP pursuant to section 147.130; and
- (2) Not be subject to any Holding Account restrictions imposed pursuant to section 147.311.

(b) If the offset project is not listed by DEP, it must be listed by an Offset Project Registry approved pursuant to section 147.286.

(c) General Requirements for Offset Project Listing. For offset projects being listed by DEP or an Offset Project Registry in an initial or renewed crediting period, the Offset Project Operator and any Authorized Project Designees approved pursuant to section 147.274 must:

- (1) Attest, in writing, to DEP as follows:

“I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] will be measured in accordance with the [appropriate DEP Compliance Offset Protocol] and all information required to be submitted to DEP is true, accurate, and complete.”;

- (2) Attest, in writing, to DEP as follows:

“I understand I am voluntarily participating in the Pennsylvania Greenhouse Gas Cap-and-Trade Program under 25 Pa. Code Chapter 147, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Pennsylvania as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this chapter.”;

- (3) Attest in writing to DEP as follows:

“I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety laws and regulations that apply to the offset project location. I understand that offset projects are not eligible to receive DEP or registry offset credits for GHG reductions and GHG removal enhancements that are not in compliance with the requirements of the Cap-and-Trade Program.”;

(4) Provide all documentation required pursuant to section 147.275(e) to DEP or an Offset Project Registry; and

(5) Disclose GHG reductions and GHG removal enhancements issued credit by any voluntary or mandatory programs for the same offset project being listed or any GHG reductions and GHG removal enhancements used for any GHG mitigation requirement.

(d) The attestations in section 147.275(c)(1), 147.275(c)(2), and 147.275(c)(3) must be provided to an Offset Project Registry with the listing information, if being listed with an Offset Project Registry, or to DEP if being listed with DEP.

(e) Offset Project Listing Information Requirements. Before an offset project is publicly listed for an initial or renewed crediting period the Offset Project Operator or Authorized Project Designee must provide the listing information in the most recent version of a Compliance Offset Protocol for that offset project type as set forth in and incorporated by reference. The following constitute the currently approved and future required offset protocols:

(1) California Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;

(2) California Compliance Offset Protocol Livestock Projects, November 14, 2014;

(3) California Compliance Offset Protocol Urban Forest Projects, October 20, 2011;

(4) California Compliance Offset Protocol U.S. Forest Projects, June 25, 2015;

(5) California Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014;

(6) Offset Projects approved by the RGGI program to the extent that they relate to projects that they relate to projects' whose emissions are not covered by this regulation and will

not otherwise reduce demand for allowances, including those for landfill methane capture, sulfur hexafluoride, forestry or afforestation, end-use efficiency in a jurisdiction that does not require the surrender of allowances for fossil fuel distribution, and avoided agricultural methane;

(7) A compliance offset protocol that DEP shall develop before the effective date of this regulation for offsets created by abandoned minelands reclamation, including the control of mine fires and the control and prevention of fires in abandoned gob and culm piles, which may include the credit for projects initiated before the effective date of this chapter; and

(8) A compliance offset protocol that DEP shall develop within two years of the proposal of this regulation for offsets created by the capture and geologic sequestration of emissions from the combustion of biomass.

(9) All Offset Project hereafter approved by any ETS trading system to with the Pennsylvania cap-and-trade program is linked

(f) Review of Offset Project Listing Information. DEP and/or the Offset Project Registry will review the offset project listing information submitted pursuant to section 147.275(e) for completeness.

(g) Notice of Completeness for Offset Project Listing Information. The Offset Project Operator or Authorized Project Designee will be notified after review by DEP or the Offset Project Registry, within 30 calendar days of receiving the complete and accurate listing information, that the offset project may be listed. If DEP or the Offset Project Registry determine that the information submitted pursuant to section 147.275(e) is incomplete or that a denial of the listing information is required, DEP or the Offset Project Registry will notify the Offset Project Operator or Authorized Project Designee of this determination within 30 calendar days of receiving the listing information from the Offset Project Operator or Authorized Project Designee.

(h) Timing for Offset Project Listing in an Initial Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 147.275(e) to DEP or an Offset Project Registry no later than the date at which the Offset Project Operator or Authorized Project Designee submits its required Offset Project Data Report for its first Reporting Period under a Compliance Offset Protocol to DEP or an Offset Project Registry

pursuant to section 147.276. The Offset Project Operator or Authorized Project Designee must submit the listing information in section 147.275(e) to DEP or an Offset Project Registry no later than one year after Offset Project Commencement. If the Offset Project Operator or Authorized Project Designee does not submit the listing information in section 147.275(e) for the offset project to DEP or an Offset Project Registry within one year of Offset Project Commencement, it will be ineligible to be listed under a Compliance Offset Protocol and will not be issued registry offset credits and DEP offset credits pursuant to sections 147.280 and 147.281.

(i) Listing Status of Offset Projects in an Initial Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset project for listing in an initial crediting period and the required documentation pursuant to section 147.275(e), and DEP or the Offset Project Registry has reviewed the offset project listing information for completeness, the offset project listing status will be “Proposed Project.” If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request DEP to make a final determination if the offset project meets the requirements in section 147.275 to be listed for an initial crediting period by the Offset Project Registry. In making this determination, DEP may consult with the Offset Project Registry before making the final determination.

(j) Timing for Offset Project Listing in a Renewed Crediting Period. The Offset Project Operator or Authorized Project Designee must submit the information in section 147.275(e) for a renewed crediting period to DEP or an Offset Project Registry no earlier than 18 months and no later than 9 months before conclusion of the initial crediting period or a previous renewed crediting period.

(k) Listing Status of Offset Projects in a Renewed Crediting Period. After the Offset Project Operator or Authorized Project Designee submits the offset project for listing in a renewed crediting period and the required documentation pursuant to section 147.275(e), and DEP or the Offset Project Registry has reviewed the offset project listing information for completeness, the offset project listing status will be “Proposed Renewal.” The verification body must assess that the offset project meets the additionality requirements in section 147.273(a)(2)(A) and 147.273(a)(2)(C) as of the date of the commencement of the renewed crediting period when conducting offset verification services for the first Reporting Period of a

renewed crediting period. If the offset project is not accepted for listing by an Offset Project Registry, the Offset Project Operator or Authorized Project Designee may request DEP to make a final determination if the project meets the requirements in section 147.275 to be listed for a renewed crediting period by the Offset Project Registry. In making this determination, DEP may consult with the Offset Project Registry before making the final determination.

(l) Once DEP or an Offset Project Registry approves an offset project for listing, the listing information is considered final, and may not be changed unless the Offset Project Operator changes during the crediting period.

(1) If the Offset Project Operator changes during the crediting period the new Offset Project Operator or Authorized Project Designee must submit updated listing information for the information that pertains to the Offset Project Operator and Authorized Project Designee, if applicable, to DEP or the Offset Project Registry within 30 calendar days of the change.

(2) If the Offset Project Operator changes during the crediting period the new Offset Project Operator or Authorized Project Designee must submit the information required pursuant to section 147.275(c) to DEP or the Offset Project Registry within 30 calendar days of the change.

(m) Limitations for Crediting Period Renewals. A crediting period may be renewed if the offset project meets the requirements for additionality pursuant to section 147.273(a)(2) and in the applicable Compliance Offset Protocol.

(1) The crediting period for non-sequestration offset projects may be renewed twice for the length of time identified by the Compliance Offset Protocol.

(2) Sequestration offset projects are not subject to any renewal limits.

(n) Transferring an Offset Project. If the Offset Project Operator or Authorized Project Designee transfers an offset project listed with DEP or an Offset Project Registry to DEP or another Offset Project Registry:

(1) DEP or the Offset Project Registry that originally listed the offset project must change the offset project listing status on its registry system to “Transferred DEP Project.”

(A) If the only action taken by the Offset Project Operator or the Authorized Project Designee was to have the listing documentation for the offset project approved by DEP or the

original Offset Project Registry, DEP or the original Offset Project Registry must retain the information related to the offset project on its website for the duration of one year before it is removed from the registry system. If the listing documentation was only submitted by the Offset Project Operator or Authorized Project Designee, but not approved by DEP or the original Offset Project Registry, DEP or the original Offset Project Registry does not need to retain the submitted listing documentation.

(B) If a verification body submitted an Offset Verification Statement, DEP or the original Offset Project Registry must retain the information related to the offset project on its website for the duration of the offset project life.

(C) DEP or the new Offset Project Registry must retain the listing date and all listing information as approved by DEP or the original Offset Project Registry. If the offset project has not undergone initial verification, the Offset Project Commencement date may change as a result of verification activities only.

(2) The Offset Project Operator or Authorized Project Designee must submit the original listing documentation reviewed and accepted by DEP or the original Offset Project Registry pursuant to this section to the new Offset Project Registry. The Offset Project Operator or Authorized Project Designee may only make changes to the listing documentation pursuant to section 147.275(1).

(3) The Offset Project Operator or Authorized Project Designee may not transfer an offset project to DEP or another Offset Project Registry once a Notice of Offset Verification Services has been submitted for a Reporting Period(s) pursuant to section 147.277.1(b)(1) or during the course of offset verification services for a Reporting Period(s). Once a Notice of Offset Verification Services has been submitted, the offset verification services must be completed for the applicable Reporting Period(s) before the Offset Project Operator or Authorized Project Designee may transfer the offset project to DEP or another Offset Project Registry. Once the offset verification services are completed for the applicable Reporting Period(s), the Offset Project Operator or Authorized Project Designee may transfer the offset project to DEP or another Offset Project Registry.

(n) Limitations for Listing Forest Offset Projects. Once a forest offset project has been issued registry offset credits pursuant to sections 147.280 and 147.280.1 or DEP offset

credits pursuant to sections 147.281 and 147.281.1, no other offset project may be listed with a Project Area including any land within the previously listed geographic boundary of the previous offset project unless the previous offset project was terminated due to an unintentional reversal or unless otherwise specified in a Compliance Offset Protocol.

§ 147.276. Monitoring, Reporting, and Record Retention Requirements for Offset Projects.

(a) General Requirements for Monitoring Equipment for Offset Projects. The Offset Project Operator or Authorized Project Designee must employ the procedures in the Compliance Offset Protocol for monitoring measurements and project performance for offset projects. All required monitoring equipment must be maintained and calibrated in a manner and at a frequency required by the equipment manufacturer, unless otherwise specified in the applicable Compliance Offset Protocol. All modeling, monitoring, sampling, or testing procedures must be conducted in a manner consistent with the applicable procedure.

(b) The Offset Project Operator or Authorized Project Designee must use the missing data methods as provided in a Compliance Offset Protocol for that offset project type, if provided and applicable.

(c) An Offset Project Operator or Authorized Project Designee must put in place all monitoring equipment or mechanisms required by the applicable version of the Compliance Offset Protocol for that offset project type as set forth in:

(1) California Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011 and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;

(2) California Compliance Offset Protocol Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects, November 14, 2014;

(3) California Compliance Offset Protocol Urban Forest Projects, October 20, 2011;

(4) California Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014 and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015;

(5) California Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014; and

(6) Offset Projects approved by the RGGI program to the extent that they relate to projects that they relate to projects' whose emissions are not covered by this regulation and will not otherwise reduce demand for allowances, including those for landfill methane capture, sulfur hexafluoride, forestry or afforestation, end-use efficiency in a jurisdiction that does not require the surrender of allowances for fossil fuel distribution, and avoided agricultural methane.

(7) A compliance offset protocol that DEP shall develop before the effective date of this regulation for offsets created by abandoned minelands reclamation, including the control of mine fires and the control and prevention of fires in abandoned gob and culm piles, which may include the credit for projects initiated before the effective date of this chapter.

(8) A compliance offset protocol that DEP shall develop within two years of the proposal of this regulation for offsets created by the capture and geologic sequestration of emissions from the combustion of biomass.

(9) All Offset Project hereafter approved by any ETS trading system to with the Pennsylvania cap-and-trade program is linked, provided that the project does not result in double counting by providing an allowance for a project whose implementation will otherwise reduce demand for that allowance.

(d) Offset Project Reporting Requirements. An Offset Project Operator or Authorized Project Designee shall submit an Offset Project Data Report to DEP or an Offset Project Registry for each Reporting Period as defined in section 147.002. Each Offset Project Data Report must cover a single Reporting Period. Reporting Periods must be contiguous; there must be no gaps in reporting once the first Reporting Period has commenced. If the Offset Project Operator or Authorized Project Designee fails to submit an Offset Project Data Report, then the Offset Project will be considered terminated and not eligible for DEP offset credits. An Offset Project Data Report may be submitted after the deadline identified in section 147.276(d)(8), but before the end of the next Reporting Period, to maintain continuous reporting; however, no DEP offset credits will be issued for the GHG emission reduction or removal enhancements quantified and reported in the Offset Project Data Report pursuant to section 147.276(d)(9). For projects developed under the Compliance Offset Protocol in section 147.273(a)(2)(C)1., there may be one

Offset Project Data Report submitted for each offset project and the Offset Project Data Report may cover up to a maximum of 12 months of data. The Offset Project Operator or Authorized Project Designee must submit an Offset Project Data Report to DEP or an Offset Project Registry within 28 months of listing their offset project pursuant to section 147.275 and must also meet all other applicable deadlines pertaining to submittal of the Offset Project Data Report. If the Offset Project Operator or Authorized Project Designee does not submit an Offset Project Data Report to DEP or an Offset Project Registry within 28 months of listing an offset project, then the Offset Project Operator or Authorized Project Designee must update the listing information in the Offset Project Data Report to reflect the most recent version of the Compliance Offset Protocol for that project type in order to remain eligible to be issued DEP offset credits. If an Offset Project Data Report that does not meet the 28 month deadline also fails to meet the deadline in section 147.276(d)(8), an Offset Project Data Report covering the Reporting Period must be submitted using the most recent version of the Compliance Offset Protocol; however, no DEP offset credits will be issued for the GHG emission reductions or removal enhancements, pursuant to section 147.276(d)(9). For forestry offset projects, when an Offset Project Data Report is not filed within the deadline specified in section 147.276(d)(8), the values used for  $AC_{\text{onsite},y-1}$  and  $BC_{\text{onsite},y-1}$  in the Offset Project Data Report for the following Reporting Period will be the  $AC_{\text{onsite},y}$  and  $BC_{\text{onsite},y}$  values reported in the untimely Offset Project Data Report for the preceding Reporting Period. The Offset Project Data Report shall contain the information required by the applicable version of the Compliance Offset Protocol for that offset project type as set forth in:

- (1) California Compliance Offset Protocol Ozone Depleting Substances Projects, October 20, 2011 and Compliance Offset Protocol Ozone Depleting Substances Projects, November 14, 2014;
- (2) California Compliance Offset Protocol Livestock Projects, October 20, 2011 and Compliance Offset Protocol Livestock Projects, November 14, 2014;
- (3) California Compliance Offset Protocol Urban Forest Projects, October 20, 2011;
- (4) California Compliance Offset Protocol U.S. Forest Projects, October 20, 2011, Compliance Offset Protocol U.S. Forest Projects, November 14, 2014, and Compliance Offset Protocol U.S. Forest Projects, June 25, 2015;

(5) California Compliance Offset Protocol Mine Methane Capture Projects, April 25, 2014;

(6) Offset Projects approved by the RGGI program to the extent that they relate to projects that they relate to projects' whose emissions are not covered by this regulation and will not otherwise reduce demand for allowances, including those for landfill methane capture, sulfur hexafluoride, forestry or afforestation, end-use efficiency in a jurisdiction that does not require the surrender of allowances for fossil fuel distribution, and avoided agricultural methane;

(7) A compliance offset protocol that DEP shall develop before the effective date of this regulation for offsets created by abandoned minelands reclamation, including the control of mine fires and the control and prevention of fires in abandoned gob and culm piles, which may include the credit for projects initiated before the effective date of this chapter; and

(8) A compliance offset protocol that DEP shall develop within two years of the proposal of this regulation for offsets created by the capture and geologic sequestration of emissions from the combustion of biomass.

(9) All Offset Project hereafter approved by any ETS trading system to with the Pennsylvania cap-and-trade program is linked, provided that the project does not result in double counting by providing an allowance for a project whose implementation will otherwise reduce demand for that allowance.

(10) The Offset Project Operator or Authorized Project Designee must attest, in writing, to DEP as follows:

“I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania the GHG reductions and/or GHG removal enhancements for [project] from [date] to [date] are measured in accordance with the [appropriate DEP Compliance Offset Protocol] and all information required to be submitted to DEP in the Offset Project Data Report is true, accurate, and complete.”

This attestation must be provided with each version of the Offset Project Data Report to an Offset Project Registry if the offset project is listed with an Offset Project Registry, or to DEP if the offset project is listed with DEP.

(11) All Offset Project Data Reports must be submitted within four months after the conclusion of each Reporting Period.

(12) If an Offset Project Data Report is not submitted to DEP or an Offset Project Registry by the applicable reporting deadline, the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible to be issued DEP offset credits pursuant to section 147.281.

(13) Each version of an Offset Project Data Report submitted to DEP or an Offset Project Registry must specify the version number and the date submitted.

(e) Requirements for Record Retention for Offset Projects. An Offset Project Operator or Authorized Project Designee must meet the following requirements:

(1) The Offset Project Operator or Authorized Project Designee must retain the following documents:

(A) All information submitted as part of the Offset Project Data Report;

(B) Documentation of the offset project boundary, including a list of all GHG emissions sources, GHG sinks, and GHG reservoirs included in the offset project boundary and the project baseline, and the calculation of the project baseline, project emissions, GHG emission reductions, and GHG removal enhancements;

(C) Fuel use and any other underlying measured or sampled data used to calculate project baseline emissions, GHG emission reductions, and GHG removal enhancements for each source, categorized by process and fuel, or material type;

(D) Documentation of the process for collecting fuel use or any other underlying measured or sampled data for the offset project and its GHG emissions sources, GHG sinks, and GHG reservoirs for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(E) Documentation of all project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(F) All point of origin and chain of custody documents required by a Compliance Offset Protocol, if applicable;

(G) All chemical analyses, results, and testing-related documentation for material and sources used for inputs to project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(H) All model inputs or assumptions used for quantifying project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(I) Any data used to assess the accuracy of project baseline emissions, GHG emission reductions, and GHG removal enhancements from each offset project GHG emissions source, GHG sink, and GHG reservoir, categorized by process;

(J) Quality assurance and quality control information including information regarding any measurement gaps, missing data substitution, calibrations or maintenance records for monitoring equipment, or models providing data for calculating project baseline emissions, project emissions, GHG emission reductions, and GHG removal enhancements;

(K) A detailed technical description of any offset project continuous measurement/monitoring system, including documentation of any findings and approvals by federal, state, and local agencies;

(L) Raw and aggregated data from any measurement system;

(M) Documentation of any changes over time and the log book on tests, down-times, calibrations, servicing, and maintenance for any measurement/monitoring equipment providing data for project baseline calculations, project emissions, GHG emission reductions, and GHG removal enhancements;

(N) For sequestration offset projects, documentation of inventory methodologies and sampling procedures including all calculation methodologies and equations used, and any data related to plot sampling; and

(O) Any other documentation or data required to be retained by a Compliance Offset Protocol, if applicable.

(2) Documents listed in section 147.276(e)(1) associated with the preparation of an Offset Project Data Report shall be retained in paper, electronic, or other usable format for a minimum of 15 years following the issuance of DEP offset credits related to that Offset Project

Data Report. All other documents shall be retained in paper, electronic, or other usable format for a minimum of 15 years.

(3) The documents retained pursuant to this section must be sufficient to allow for the verification of each Offset Project Data Report.

(4) Upon request by DEP or an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide to DEP or an Offset Project Registry all documents pursuant to this section, including data used to develop an Offset Project Data Report within 10 calendar days of the request.

(f) General Procedure for Interim Data Collection. This section only applies if a Compliance Offset Protocol does not already include methods, or does not include a specific method for the data in question, for collecting or accounting for data in the event of missing data due to an unforeseen breakdown of gas or fuel analytical monitoring equipment or other data collection systems.

(1) In the event of an unforeseen breakdown of offset project data monitoring equipment and gas or fuel flow monitoring devices required for the GHG emission reductions and GHG removal enhancement estimation, DEP may authorize an Offset Project Operator or Authorized Project Designee to use an interim data collection procedure if DEP determines that the Offset Project Operator or Authorized Project Designee has satisfactorily demonstrated that:

(A) The breakdown may result in a loss of more than 20 percent of the source's data for the year covered by an Offset Project Data Report;

(B) The data monitoring equipment cannot be promptly repaired or replaced without shutting down a process unit significantly affecting the offset project operations, or that the monitoring equipment must be replaced and replacement equipment is not immediately available;

(C) The interim procedure will not remain in effect longer than is reasonably necessary for repair or replacement of the malfunctioning data monitoring equipment; and

(D) The request was submitted within 30 calendar days of the breakdown of the data monitoring equipment.

(2) An Offset Project Operator or Authorized Project Designee seeking approval of an interim data collection procedure must, within 30 calendar days of the monitoring equipment breakdown, submit a written request to DEP that includes all of the following:

- (A) The proposed start date and end date of the interim procedure;
- (B) A detailed description of what data are affected by the breakdown;
- (C) A discussion of the accuracy of data collected during the interim procedure compared with the data collected under the Offset Project Operator's or Authorized Project Designee's usual equipment-based method; and
- (D) A demonstration that no feasible alternative procedure exists that would provide more accurate emissions data.

(3) DEP may limit the duration of the interim data collection procedure or include other conditions for approval.

(4) Data collected pursuant to an approved interim data collection procedure shall be considered captured data for purposes of compliance with a Compliance Offset Protocol. When approving an interim data collection procedure, DEP shall determine whether the accuracy of data collected under the procedure is reasonably equivalent to data collected from properly functioning monitoring equipment, and if it is not, the relative accuracy to assign for purposes of assessing possible offset material misstatement under section 147.277.1(b)(3)(Q) of this article.

§ 147.277. Verification of GHG Emission Reductions and GHG Removal Enhancements from Offset Projects.

(a) General Requirements. An Offset Project Operator or Authorized Project Designee must obtain the services of an DEP-accredited verification body for the purposes of verifying Offset Project Data Reports submitted under this article.

(b) Schedule for Verification of Non-Sequestration Offset Projects. The verification of GHG emission reductions for non-sequestration offset projects that produce greater than or equal to 25,000 metric tons of GHG reductions must be performed on a Reporting Period basis and cover the Reporting Period for which the most recent Offset Project Data Report was submitted unless otherwise specified in a Compliance Offset Protocol. For Reporting Periods in which an Offset Project Data Report for a non-sequestration offset project shows that the offset

project produced fewer than 25,000 metric tons of GHG reductions in a Reporting Period, the Offset Project Operator or Authorized Project Designee may choose to perform verification that covers two consecutive Reporting Periods, even if for the subsequent Reporting Period the offset project produced greater than or equal to 25,000 metric tons of GHG reductions. If an Offset Project Data Report results in zero GHG emission reductions, the Offset Project Operator or Authorized Project Designee may defer verification until the offset project produces an Offset Project Data Report that no longer results in zero GHG emission reductions.

(c) Schedule for Verification of Sequestration Offset Projects. An initial verification of GHG emission reductions and GHG removal enhancements for all sequestration offset projects must be performed following the first Reporting Period and cover one Reporting Period. After the first Reporting Period, verification must be conducted at least once every six years and may cover up to six Reporting Periods for which Offset Project Data Reports were submitted. After an initial verification with a Positive Offset Verification Statement, reforestation offset projects and urban forest offset projects that meet the requirements of the applicable Compliance Offset Protocol may defer the second verification for twelve years, but verification of Offset Project Data Reports must be performed at least once every six years thereafter. For offset projects that do not renew their crediting period, verification must still be conducted at least once every six years for the remainder of the project life. However, after a successful full offset verification of an Offset Project Data Report indicating that Actual Onsite Carbon Stocks (in MTCO<sub>2e</sub>) are at least 10% greater than the Actual Onsite Carbon Stocks reported in the final Offset Project Data Report of the final crediting period that received a positive Offset Verification Statement, the next full offset verification service may be deferred for twelve years. An offset project that has deferred verification for twelve years must resume conducting a full verification at least once every six years if it receives an Adverse Offset Verification Statement.

(d) Timing for Submittal of Offset Verification Statements to DEP or an Offset Project Registry. Any Offset Verification Statement must be received by DEP or an Offset Project Registry within eleven months after the conclusion of the Reporting Period for which offset verification services were performed, except for Reporting Periods for which verification is deferred in accordance with this section. If the Offset Verification Statement is not submitted to DEP or an Offset Project Registry by the verification deadline, the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report are not eligible

to be issued DEP offset credits or registry offset credits. The verification body must issue one Offset Verification Statement for each Offset Project Data Report that it verifies for the Offset Project Operator or Authorized Project Designee.

§ 147.277.1. Requirements for Offset Verification Services.

(a) Rotation of Verification Bodies. An offset project shall not have more than any six out of nine consecutive Reporting Periods verified by the same verification body or offset verification team member(s), unless otherwise specified in section 147.277.1(a)(1) or (a)(2). The rotation requirements in this section are applied between the Offset Project Operator, Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee, if applicable, and the verification body and offset verification team member(s) on an offset project basis.

(1) For offset projects developed under the Compliance Offset Protocol in section 147.273(a)(2)(C)(1), the following shall apply: Neither a verification body nor offset verification team member may conduct offset verification services for more than any six out of nine consecutive offset projects developed by any given Offset Project Operator, or developed on behalf of that Offset Project Operator by any Authorized Project Designee, or any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee. For offset projects developed under the Compliance Offset Protocol in section 147.273(a)(2)(C)(1), the order of consecutive projects is determined by the project commencement dates. For this provision an offset project is defined by any activities reported in an Offset Project Data Report, and is applied to offset projects listed by the Offset Project Operator and Authorized Project Designee, if applicable.

(2) For reforestation offset projects developed under, and that meet the requirements of, the Compliance Offset Protocol in section 147.273(a)(2)(C)(4), and urban forest offset projects developed under, and that meet the requirements of, the Compliance Offset Protocol in section 147.273(a)(2)(C)(3), the following shall apply: An Offset Project Operator or Authorized Project Designee that has deferred the second verification for 6 to 12 years may have up to 13 Offset Project Data Reports verified by the same verification body and offset verification team member(s). If an Offset Project Operator or Authorized Project Designee has not deferred the second verification for more than 6 years, the requirements in section 147.277.1(a) for rotation of

verification bodies and offset verification team member(s) shall apply. An Offset Project Operator or Authorized Project Designee may contract with a previous verification body or offset verification team member(s) only if at least three consecutive Offset Project Data Reports for the offset project have been verified by a different verification body(ies) and offset verification team member(s) before the previous verification body and offset verification team member(s) is selected again. When rotating verification bodies and offset verification team members under this provision, the rotation requirements must also apply to any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee, if applicable.

(b) Offset Verification Services. Offset Verification Services shall be subject to the following requirements.

(1) Notice of Offset Verification Services for Offset Projects. Before offset verification services, as defined in section 147.277.1(b)(3), may begin, the Offset Project Operator or Authorized Project Designee must submit the Offset Project Data Report to DEP or an Offset Project Registry, and the verification body must submit a Notice of Offset Verification Services to DEP and an Offset Project Registry, if applicable. The verification body may begin offset verification services for the Offset Project Operator or Authorized Project Designee 10 calendar days after the Notice for Offset Verification Services is received by DEP and the Offset Project Registry. The verification body may not conduct the site visit until at least 30 calendar days after the Notice for Offset Verification Services is received by DEP and the Offset Project Registry, or earlier, if the earlier site visit date is approved by DEP in writing. The Notice of Offset Verification Services must include the following information:

(A) The name of the offset project type, including the length of the offset project crediting period, and title of the Compliance Offset Protocol used to implement the offset project;

(B) A list of staff who will be designated to provide offset verification services as part of an offset verification team, including the names of each designated staff member, the lead verifier, independent reviewer, all subcontractors, and a description of the roles and responsibilities each team member will have during the offset verification process;

(C) Documentation that the offset verification team has the skills required to provide offset verification services for the Offset Project Operator or Authorized Project Designee. At

least one offset verification team member must be accredited by DEP as an offset project specific verifier for an offset project of that type; and

(D) General information on the Offset Project Operator or Authorized Project Designee, including:

1. The name of the Offset Project Operator or Authorized Project Designee, including contact information, address, telephone number, and email address;
2. The locations that will be subject to offset verification services;
3. The date(s) of on-site visits, with address and contact information; and
4. A brief description of expected offset verification services to be performed, including expected completion date.

(2) If any information submitted pursuant to sections 147.277.1(b)(1)(B) and 147.277.1(b)(1)(D) changes after the Notice for Offset Verification Services is submitted to DEP and the Offset Project Registry, if applicable, and before offset verification services begin, the verification body must notify DEP and the Offset Project Registry by submitting an updated Notice of Offset Verification Services as soon as the change is made, but, at least five working days prior to the start of offset verification services, unless otherwise approved by DEP in writing. If any information submitted pursuant to sections 147.277.1(b)(1)(B) and 147.277.1(b)(1)(D) changes during offset verification services, the verification body must notify DEP and the Offset Project Registry, if applicable, within 10 working days. In either instance, the Notice of Offset Verification Services must be resubmitted to DEP and the Offset Project Registry, as applicable. If DEP and the Offset Project Registry, if applicable, request revisions to the Notice of Offset Verification Services, the verification body must resubmit the revised Notice of Offset Verification Services within 10 working days of such request, or if there is a reason the verification body cannot submit the revisions within 10 working days, the verification body must communicate to DEP and the Offset Project Registry in writing as to the reasons why and get approval from the Offset Project Registry or DEP for an extension.

(3) Offset verification services must include the following:

(A) Offset Verification Plan. The Offset Project Operator or Authorized Project Designee must submit the following information necessary to develop an Offset Verification Plan to the offset verification team:

1. Information to allow the offset verification team to develop a general understanding of offset project boundaries, operations, project baseline emissions, and Reporting Period GHG reductions and GHG removal enhancements;
2. Information regarding the training or qualifications of personnel involved in developing the Offset Project Data Report;
3. The name and date of the Compliance Offset Protocol used to quantify and report project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol; and
4. Information about any data management system, offset project monitoring system, and models used to track project baselines, GHG reductions, GHG removal enhancements, and other required data as applicable in the Compliance Offset Protocol.

(B) Timing of Offset Verification Services. The Offset Verification Plan submitted pursuant to section 147.277.1(b)(3)(A) shall also include the following information:

1. Dates of proposed meetings and interviews with personnel related to the offset project;
2. Dates of proposed site visits;
3. Types of proposed document and data reviews; and
4. Expected date for completing offset verification services.

(C) Planning Meetings with the Offset Project Operator or Authorized Project Designee. The offset verification team must discuss with the Offset Project Operator or Authorized Project Designee the scope of the offset verification services and request any information and documents needed for initiating offset verification services. The offset verification team must review the documents submitted and plan and conduct a review of original documents and supporting data for the Offset Project Data Report. Information regarding planning meetings may be included in the offset verification plan, but is not required.

Any discussions or meetings to secure an offset verification services contract or collect preliminary project documents to bid the offset verification services may occur prior to submitting the Notice of Offset Verification Services pursuant to section 147.277.1(b)(1).

(D) Site Visits for Offset Projects. For a non-sequestration offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make at least one site visit for each Reporting Period that an Offset Project Data Report is submitted, except for those non-sequestration offset projects for which the Offset Project Data Reports qualify for a two-year offset verification period pursuant to section 147.277(b). In this case, at least one offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit each time offset verification services are performed; offset verification services for non-sequestration offset projects would include one or two Reporting Periods, depending on whether verification is eligible to be deferred pursuant to section 147.277(b). For projects using protocols in section 147.273(a)(2)(C)1, 2, or 3, if the project is no longer in operation and all destruction devices, metering and monitoring equipment has been removed, the site visit can occur at the offices of the Offset Project Operator, or Authorized Project Designee. Such a site visit cannot be used for reducing the invalidation timeframe in section 147.285. For a forest or urban forest offset project, at least one accredited offset verifier in the offset verification team, including the offset project specific verifier, must make a site visit every year that offset verification services are provided, except for those offset projects approved for less intensive verification, for which a site visit must be performed at least once every six years. A site visit is also required after the first Reporting Period of an offset project under a Compliance Offset Protocol and after the first Reporting Period for each renewed crediting period under a Compliance Offset Protocol. Any site visit performed under this section must be conducted after the Offset Project Operator or Authorized Project Designee submits its Offset Project Data Report to DEP or an Offset Project Registry. During the required verification, the offset verification team member(s) must conduct the following, and document or explain how each requirement was checked and fulfilled in the detailed verification report:

1. During the initial verification conducted following the first Reporting Period of the crediting period the offset verification team members must complete all of the following requirements, either during the required site visit or as part of a desk review:

- a. Assess offset project eligibility and that the offset project meets the requirements for additionality according to section 147.273 and the applicable Compliance Offset Protocol;
- b. Review the information submitted for listing pursuant to section 147.275 and determine if it is complete and accurate;
- c. Confirm that the offset project boundary is appropriately defined;
- d. Review project baseline calculations and modeling;
- e. Assess the operations, functionality, data control systems, and review GHG measurement and monitoring techniques; and
- f. Confirm that all applicable eligibility criteria to design, measure, establish the chain of custody, and monitor the offset project conforms to the requirements of the applicable Compliance Offset Protocol.
- g. All criteria pertaining to the eligibility of the offset project must be assessed during the first site visit in the first Reporting Period of each crediting period. All eligibility criteria must be met and are not subject to sampling. If any of the eligibility criteria are not met, the project would be ineligible for crediting and receive an Adverse Offset Verification Statement.

2. During the initial verification conducted following the first Reporting Period of the crediting period and each subsequent verification the offset verification team must complete all of the following requirements, either during the required site visit or as part of a desk review:

- a. Check that all offset project boundaries, GHG emissions sources, GHG sinks, and GHG reservoirs in the applicable Compliance Offset Protocol are identified appropriately;
- b. Review and understand the data management systems used by the Offset Project Operator or Authorized Project Designee to track, quantify, and report GHG reductions, GHG removal enhancements, or other data required as applicable in the Compliance Offset Protocol. This includes reviewing data collection processes and procedures, sampling techniques and metering accuracy, quality assurance/quality control processes and procedures, and missing data procedures. The offset verification team member(s) must evaluate the uncertainty and effectiveness of these systems;

- c. Interview key personnel involved in collecting offset project data and preparing the Offset Project Data Report;
- d. Make direct observations of equipment for data sources and equipment supplying data for GHG emission sources in the sampling plan determined to be high risk;
- e. Collect and review other information that, in the professional judgment of the team, is needed in the offset verification process;
- f. Confirm the offset project conforms with all local, state, or federal environmental regulatory requirements pursuant to section 147.273(b), including health and safety regulations; and
- g. Review all chain of custody documents as required in the Compliance Offset Protocol, if applicable.
- h. If the offset project is found by the offset verification team to not meet the requirements of section 147.277.1(b)(3)(D)(2)f, the offset project is ineligible to receive DEP offset credits or registry offset credits for some or all GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report.

(E) The offset verification team must review offset project operations to identify applicable GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs required to be included and quantified in the Offset Project Data Report as required by the applicable Compliance Offset Protocol. This must include a review of each type of GHG emissions source, GHG sink, and GHG reservoir to ensure that all GHG emissions sources, GHG sinks, and GHG reservoirs required to be reported for the offset project are properly included in the Offset Project Data Report.

(F) An Offset Project Operator or Authorized Project Designee must make available to the offset verification team all information and documentation used to calculate and report project baseline and project GHG emissions, GHG reductions, and GHG removal enhancements and other information required by the applicable Compliance Offset Protocol.

(G) Sampling Plan for Offset Project Data Reports. As part of confirming the Offset Project Data Report, the offset verification team must develop a sampling plan that meets the following requirements:

1. The offset verification team must develop a sampling plan based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale, and complexity of the offset verification services for an Offset Project Operator or Authorized Project Designee. The analysis must review the inputs for the development of the submitted Offset Project Data Report, the rigor and appropriateness of the GHG data management systems, and the coordination within an Offset Project Operator's or Authorized Project Designee's organization to manage the operation and maintenance of equipment and systems used to develop the Offset Project Data Reports;

2. The offset verification team must include a ranking of GHG emissions sources, GHG sinks, and GHG reservoirs within the offset project boundary by amount of contribution to total CO<sub>2</sub>e emissions, GHG reductions, and GHG removal enhancements, and a ranking of GHG emissions sources, GHG sinks, or GHG reservoirs with the largest calculation uncertainty; and

3. The offset verification team must include a qualitative narrative of uncertainty risk assessment in the following areas as applicable to the Compliance Offset Protocol:

- a. Data acquisition equipment;
- b. Data sampling and frequency;
- c. Data processing and tracking;
- d. Project baseline and project GHG emissions, GHG reductions, and GHG removal enhancement calculations;
- e. Data reporting; and
- f. Management policies or practices in developing Offset Project Data Reports.

(H) After completing the analysis in section 147.277.1(b)(3)(G), the offset verification team must include in the sampling plan a list which includes the following:

1. GHG emissions sources, GHG sinks, and GHG reservoirs that will be targeted for document reviews to ensure conformance with the Compliance Offset Protocol and data checks as specified in section 147.277.1(b)(3)(L) and an explanation of why they were chosen;

2. Methods used to conduct data checks for each GHG emissions source, GHG sink, and GHG reservoir; and

3. A summary of the information analyzed in the data checks and document reviews conducted for each GHG emissions source, GHG sink, and GHG reservoir.

(I) The sampling plan list, prepared pursuant to section 147.277.1(b)(3)(H), must be updated and finalized prior to the completion of offset verification services. The final sampling plan must describe in detail how the GHG emissions sources, GHG sinks, and GHG reservoirs with identified risk, subject to data checks, were reviewed for accuracy.

(J) The offset verification team must revise the sampling plan to describe tasks completed or needed to be completed by the offset verification team as relevant information becomes available and potential issues emerge of offset material misstatement or nonconformance with the requirements of the Compliance Offset Protocol and this article.

(K) The verification body must retain the sampling plan in paper, electronic, or other format for a period of not less than 15 years following the submission of each Offset Verification Statement. The sampling plan must be made available at any time during offset verification services to DEP or the Offset Project Registry within 10 calendar days upon request. The verification body must also retain all material received, reviewed, or generated to render an Offset Verification Statement for an Offset Project Operator or Authorized Project Designee for 15 years following the submittal of each Offset Verification Statement. The documentation must allow for a transparent review of how a verification body reached its conclusion in the detailed verification report and Offset Verification Statement.

(L) Data Checks for Offset Project Data Reports. To determine the reliability of the submitted Offset Project Data Report, the offset verification team must use data checks. Such data checks must focus first on the largest and most uncertain estimates of project baseline GHG emissions, project emissions, GHG reductions, and GHG removal enhancements, and the offset verification team must:

1. Use data checks to ensure that the appropriate methodologies and GHG emission factors have been applied in calculating the project baseline and Reporting Period GHG emissions, project emissions, GHG reductions, and GHG removal enhancements calculations in the Compliance Offset Protocol;

2. Choose GHG emissions sources, project emissions, GHG sinks, and GHG reservoirs for data checks based on their relative sizes and risks of offset material misstatement or nonconformance as indicated in the sampling plan;

3. Use professional judgment in the number of data checks required for the offset verification team to conclude with reasonable assurance whether the Offset Project Operator's or Authorized Project Designee's total reported GHG reductions and GHG removal enhancements are free of offset material misstatement and the Offset Project Data Report otherwise conforms to the requirements of the Compliance Offset Protocol and this article. At a minimum a data check must include the following:

- a. Tracing data in the Offset Project Data Report to its origin;
- b. Looking at the process for data compilation and collection;
- c. Reviewing all GHG inventory designs for GHG sources, GHG sinks, and GHG reservoirs, and sampling procedures, if applicable;
- d. Recalculating baseline GHG emissions, project emissions, GHG reductions, and GHG removal enhancements estimates to check original calculations;
- e. Reviewing calculation methodologies used by the Offset Project Operator or Authorized Project Designee for conformance with the Compliance Offset Protocol and this article;
- f. Reviewing meter and fuel analytical instrumentation calibration, if applicable; and
- g. Reviewing the quantification from models approved for use in the Compliance Offset Protocol, if applicable; and

4. Compare its own calculated results for the data checks conducted with the reported offset project data in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be identified in the issues log. The comparison of data checks must also include a narrative to indicate which GHG emissions sources, GHG sinks, and GHG reservoirs were checked, the types and quantity of data that were evaluated for each GHG emissions source, GHG sink, and GHG reservoir, how the data checks were conducted including calculations, and any discrepancies that were identified.

(M) Offset Project Data Report Modifications. As a result of review by the offset verification team and prior to completion of an Offset Verification Statement, the Offset Project Operator or Authorized Project Designee must make any possible improvements and fix any correctable errors to the submitted Offset Project Data Report, and a revised Offset Project Data Report must be submitted to DEP or the Offset Project Registry. The revised Offset Project Data Report must include all components required in section 147.276(d). If the Offset Project Operator or Authorized Project Designee does not make all possible improvements and fix any correctable errors to the Offset Project Data Report, the verification body must issue an Adverse Offset Verification Statement. The offset verification team shall use professional judgment in the determination of correctable errors, including whether differences are not errors but result from truncation or rounding. The offset verification team must document in the issues log the source of any difference identified, including whether the difference results in a correctable error. Documentation for all Offset Project Data Report submittals must be retained by the Offset Project Operator or Authorized Project Designee for the length of time specified in section 147.276(e)(2).

(N) To verify that the Offset Project Data Report is free of offset material misstatement, the offset verification team must make its own determination of GHG reductions or GHG removal enhancements relative to the project baseline using the data check conducted pursuant to section 147.277.1(b)(3)(L), and must determine whether there is reasonable assurance that the Offset Project Data Report does not contain an offset material misstatement for the Offset Project Operator or Authorized Project Designee, on a CO<sub>2</sub>e basis. To assess conformance with this article and the Compliance Offset Protocol the offset verification team must review the methods and factors used to develop the Offset Project Data Report for adherence to the requirements of this article and the Compliance Offset Protocol and ensure that other requirements of this article are met.

(O) Issues Log. The offset verification team must keep a log of any issues identified in the course of offset verification services that may affect determinations of offset material misstatement and nonconformance. The issues log must identify the section of this article or Compliance Offset Protocol related to the nonconformance, if applicable, and indicate whether the issues were corrected by the Offset Project Operator or Authorized Project Designee prior to completing the offset verification services. Any other concerns that the offset verification team

has with the preparation of the Offset Project Data Report must be documented in the issues log. The issues log must indicate whether the issues could have any bearing on offset material misstatement or conformance.

(P) An assessment of offset material misstatement is conducted for net GHG reductions and GHG removal enhancements achieved in a given Reporting Period relative to the project baseline in that Reporting Period in metric tons of CO<sub>2</sub>e.

(Q) The offset verification team must determine whether the GHG reductions and GHG removal enhancements quantified and reported in the Offset Project Data Report contain an offset material misstatement using the following equation:

$$\text{Percent error} = \frac{[\sum \text{Discrepancies} + \sum \text{Omissions} + \sum \text{Misreporting}] \times 100\%}{\text{Total Reported Emission Reductions and Removal Enhancements}}$$

Where:

“Discrepancies” means any differences between the reported GHG value for sources, sinks, and reservoirs for the project baseline or project, and the verifier calculated GHG value for a data source subject to data checks in 147.277.1(b)(3)(L) calculated by the offset verification team. Any discrepancies identified must include the positive or negative impact of the GHG source, sink, or reservoir on the total reported GHG emission reductions and removal enhancements when input into the offset material misstatement equation.

“Omissions” means any GHG emissions or removal enhancements associated with required sources, sinks, and reservoirs for the project baseline or project emissions, that the offset verification team concludes must be part of the Offset Project Data Report, but were not included by the Offset Project Operator or Authorized Project Designee in the Offset Project Data Report. Any omissions found by the offset verification team must include the positive or negative impact of the omission on the total reported GHG emission reductions and removal enhancements when input into the offset material misstatement equation.

“Misreporting” means duplicative, incomplete, or other GHG emissions or removal enhancements for required sources, sinks, and reservoirs in the project baseline or project emissions, the offset verification team concludes should, or should not, be part of the Offset Project Data Report. Any misreporting found by the offset verification team must include the

positive or negative impact of the misreporting on the total reported GHG emission reductions and removal enhancements when input into the offset material misstatement equation.

“Total reported emission reductions and removal enhancements” means net GHG reductions and GHG removal enhancements reported by the Offset Project Operator or Authorized Project Designee for an Offset Project Data Report relative to the project baseline for that Offset Project Data Report in metric tons CO<sub>2e</sub>.

(R) Offset verification services are not complete until DEP offset credits are issued for the GHG emission reductions and GHG removal enhancements reported in an Offset Project Data Report. Offset verification services must include:

1. Offset Verification Statement. Prior to completion of the offset verification services conducted pursuant to section 147.277.1(b)(3), the verification body must complete an Offset Verification Statement for each Offset Project Data Report for which offset verification services were conducted and provide it to the Offset Project Operator or Authorized Project Designee and DEP or the Offset Project Registry by the verification deadline pursuant to section 147.277(d). Before the Offset Verification Statement is completed, the verification body must have the offset verification services and findings of the offset verification team independently reviewed within the verification body by an independent reviewer not involved in offset verification services for that offset project. The independent reviewer may not be the offset project specific verifier, and may not accompany the offset verification team on a site visit. The independent reviewer may conduct a separate site visit, if necessary.

2. The independent reviewer shall serve as the final check of the offset verification team’s work to identify any significant concerns, including:

- a. Errors in planning;
- b. Errors in data sampling; and
- c. Errors in judgment by the offset verification team that are related to the draft offset verification statement.

3. The independent reviewer must maintain independence from the offset verification services by not making specific recommendations about how the offset verification services should be conducted. The independent reviewer will review documents applicable to the

offset verification services provided and identify any failure to comply with the requirements of this article or with the verification body's internal policies and procedures for providing offset verification services. The independent reviewer must concur with the offset verification findings before the Offset Verification Statement can be issued.

4. When the offset verification team completes its findings:

a. The verification body must provide to the Offset Project Operator or Authorized Project Designee a detailed verification report for each Offset Project Data Report for which offset verification services were conducted. The detailed verification report must at a minimum include the Offset Verification Plan, the detailed comparison of the data checks conducted during offset verification services pursuant to section 147.277.1(b)(3)(L), including the required narrative, the issues log identified in the course of offset verification activities and the issue resolutions, and any qualifying comments on findings during offset verification services. The detailed verification report must also include the calculations performed in 147.277.1(b)(3)(Q) with enough detail to understand the relationships between the data checks and the offset material misstatement evaluation, and be made available to DEP within 10 calendar days upon request. If the Offset Verification Statement is being submitted to an Offset Project Registry, then the verification body must submit the detailed verification report to the Offset Project Registry with the Offset Verification Statement. The detailed verification report must be submitted to the Offset Project Operator or Authorized Project Designee at the same time or before the Offset Verification Statement is submitted to DEP or the Offset Project Registry.

b. The verification body must provide the Offset Verification Statement to the Offset Project Operator or Authorized Project Designee and DEP or the Offset Project Registry, attesting to DEP whether the verification body has found the submitted Offset Project Data Report to be free of offset material misstatement, and whether the Offset Project Data Report is in conformance with the requirements of this article and the Compliance Offset Protocol.

c. A Compliance Offset Protocol may restrict the use of a Qualified Positive Offset Verification Statement for certain project types, in which case the verification body must submit either a Positive Offset Verification Statement or an Adverse Offset Verification Statement. In the case of a Qualified Positive Offset Verification Statement, when not restricted by a Compliance Offset Protocol, the verification body will qualify the Offset Verification Statement

to indicate any nonconformances allowed for a qualified Positive Offset Verification Statement as defined in section 147.002 contained within the Offset Project Data Report and that these nonconformances do not result in an offset material misstatement.

d. The offset verification team must have a final discussion with the Offset Project Operator or Authorized Project Designee explaining their findings and notifying the Offset Project Operator or Authorized Project Designee of any unresolved issues noted in the issues log before the Offset Verification Statement is finalized and submitted to the Offset Project Registry or DEP.

e. The lead verifier in the offset verification team must attest to DEP in the Offset Verification Statement that the offset verification team has carried out all offset verification services as required by this article, and the lead verifier who has conducted the independent review of offset verification services and findings must attest to his or her independent review on behalf of the verification body and his or her concurrence with the offset verification findings.

f. The lead verifier must attest in the Offset Verification Statement, in writing, to DEP as follows:

“I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the offset verification team has carried out all offset verification services as required by sections 147.277.1, 147.277.2, and the applicable Compliance Offset Protocol and the findings are true, accurate, and complete and have been independently reviewed by an independent reviewer as required under sections 147.277.1(b)(3)(R)(1.) through 147.277.1(b)(3)(R)(3.).”

5. Prior to the verification body providing an Adverse Offset Verification Statement to DEP or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must be provided at least 10 working days to modify the Offset Project Data Report to correct any offset material misstatement or nonconformance found by the offset verification team. The modified Offset Project Data Report and Offset Verification Statement must be submitted to DEP or the Offset Project Registry by the applicable verification deadline, unless the Offset Project Operator or Authorized Project Designee makes a request to DEP pursuant to section 147.277.1(b)(3)(R)(6.).

6. If the Offset Project Operator or Authorized Project Designee and the verification body cannot reach agreement on modifications to the Offset Project Data Report that result in a Positive Offset or Qualified Positive Offset Verification Statement due to a disagreement on the requirements of this article or Compliance Offset Protocol, the Offset Project Operator or Authorized Project Designee may petition DEP to make a decision as to the verifiability of the submitted Offset Project Data Report.

7. If DEP determines that the Offset Project Data Report does not meet the standards and requirements specified in this article, the Offset Project Operator or Authorized Project Designee must provide any additional information within 30 calendar days of the DEP determination. DEP will review the new information and notify the Offset Project Operator or Authorized Project Designee and verification body of its final decision. In re-verifying a revised Offset Project Data Report, the verification body and offset verification team shall be subject to the requirements in sections 147.277.1(b)(3)(R)1. through 147.277.1(b)(3)(R)4. and must submit the revised Offset Verification Statement to DEP or the Offset Project Registry within 15 calendar days.

8. If DEP or the Offset Project Registry determines that the detailed verification report required pursuant to 147.277.1(b)(3)(R)4.a does not contain sufficient information to substantiate the attestations in the Offset Verification Statement, then the verification body must submit a revised verification report and a revised Offset Verification Statement to DEP or the Offset Project Registry within 15 calendar days of the determination.

(S) Upon submission of the Offset Verification Statement to DEP or the Offset Project Registry, the Offset Project Data Report must be considered final and no further changes may be made by the Offset Project Operator or Authorized Project Designee unless the Offset Project Registry or DEP requests any changes as part of their review. Once DEP offset credits are issued for the Offset Project Data Report, all offset verification requirements of this article shall be considered complete for the applicable Offset Project Data Report.

(T) If the Department finds a high level of conflict of interest existed between a verification body and an Offset Project Operator or Authorized Project Designee pursuant to section 147.279(b)(4) and section 147.279(b)(5), or an Offset Project Data Report that received a Positive Offset or Qualified Positive Offset Verification Statement fails an DEP audit, the

Secretary may set aside the Positive Offset or Qualified Positive Offset Verification Statement submitted by the verification body and require the Offset Project Operator or Authorized Project designee to have the Offset Project Data Report re-verified by a different verification body within 90 calendar days of this finding.

(U) Upon request by DEP or the Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the data used to generate an Offset Project Data Report, including all data available to the offset verification team in the conduct of offset verification services, within 10 working days of the request.

(V) Upon request by DEP or the Offset Project Registry the verification body must provide DEP or the Offset Project Registry the detailed verification report given to the Offset Project Operator or Authorized Project Designee, as well as the sampling plan, contracts for offset verification services, and any other supporting documentation. All documentation must be provided by the verification body to DEP or the Offset Project Registry within 10 working days of the request.

(W) Upon written notification by DEP the verification body and its staff must be available for an offset verification services audit when providing offset verification services for an offset project listed with DEP or an Offset Project Registry using a Compliance Offset Protocol.

#### § 147.277.2. Additional Project Specific Requirements for Offset Verification Services.

In addition to meeting the offset verification requirements in sections 147.277 and 147.277.1, Offset Project Operators or Authorized Project Designees must ensure the GHG emission reductions and GHG removal enhancements resulting from an offset project meet any additional verification requirements in the Compliance Offset Protocol, if applicable, for an offset project of that type.

#### § 147.278. Offset Verifier and Verification Body Accreditation.

(a) An offset verifier or verification body must meet the accreditation requirements of the MRR to provide offset verification services to verify GHG emission reductions and GHG removal enhancements for offset projects listed pursuant to this article. Accreditation of

verification bodies and offset verifiers for verifying Offset Project Data Reports under this article must be achieved separately from accreditation for verifying reports submitted under the MRR.

(b) For purposes of this article, the subcontractor requirements of the MRR must be applied to the Offset Project Operator and/or Authorized Project Designee and not a reporting entity.

(c) A DEP accredited verification body must make itself and its personnel available for a DEP audit.

(d) A DEP-accredited offset verification body may employ or contract with technical experts not accredited by DEP to assist with offset verification services.

(1) All technical experts must be listed on the Notice of Offset Verification Services as required in section 147.277.1(b) and must be included in the evaluation for conflict of interest as required in section 147.279.

(2) Technical experts must be under the direct supervision of a DEP-accredited offset verifier while performing verification activities.

(3) Technical experts may assist in underlying offset verification tasks but may not be responsible for completing any offset verification services as defined in 147.002(a).

(e) “Direct supervision,” for purposes of this section, means daily, on-site, close contact with an DEP-accredited verifier acting as a supervisor to a technical expert during a site visit, who is able to respond to the needs of the technical expert. During a site visit, the supervisor must be physically present, or within 4 hours travel time and available to respond to the needs of the technical expert.

(f) “Technical expert,” for purposes of this section, means a person, who is not an DEP-accredited verifier, and has demonstrated expertise in a particular technical area for which the person hired by the verification body to assist with underlying offset verification task(s) that require a particular expertise. A technical expert may be an employee of the verification body working to get the required experience to become an DEP-accredited verifier.

§ 147.279. Conflict of Interest Requirements for Verification Bodies and Offset Verifiers for Verification of Offset Project Data Reports.

(a) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, and offset verifiers accredited by DEP to perform offset verification services for Offset Project Operators, and Authorized Project Designees, if applicable, as well as any other member of the offset verification team and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee, if applicable.

(b) “Member” for the purposes of this section means any employee or subcontractor of the verification body or related entities of the verification body. “Member” also includes any individual with majority equity share in the verification body or its related entities. “Related entity” for the purposes of this section means any direct parent company, direct subsidiary, or sister company. The potential for a conflict of interest must be deemed to be high where:

(1) The verification body and Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) share any senior management staff or board of directors membership, or any of the senior management staff of the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) have been employed by the verification body, or vice versa, within the previous three years; or

(2) Within the previous five years, any staff member of the verification body or any related entity or any member of the offset verification team has provided to the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) any of the following non-offset verification services:

(A) Designing, developing, implementing, reviewing, or maintaining an inventory or offset project information or data management system for air emissions, unless the review was part of providing GHG offset verification services;

(B) Developing GHG emission factors or other GHG-related engineering analysis;

(C) Designing energy efficiency, renewable power, or other projects which explicitly identify GHG reductions and GHG removal enhancements as a benefit;

(D) Designing, developing, implementing, internally auditing, consulting, or maintaining an offset project resulting in GHG emission reductions and GHG removal enhancements;

(E) Owning, buying, selling, trading, or retiring shares, stocks, or DEP offset credits or registry offset credits from the offset project;

(F) Dealing in or being a promoter of DEP offset credits or registry offset credits on behalf of an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

(G) Preparing or producing GHG-related manuals, handbooks, or procedures specifically for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

(H) Appraisal services of carbon or GHG liabilities or assets;

(I) Brokering in, advising on, or assisting in any way in carbon or GHG-related markets;

(J) Directly managing any health, environment or safety functions for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

(K) Bookkeeping or other services related to the accounting records or financial statements;

(L) Any service related to information systems, including International Organization for Standardization 14001 Certification for Environmental Management (ISO 14001 Certification), unless those systems will not be reviewed as part of the offset verification process;

(M) Appraisal and valuation services, both tangible and intangible;

(N) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the information reviewed in formulating the Offset Verification Statement will not be reviewed as part of the offset verification services;

(O) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;

(P) Any internal audit service that has been outsourced by the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) that relates to the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical

consultant(s) internal accounting controls, financial systems, or financial statements, unless the systems and data reviewed during those services, as well as the result of those services will not be part of the offset verification process;

(Q) Acting as a broker-dealer (registered or unregistered), promoter, or underwriter on behalf of the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

(R) Any legal or expert services to the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) or a legal representative for the purpose of a financing involving the Offset Project or advocating the Offset Project Operator's, Authorized Project Designee's, if applicable, and their technical consultant(s) interests in litigation or in a regulatory or administrative proceeding or investigation, unless providing factual testimony.

(3) Within the previous three years, any staff member of the verification body or any related entity or any member of the offset verification team has provided to the ozone depleting substances destruction facility a third-party certification of a facility to meet the requirements set forth by the United Nations Environment Programme Ozone Secretariat's Technology and Assessment Panel (TEAP) for ozone depleting substances destruction.

(4) The potential for conflict of interest will be deemed to be high when any member of the verification body provides any type of incentive to an Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) to secure an offset verification services contract.

(5) The potential for a conflict of interest will also be deemed to be high where any member of the verification body has provided offset verification services for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) except within the time periods in which the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) is allowed to use the same verification body as specified in section 147.277.1(a).

(c) The potential for a conflict of interest must be deemed to be low where no potential for a conflict of interest is found under section 147.279(b) and any non-offset

verification services provided by any member of the verification body to the Offset Project Operator, Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee within the last five years are valued at less than 20 percent of the fee for the proposed offset verification, except where medium conflict of interest related to personal, employment, or family relationships is identified pursuant to section 147.279(d).

(d) The potential for a conflict of interest must be deemed to be medium where the potential for a conflict of interest is not deemed to be either high or low as specified in sections 147.279(b) and 147.279(c), or where there are any instances of personal, employment, or familial relationships between the verification body and management or employees of the Offset Project Operator or Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee and when a conflict of interest self-evaluation is submitted pursuant to section 147.279(g). For purposes of section 147.279 only, “employment” means the condition of having paid work documented in a W-2 form. If a verification body identifies a medium potential for conflict of interest and intends to provide offset verification services for the Offset Project Operator, Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee for an offset project listed with DEP or an Offset Project Registry, the verification body must submit, in addition to the submittal requirements specified in section 147.279(e), a plan to avoid, neutralize, or mitigate the potential conflict of interest situation. At a minimum, the conflict of interest mitigation plan must include:

(1) A demonstration that any members with potential conflicts have been removed and insulated from the project;

(2) An explanation of any changes to the organizational structure or verification body to remove the potential conflict of interest. A demonstration that any unit with potential conflicts has been divested or moved into an independent entity or any subcontractor with potential conflicts has been removed; and

(3) Any other circumstance that specifically addresses other sources for potential conflict of interest.

(e) Conflict of Interest Submittal Requirements for Accredited Verification Bodies. Before providing any offset verification services, the verification body must submit to the Offset Project Operator, and Authorized Project Designee, if applicable, DEP and the Offset Project Registry, a self-evaluation of the potential for any conflict of interest that the verification body, its staff, its related entities, or any subcontractors performing offset verification services may have with the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) for which it will perform offset verification services. Offset verification services shall not commence prior to approval of the conflict of interest self-evaluation by DEP or the Offset Project Registry pursuant to section 147.279(f). The submittal must include the following:

(1) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in sections 147.279(b), (c), and (d);

(2) Identification of whether any member of the offset verification team has previously provided offset verification services for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s), and, if so, the years in which such offset verification services were provided; and

(3) Identification of whether any member of the offset verification team or related entity has engaged in any non-offset verification services of any nature with the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) either within or outside Pennsylvania during the previous five years. If non-offset verification services have previously been provided, the following information must also be submitted:

(A) Identification of the nature and location of the work performed for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) and whether the work is similar to the type of work to be performed during offset verification;

(B) The nature of past, present, or future relationships with the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s), including:

1. Instances when any member of the offset verification team has performed or intends to perform work for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s);

2. Identification of whether work is currently being performed for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s), and if so, the nature of the work;

3. How much work was performed for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) in the last five years, in dollars;

4. Whether any member of the offset verification team has any contracts or other arrangements to perform work for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) or a related entity; and

5. How much work related to GHG reductions and GHG removal enhancements the offset verification team has performed for the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) or related entities in the last five years, in dollars;

(C) Explanation of how the amount and nature of work previously performed is such that any member of the offset verification team's credibility and lack of bias should not be under question;

(D) A list of names of the staff that would perform offset verification services for the Offset Project Operator, and Authorized Project Designee, if applicable, and a description of any instances of personal, employment, or family relationships with management or employees of the Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) that potentially represent a conflict of interest;

(E) Identification of any other circumstances known to the verification body, or Offset Project Operator, Authorized Project Designee, if applicable, and their technical consultant(s) that could result in a conflict of interest; and

(F) Attest, in writing, to DEP as follows:

"I certify under penalty of perjury of the laws of the Commonwealth of Pennsylvania the information provided in the Conflict of Interest submittal is true, accurate, and complete."

(f) Approval of Conflict of Interest Submittals. DEP or the Offset Project Registry must review the self-evaluation submitted by the verification body and determine whether the

verification body is authorized to perform the offset verification services for the Offset Project Operator and Authorized Project Designee, if applicable.

(1) DEP or the Offset Project Registry has 30 calendar days to make a determination whether to accept or deny the conflict of interest submittal and notify the verification body whether it may proceed with the offset verification services for the Offset Project Operator and Authorized Project Designee, if applicable.

(A) If DEP or an Offset Project Registry requests revisions to the conflict of interest self evaluation prior to approval, the verification body must resubmit the revised conflict of interest self evaluation within 10 working days of such request, or if there is a reason the verification body cannot submit the revisions within 10 working days, the verification body must communicate to DEP and the Offset Project Registry, in writing, as to the reasons why and get approval from DEP or the Offset Project Registry for an extension.

(B) If DEP or the Offset Project Registry determines that the verification body or any member of the offset verification team meets the criteria in section 147.279(b), DEP or the Offset Project Registry shall find a high potential conflict of interest and offset verification services may not proceed.

(C) If DEP or the Offset Project Registry determines that there is a low potential conflict of interest, offset verification services may proceed.

(D) If DEP or the Offset Project Registry determines that the verification body or any member of the offset verification team have a medium potential for conflict of interest, DEP or the Offset Project Registry shall evaluate the conflict of interest mitigation plan submitted by the verification body pursuant to section 147.279(d) and may request additional information from the applicant to complete the determination. In determining whether offset verification services may proceed, DEP or the Offset Project Registry may consider factors including, but not limited to, the nature of previous work performed, the current and past relationships between the verification body, related entities, and its subcontractors with the Offset Project Operator and Authorized Project Designee, if applicable, and any technical consultant(s) used by the Offset Project Operator or Authorized Project Designee, and related entities, and the cost of the offset verification services to be performed. If DEP or the Offset Project Registry determines that these factors when considered in combination demonstrate an acceptable level of potential conflict of

interest, DEP or the Offset Project Registry will authorize the verification body to provide offset verification services.

(2) If the offset project was listed with an Offset Project Registry, the conflict of interest self-evaluation acceptance or denial notification will be given by the Offset Project Registry.

(g) Monitoring Conflict of Interest Situations.

(1) After commencement of offset verification services, the verification body must monitor and immediately make full disclosure, in writing, to DEP and the Offset Project Registry regarding any potential for a conflict of interest situation that arises for an offset project using a Compliance Offset Protocol. This disclosure must include a description of actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.

(2) The verification body must continue to monitor arrangements or relationships that may be present for a period of one year after the completion of offset verification services for an offset project using a Compliance Offset Protocol. During that period, within 30 days of the verification body or any verification team member entering into any contract with the Offset Project Operator, and Authorized Project Designee, if applicable, for which the verification body has provided offset verification services, the verification body must notify DEP and the Offset Project Registry of the contract and the nature of the work to be performed. DEP or the Offset Project Registry, within 30 working days, will determine the level of conflict using the criteria in sections 147.279(a) through (d), if the Offset Project Operator, and Authorized Project Designee, if applicable, must re-verify their Offset Project Data Report, and if accreditation revocation is warranted by DEP.

(3) The verification body must notify DEP and the Offset Project Registry within 30 calendar days, of any emerging conflicts of interest during the time offset verification services are being provided for an offset project using a Compliance Offset Protocol.

(A) If DEP or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium risk, and this risk can be mitigated, then the verification body meets the conflict of interest requirements to continue to provide offset

verification services for the Offset Project Operator, and Authorized Project Designee, if applicable, and will not be subject to suspension or revocation of accreditation as specified in section 95132(d) of MRR.

(B) If DEP or the Offset Project Registry determines that an emerging potential conflict disclosed by the verification body is medium or high risk, and this risk cannot be mitigated, then the verification body will not be able to continue to provide offset verification services for the Offset Project Operator, and Authorized Project Designee, if applicable, and may be subject to the suspension or revocation of accreditation by DEP under section 95132(d) of MRR.

(4) The verification body must report to DEP and the Offset Project Registry, if applicable, any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of offset verification services.

(5) DEP may void a Positive Offset or Qualified Positive Offset Verification Statement received in section 147.281 if it discovers a potential conflict of interest has arisen for any member of the offset verification team. In such a case, the Offset Project Operator, and Authorized Project Designee, if applicable, shall be provided 90 calendar days to complete re-verification.

(6) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this article, the Secretary may rescind accreditation of the body, its verifier staff, or its subcontractor(s) for any appropriate period of time as provided in section 95132(d) of MRR.

(h) Specific Requirements for Jurisdictions with Approved Air Pollution Control Programs.

(1) If a jurisdiction with an approved air pollution control program has provided or is providing any services listed in section 147.279(b)(2) as part of its regulatory duties, those services do not constitute non-verification services or a potential for high conflict of interest for purposes of this article;

(2) Before providing offset verification services, a jurisdiction with an approved air pollution control program must submit a conflict of interest self-evaluation pursuant to

147.279(e) for each Offset Project Operator, and Authorized Project Designee, if applicable, for which it intends to provide offset verification services. As part of its conflict of interest self-evaluation submittal under section 147.279(e), the jurisdiction with an approved air pollution control program shall certify that it will prevent conflicts of interests and resolve potential conflict of interest situations pursuant to its policies and mechanisms submitted under section 95132(b)(1)(G) of MRR;

(3) If a jurisdiction with an approved air pollution control program hires a subcontractor who is not an employee to provide offset verification services, the air district shall be subject to all of the requirements of section 147.279.

§ 147.279.1 Additional Requirements for Jurisdictions with Approved Air Pollution Control Programs.

(a) The following requirements will apply to municipalities with approved air pollution programs that meet the requirements under section 147.278 to become accredited as an offset verification body and/or the requirements under section 147.286 to meet the requirements as an approved Offset Project Registry:

(1) The jurisdiction may:

(A) Register with DEP pursuant to section 147.130; and

(B) Hold compliance instruments as a voluntarily associated entity pursuant to section 147.114.

(2) The jurisdiction may not:

(A) Be an Offset Project Operator or Authorized Project Designee for any offset project for which it provides offset verification services pursuant to sections 147.277, 147.277.1, and 147.277.2, and for which the air district will subsequently request the issuance of DEP offset credits pursuant to section 147.281;

(B) Be an Offset Project Operator or Authorized Project Designee for any offset project for which it provides registry services pursuant to section 147.287, and for which the air district will subsequently request the issuance of DEP offset credits pursuant to section 147.281; and

(C) Be an offset verification body for any offset project developed using a Compliance Offset Protocol for which it would provide registry services pursuant to section 147.287.

§ 147.280. Issuance of Registry Offset Credits.

(a) One registry offset credit, which represents one metric ton of CO<sub>2</sub>e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued pursuant to section 147.280.1 only if:

(1) An Offset Project Registry has listed the offset project pursuant to section 147.275;

(2) The GHG emission reductions or GHG removal enhancements were issued a Positive Offset or Qualified Positive Offset Verification Statement pursuant to section 147.277.1 and 147.277.2; and

(3) An Offset Project Registry has received a Positive Offset or Qualified Positive Offset Verification Statement issued and attested to by a DEP-accredited verification body for the Offset Project Data Report for which registry offset credits would be issued.

(b) An Offset Project Registry will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of section 147.280(a), the information submitted pursuant to section 147.280(a) is complete, and the Positive Offset or Qualified Positive Offset Verification Statement meets the requirements of sections 147.277, 147.277.1, and 147.277.2 within 45 calendar days of receiving it.

(c) Determination for Timing and Duration of Initial Crediting Periods for Offset Projects Submitted Through an Offset Project Registry. The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by an Offset Project Registry, unless otherwise specified in the applicable Compliance Offset Protocol.

(d) Determination for Timing and Duration of Renewed Crediting for Offset Projects Submitted through an Offset Project Registry. A renewed crediting period will begin the day after the conclusion of the prior crediting period.

§ 147.280.1 Process for Issuance of Registry Offset Credits.

(a) An Offset Project Registry may issue a registry offset credit that meets the requirements of sections 147.280(a) and (b) to an Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator or Authorized Project Designee to receive registry offset credits, no later than 15 calendar days after an Offset Project Registry makes a determination pursuant to section 147.280(b).

(b) Change of Listing Status at the Offset Project Registry. When an Offset Project Registry issues a registry offset credit for an offset project, the listing status for that offset project will be changed to either “Active Registry Project” or “Active Registry Renewal” at the Offset Project Registry and DEP.

(c) Notice of Determination of Issuance of Registry Offset Credits. Not later than 15 calendar days after an Offset Project Registry issues a registry offset credit, an Offset Project Registry will notify the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator of the issuance.

(d) Requests for Additional Information. An Offset Project Registry may request additional information for offset projects seeking issuance of registry offset credits from the Offset Project Operator, Authorized Project Designee or verification body.

(1) An Offset Project Registry may request any additional information from the Offset Project Operator, Authorized Project Designee, if applicable, or the verification body within the timeframe specified in section 147.280(b) before issuing registry offset credits for an offset project that meets the requirements of sections 147.280(a) and (b).

(2) If an Offset Project Registry determines the information submitted pursuant to sections 147.280(a), 147.280(b), and 147.280.1(d)(2) does not meet the requirements for issuance of registry offset credits, an Offset Project Registry must deny issuance of registry offset credits. The Offset Project Operator or Authorized Project Designee may petition an Offset Project Registry within 10 days of denial for a review of the information submitted pursuant to sections 147.280(a), 147.280(b), and 147.280.1(d)(2) and respond to any issues that prevent the issuance of registry offset credits.

(3) An Offset Project Registry must make a final determination within 30 calendar days of receiving the Offset Project Operator's or Authorized Project Designee's request in section 147.280.1(d)(2) and may request additional information from the Offset Project Operator, Authorized Project Designee, if applicable, or verification body.

(4) If an Offset Project Registry determines not to issue registry offset credits, the Offset Project Registry must submit a detailed report to DEP that describes why they came to a negative determination.

(5) If an Offset Project Registry determines not to issue registry offset credits, the Offset Project Operator or Authorized Project Designee may request that DEP make a final determination on whether the GHG reductions or removal enhancements achieved by the offset project meet the requirements for registry offset credit issuance. In making this determination, DEP may consult with the Offset Project Operator, Authorized Project Designee, if applicable, verification body, and Offset Project Registry before making the final determination.

(6) If after reviewing all the information, DEP determines that the GHG reductions or removal enhancements meet the requirements for registry offset credit issuance, the Offset Project Registry will issue registry offset credits in the amount of GHG reductions or removal enhancements verified to have been achieved by the offset project for the applicable Reporting Period(s).

(e) At the time of issuance or after notifying the Offset Project Operator, Authorized Project Designee, or any other third party authorized by the Offset Project Operator to receive registry offset credits, of the issuance, the Offset Project Registry will create a unique serial number for each registry offset credit.

#### § 147.281. Issuance of DEP Offset Credits.

(a) One DEP offset credit, which represents one metric ton of CO<sub>2</sub>e for a direct GHG emission reduction or direct GHG removal enhancement, will be issued only for a GHG emission reduction or GHG removal enhancement that occurs during a Reporting Period. One DEP offset credit will be issued for each metric ton of CO<sub>2</sub>e only if:

(1) DEP or an Offset Project Registry has listed the offset project pursuant to section 147.275;

(2) The GHG emission reductions and GHG removal enhancements were issued a Positive Offset or Qualified Positive Offset Verification Statement pursuant to sections 147.277.1 and 147.277.2;

(3) DEP or an Offset Project Registry has received a Positive Offset or Qualified Positive Offset Verification Statement issued and attested to by an DEP-accredited verification body for the Offset Project Data Report for which registry offset credits were issued pursuant to section 147.280.1, if the offset project was submitted for listing with an Offset Project Registry, or for which DEP offset credits would be issued pursuant to section 147.281.1; and

(4) The issued DEP offset credits would not immediately be subject to invalidation pursuant to sections 147.285(c)(1) and 147.285(c)(3).

(b) Requirements for Offset Projects Submitted Through an Offset Project Registry Seeking Issuance of DEP Offset Credits. If an Offset Project Operator or Authorized Project Designee provides information for listing pursuant to section 147.275, monitors and reports pursuant to section 147.276, and has their offset project verified pursuant to sections 147.277, 147.277.1, and 147.277.2 through an Offset Project Registry, the Offset Project Operator or Authorized Project Designee must provide the following information to DEP for issuance of DEP offset credits pursuant to section 147.281.1:

(1) The attestations required in sections 147.275(c)(1), 147.275(c)(2), 147.275(c)(3), 147.276(d)(7), 147.277.1(b)(3)(R)(4)b, 147.277.1(b)(3)(R)(4)e., 147.277.1(b)(3)(R)(4)f, and any in the applicable Compliance Offset Protocol;

(2) Offset project listing information submitted to an Offset Project Registry pursuant to sections 147.275(c) and (e);

(3) The original and final Offset Project Data Reports submitted to an Offset Project Registry pursuant to sections 147.276(d), 147.277.1(b)(3)(M), and 147.277.1(b)(3)(R)5; and

(4) Offset Verification Statements submitted pursuant to section 147.277.1(b)(3)(R)(4)b.

(5) The Offset Project Operator, or Authorized Project Designee, if applicable, must submit a request for issuance of DEP offset credits to DEP for each Offset Project Data Report for which they are seeking issuance of DEP offset credits identifying which Holding Accounts

the DEP offset credits should be placed into and how many DEP offset credits will be placed into each Holding Account. The Offset Project Operator or Authorized Project Designee may request that DEP offset credits are placed into the Holding Account of any party not prohibited to hold compliance instruments under this Article. Any party receiving DEP offset credits at the time of DEP offset credit issuance must have a tracking system account with DEP.

(A) An Offset Project Operator or Authorized Project Designee may request that only a portion of the eligible GHG reductions and removal enhancements for the applicable Reporting Period be issued DEP offset credits in the request for issuance.

(B) The request for issuance of DEP offset credits may be provided to DEP when the Offset Project Operator or Authorized Project Designee, if applicable, submits the information in sections 147.281(b)(1) through (4) but must be provided to DEP before it will issue DEP offset credits pursuant to section 147.281.1. If the offset project was listed by an Offset Project Registry, the request for issuance of DEP offset credits may not be provided to DEP until the Offset Project Registry has issued registry offset credits for the applicable Offset Project Data Report(s).

(c) DEP will determine whether the GHG emission reductions and GHG removal enhancements meet the requirements of this article and the applicable Compliance Offset Protocol, the information submitted in sections 147.281(b) and (c) is complete, and the Positive Offset or Qualified Positive Offset Verification Statement meets the requirements of sections 147.277, 147.277.1, and 147.277.2 within 45 calendar days of receiving complete and accurate information.

(d) Before DEP issues a DEP offset credit pursuant to section 147.281.1 for GHG reductions and GHG removal enhancements achieved by an offset project in a Reporting Period, the Offset Project Operator or Authorized Project Designee must provide the following attestations, in writing, to DEP:

(1) “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania the GHG reductions or GHG removal enhancements for [project] from [date] to [date] have been measured in accordance with the [appropriate DEP Compliance Offset Protocol] and all information required to be submitted to DEP is true, accurate, and complete.”;

(2) “I understand I am voluntarily participating in the Pennsylvania Greenhouse Gas Cap-and-Trade Program under 25 Pa. Code Chapter 147, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of Pennsylvania as the exclusive venue to resolve any and all disputes arising from the enforcement of provisions in this chapter.”;

(3) “I understand that the offset project activity and implementation of the offset project must be in accordance with all applicable local, regional, and national environmental and health and safety regulations that apply based on the offset project location. I understand that offset projects are not eligible to receive DEP or registry offset credits for GHG reductions and GHG removal enhancements that are not in compliance with the requirements of this chapter.”;

(4) “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania all information provided to DEP for issuance of DEP offset credits is true, accurate, and complete.”; and

(5) “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the GHG reductions and GHG removal enhancements for which I am seeking DEP Offset Credits have not been issued any offset credits or been used for any GHG mitigation requirements in any other voluntary or mandatory program, except, if applicable, an Offset Project Registry pursuant to section 147.280.1.”

(e) Determination for Timing and Duration of Initial Crediting Periods for Offset Projects Submitted Through DEP. The initial crediting period will begin with the date that the first verified GHG emission reductions and GHG removal enhancements occur, according to the first Positive Offset or Qualified Positive Offset Verification Statement that is received by DEP, unless otherwise specified in a Compliance Offset Protocol.

(f) Determination for Timing and Duration of Renewed Crediting for Offset Projects Submitted Through DEP. A renewed crediting period will begin the day after the conclusion of the prior crediting period.

#### § 147.281.1 Process for Issuance of DEP Offset Credits.

(a) DEP will issue an DEP offset credit for GHG reductions and removal enhancements achieved in a Reporting Period for an offset project that meets the requirements of

sections 147.281(a) and (b) to the DEP Issuance Account no later than 15 calendar days after DEP makes a determination pursuant to section 147.281(c), as long as all attestations required in section 147.281(d) have been received by DEP prior to its determination.

(b) Change of Listing Status at DEP. When DEP issues a DEP offset credit for an offset project, the listing status for that offset project will be changed from “Active Registry Project” to “Active DEP Project” or “Active Registry Renewal” to “Active DEP Renewal” at the Offset Project Registry and DEP.

(c) Notice of Determination of Issuance of DEP Offset Credits. Not later than 15 calendar days after DEP determines to issue a DEP offset credit pursuant to section 147.281(c), DEP will notify the Offset Project Operator, Authorized Project Designee, or any other third party requested by the Offset Project Operator pursuant to section 147.281(b)(5)(B) to receive DEP offset credits, of its intent to issue DEP offset credits.

(d) Requests for Additional Information. DEP may request additional information for offset projects submitted through an Offset Project Registry seeking issuance of DEP offset credits.

(1) DEP will notify the Offset Project Operator, Authorized Project Designee, or other third party identified in section 147.281(b)(5)(B) within 15 calendar days of its determination pursuant to section 147.281(c) if the information submitted pursuant to section 147.281(b), (c), and (d) is incomplete and request additional specific information.

(2) DEP may request any additional information from the Offset Project Operator, Authorized Project Designee, Offset Project Registry, or verification body before issuing DEP offset credits for an offset project that meets the requirements of section 147.281. The Offset Project Operator, Authorized Project Designee, Offset Project Registry, or verification body must submit the requested information to DEP within 10 calendar days of DEP’s request.

(3) If DEP determines the information submitted in sections 147.281(b), 147.281(c), and 147.281.1(d)(2) does not meet the requirements for issuance of DEP offset credits, then DEP may deny issuance of DEP offset credits. The Offset Project Operator or Authorized Project Designee may petition DEP within 10 days of denial for a review of submitted information in

sections 147.281(b), 147.281(c), and 147.281.1(d)(2) and respond to any issues that prevent the issuance of DEP offset credits.

(4) DEP must make a final determination within 30 calendar days of receiving the request in section 147.281.1(d)(3) and may request additional information from the Offset Project Operator or Authorized Project Designee, verification body, or Offset Project Registry. This determination made by the Secretary is final.

(e) A registry offset credit issued pursuant to section 147.280.1(a) must be removed or cancelled by the Offset Project Registry within 10 calendar days after DEP issues a DEP offset credit pursuant to this section, such that the registry offset credit is no longer available for transaction on the Offset Project Registry system. The Offset Project Registry must provide proof to DEP that the registry offset credits have been permanently removed or cancelled from the registry system.

(f) Receipt of DEP Offset Credits. DEP will transfer DEP offset credits into the Holding Account of the Offset Project Operator, Authorized Project Designee, or any other third party requested by the Offset Project Operator pursuant to section 147.281(b)(5)(B) to receive DEP offset credits, within 15 working days of the notice of determination pursuant to sections 147.281.1(c) and (d)(4).

#### § 147.282. Registration of DEP Offset Credits.

A DEP offset credit will be registered by:

- (a) Creating a unique DEP serial number; and
- (b) Transferring the DEP offset credits to the Holding Account of the listed Offset Project Operator, Authorized Project Designee, or another third party as requested by the Offset Project Operator pursuant to section 147.281(b)(5)(B) to receive DEP offset credits, unless otherwise required by section 147.283.

#### § 147.283. Forestry Offset Reversals.

(a) For forest sequestration projects, a portion of DEP offset credits issued to the forest offset project will be placed by DEP into the Forest Buffer Account.

(1) The amount of DEP offset credits that must be placed in the Forest Buffer Account shall be determined as set forth in the applicable version of the Compliance Offset Protocol in section 147.273(a)(2)(C)4.

(2) DEP offset credits will be transferred to the Forest Buffer Account by DEP at the time of DEP offset credit registration pursuant to section 147.282.

(3) If a forest offset project is originally submitted through an Offset Project Registry an equal number of registry offset credits must be removed or cancelled by the Offset Project Registry, such that the registry offset credit is no longer available for transaction on the Offset Project Registry system, and issued by DEP for placement in the Forest Buffer Account.

(4) The DEP offset credits placed into the Forest Buffer Account must correspond to the Reporting Period for which the DEP offset credits are issued.

(b) Unintentional Reversals. If there has been an unintentional reversal, the Offset Project Operator or Authorized Project Designee must notify DEP and the Offset Project Registry, in writing, of the reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery.

(1) In the case of an unintentional reversal the Offset Project Operator or Authorized Project Designee shall provide in writing to DEP and an Offset Project Registry, if applicable, a completed verified estimate of current carbon stocks within the offset project boundary within 23 months of the discovery of the unintentional reversal. To determine the verified estimate of current carbon stocks a full offset verification must be conducted pursuant to sections 147.277 through 147.278, including a site visit. The verified estimate may be submitted as a separate offset verification services or incorporated into a chapter of the detailed verification report submitted pursuant to section 147.277.1 when offset verification services are conducted for an Offset Project Data Report. After an unintentional reversal, the Offset Project Operator or Authorized Project Designee does not need to submit an Offset Project Data Report until the required verified estimate of current carbon stocks within the offset project boundary is completed.

(2) If DEP determines that there has been an unintentional reversal, and DEP offset credits have been issued to the offset project, DEP will retire a quantity of DEP offset credits

from the Forest Buffer Account in the amount of metric tons CO<sub>2e</sub> reversed for all Reporting Periods.

(c) Intentional Reversals. Requirements for intentional reversals are as follows:

(1) If an intentional reversal occurs, the Offset Project Operator or Authorized Project Designee shall, within 30 calendar days of the intentional reversal:

(A) Give notice, in writing, to DEP and the Offset Project Registry, if applicable, of the intentional reversal; and

(B) Provide a written description and explanation of the intentional reversal to DEP and the Offset Project Registry, if applicable.

(2) Within one year of the occurrence of an intentional reversal, the Offset Project Operator or Authorized Project Designee shall submit to DEP and the Offset Project Registry, if applicable, a completed verified estimate of current carbon stocks within the offset project boundary. To determine the verified estimate of current carbon stocks a full offset verification must be conducted pursuant to sections 147.277 through 147.278, including a site visit. The verified estimate may be submitted as a separate offset verification services or incorporated into a chapter of the detailed verification report submitted pursuant to section 147.277.1 when offset verification services are conducted for an Offset Project Data Report.

(3) If an intentional reversal occurs from a forest offset project, and DEP offset credits have been issued to the offset project, the current or most recent (in the case of an offset project after the final crediting period), forest owner(s) must submit to DEP for placement in the Retirement Account a quantity of valid DEP offset credits or other approved compliance instruments pursuant to subchapter 4 within six months of notification by DEP in the amount determined pursuant to sections 147.283(c)(3):

(A) The forest owner must turn in valid compliance instruments in the amount of metric tons CO<sub>2e</sub> reversed for all Reporting Periods.

(B) Notification by DEP will occur after the verified estimate of carbon stocks referred to in section 147.283(c)(2) has been submitted to DEP, or after one year has elapsed since the occurrence of the reversal if the Offset Project Operator or Authorized Project Designee fails to submit the verified estimate of carbon stocks.

(D) If the forest owner does not submit valid DEP offset credits or other approved compliance instruments in the amount required pursuant to sections 147.283(c)(3)(A) to DEP within six months of notification by DEP, DEP will retire a quantity of DEP offset credits equal to the difference between the number of metric tons of CO<sub>2</sub>e determined pursuant to sections 147.283(c)(3)(A) and the number of retired approved compliance instruments from the Forest Buffer Account and the forest owner will be subject to enforcement action and each DEP offset credit retired from the Forest Buffer Account will constitute a separate violation pursuant to section 147.314.

(4) Early Project Terminations. If a project termination, as defined in the Compliance Offset Protocol in section 147.273(a)(2)(C)(4), occurs from a compliance or early action forest offset project, and DEP offset credits have been issued to the offset project, the current or most recent (in the case of an offset project after the final crediting period), forest owner(s) must submit to DEP for placement in the Retirement Account a quantity of valid DEP offset credits or other approved compliance instruments pursuant to subchapter 4 in the amount equal to the number of DEP offset credits issued to the offset project for each Reporting Period, except for improved forest management forest offset projects. If the project is an improved forest management forest offset project, the amount of metric tons CO<sub>2</sub>e reversed must be multiplied by the compensation rate in the Compliance Offset Protocol in section 147.273(a)(2)(C)4.

(A) DEP will notify the forest owner of how many DEP offset credits must be replaced with valid compliance instruments.

(B) The forest owner must submit to DEP for placement in the Retirement Account a valid DEP offset credit or another approved compliance instrument pursuant to subchapter 4 for each DEP offset credit required to be replaced within six months of DEP's retirement.

(C) If the forest owner does not submit valid DEP offset credits or other approved compliance instruments to DEP in the amount required pursuant to sections 147.283(c)(4) within six months of DEP's retirement, DEP will retire a quantity of DEP offset credits equal to the difference between the number of metric tons of CO<sub>2</sub>e determined pursuant to sections 147.283(c)(4) and the number of retired approved compliance instruments from the Forest Buffer Account and they will be subject to enforcement action and each DEP offset credit retired from the Forest Buffer Account will constitute a separate violation pursuant to section 147.314.

(d) Disposition of Forest Sequestration Projects After a Reversal. If a reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks, the forest offset project will be terminated by DEP or an Offset Project Registry.

(1) If the forest offset project is terminated due to an unintentional reversal, DEP will retire from the Forest Buffer Account a quantity of DEP offset credits equal to the total number of DEP offset credits issued pursuant to section 147.281, and where applicable, all DEP offset credits issued to the offset project pursuant to the Program for Recognition of Early Action Offset Credits, over the preceding 100 years.

(2) If the forest offset project is terminated due to an unintentional reversal, another offset project may be initiated and submitted to DEP or an Offset Project Registry for listing within the same offset project boundary.

(3) If the forest offset project has experienced an unintentional reversal and its actual standing live carbon stocks are still above the approved baseline levels, it may continue without termination as long as the unintentional reversal has been compensated by the Forest Buffer Account. The Offset Project Operator or Authorized Project Designee must continue contributing to the Forest Buffer Account in future years as quantified in section 147.283(a)(1).

(4) If the forest offset project is terminated due to any reason except an unintentional reversal, new offset projects may not be initiated within the same offset project boundary, unless otherwise specified in a Compliance Offset Protocol.

#### § 147.284. Ownership and Transferability of DEP Offset Credits.

(a) Initial ownership of a DEP offset credit will be with the registered Offset Project Operator, Authorized Project Designee, or another third party as requested by the Offset Project Operator pursuant to section 147.281(b)(5)(B) to receive DEP offset credits, unless otherwise required by section 147.283. A DEP offset credit may be sold, traded, or transferred, unless:

(1) It has been retired, surrendered for compliance, or used to meet any GHG mitigation requirements in any voluntary or regulatory program;

(2) It resides in the Forest Buffer Account pursuant to section 147.283; or

(3) It has been invalidated pursuant to section 147.285.

(b) A DEP offset credit may only be used:

(1) To meet a compliance obligation under this article, except if used by a covered entity in a program approved for linkage pursuant to subchapter 12; or

(2) By a Voluntarily Associated Entity for purposes of voluntary retirement.

§ 147.285. Invalidation of DEP Offset Credits.

(a) A DEP offset credit issued under this article will remain valid unless invalidated pursuant to this section.

(b) Timeframe for Invalidation. DEP may invalidate a DEP offset credit pursuant to this section within the following timeframe if a determination is made pursuant to section 147.285(f):

(1) Within eight years of the date that corresponds to the end of the Reporting Period for which the DEP offset credit is issued, if the DEP offset credit is issued pursuant to section 147.281.1, unless one of the following requirements is met:

(A) The Offset Project Operator or Authorized Project Designee for an offset project developed under the Compliance Offset Protocol in section 147.273(a)(2)(C)1 does all of the following:

1. Has a different verification body that has not verified the Offset Project Data Report for the issuance of DEP offset credits, and meets the requirements for conflict of interest pursuant to section 147.279 and rotation of verification bodies pursuant to section 147.277.1(a), conduct a second independent regulatory verification pursuant to sections 147.277 through 147.278, except for section 147.277.1(b)(3)(M), for the same Offset Project Data Report. Although the requirements in section 147.277.1(b)(3)(M) do not need to be met under this section, any misreporting, discrepancies, and omissions found during the full offset verification services must be included in the offset material misstatement calculation performed pursuant to section 147.277.1(b)(3)(Q). If minor correctable errors that do not result in an offset material misstatement are found during the full offset verification services and the verification body does not identify any other nonconformance that would result in an adverse Offset Verification Statement, the verification body must issue a Qualified Positive Offset

Verification Statement and identify the correctable errors on the Offset Verification Statement;

2. The second regulatory verification must be completed within three years of the issuance of the DEP offset credits through the submittal of an Offset Verification Statement pursuant to section 147.277.1(b)(3)(R)1, and the Offset Project Operator or Authorized Project Designee must receive a Positive or Qualified Positive Offset Verification Statement from the new verification body for the same Offset Project Data Report.

a. If the offset project is listed with an Offset Project Registry, the verification body must submit the detailed verification report and Offset Verification Statement for the second regulatory verification to the Offset Project Registry and DEP.

b. The Offset Project Registry must review the offset verification documents pursuant to section 147.287(e)(1)(E) and submit a report to DEP that includes the details and findings of the Offset Project Registry's review. During its review, the Offset Project Registry may request additional information from the verification body and Offset Project Operator or Authorized Project Designee, if applicable, and may request clarifications and revisions to the materials, if necessary.

c. The Offset Project Registry has 45 calendar days to review the offset verification information once complete and accurate verification documents are received from the verification body.

d. The Offset Project Registry has an additional 15 working days to submit its report to DEP. DEP will review the Offset Project Registry report and determine based on the report and all the information submitted by the verification body and Offset Project Operator or Authorized Project Designee, if applicable, if the invalidation timeframe will be reduced. During its review, DEP may request additional information, clarifications, and revisions to the materials, if necessary.

3. If the requirements in sections 147.285(b)(1)(A)1 and 2 are met, the DEP offset credits issued under the Offset Project Data Report may only be subject to invalidation within three years of the date that corresponds to the end of the Reporting Period for which the DEP offset credits are issued, if the DEP offset credits are issued pursuant to section 147.281;

or

(B) The Offset Project Operator or Authorized Project Designee for an offset project developed under one of the protocols listed in section 147.285(b)(1)(B). does the following:

1. Has a subsequent Offset Project Data Report verified pursuant to sections 147.277 through 147.278 by a different verification body than the one which conducted the most recent verification, and that meets the requirements for conflict of interest pursuant to section 147.279 and rotation of verification bodies pursuant to section 147.277.1(a); and

2. The verification conducted by a different verification body for the subsequent Offset Project Data Report and used to reduce the invalidation timeframe of any DEP offset credits must be completed through the submittal of an Offset Verification Statement pursuant to section 147.277.1(b)(3)(R)1 within, at a maximum, three years from the date that corresponds to the last time DEP offset credits were issued to the offset project. The verification of the subsequent Offset Project Data Report must result in a Positive or Qualified Positive Offset Verification Statement from the new verification body.

3. If the requirements in sections 147.285(b)(1)(B)1 and 2 are met, the DEP offset credits issued pursuant to section 147.281 for no more than three Reporting Periods prior to the Reporting Period for which the subsequent Offset Project Data Report was verified by a different verification body may only be subject to invalidation within three years of the date that corresponds to the end of the Reporting Period for which the DEP offset credits are issued, if the DEP offset credits are issued pursuant to section 147.281.

4. If an offset project developed under one of the Compliance Offset Protocols listed in section 147.285(b)(1)(B)5 is in the last Reporting Period of a crediting

period and will not have a renewed crediting period, the invalidation timeframe for up to the last three Reporting Periods may be reduced from eight years to three years if the following requirements are met for the last Offset Project Data Report of the crediting period:

a. The Offset Project Operator or Authorized Project Designee has a different verification body than has verified the Offset Project Data Reports identified in section 147.285(b)(1)(B)4. and that meets the requirements for conflict of interest pursuant to section 147.279 and rotation of verification bodies pursuant to section 147.277.1(a) conduct a second independent regulatory verification pursuant to sections 147.277 through 147.278, except for section 147.277.1(b)(3)(M), for the last Offset Project Data Report of the crediting period. Although the requirements in section 147.277.1(b)(3)(M) do not need to be met under this section, any misreporting, discrepancies, and omissions found during the full offset verification services must be included in the offset material misstatement calculation performed pursuant to section 147.277.1(b)(3)(Q); and

b. The second regulatory verification must be completed within three years of the issuance of the DEP offset credits through the submittal of an Offset Verification Statement pursuant to section 147.277.1(b)(3)(R)1. and the Offset Project Operator or Authorized Project Designee must receive a Positive or Qualified Positive Offset Verification Statement from the new verification body for the same last Offset Project Data Report.

i. If the offset project is listed with an Offset Project Registry, the verification body must submit the detailed verification report and Offset Verification Statement for the second regulatory verification to the Offset Project Registry and DEP.

ii. The Offset Project Registry must review the offset verification documents pursuant to section 147.287(e)(1)(E) and submit a report to DEP that includes the details and findings of the Offset Project Registry's review. During its review, the Offset Project Registry may request additional information from the verification body and Offset

Project Operator or Authorized Project Designee, if applicable, and may request clarifications and revisions to the materials, if necessary.

iii. The Offset Project Registry has 45 calendar days to review the offset verification information once complete and accurate verification documents are received from the verification body.

iv. The Offset Project Registry has an additional 15 working days to submit its report to DEP. DEP will review the Offset Project Registry report and determine based on the report and all the information submitted by the verification body and Offset Project Operator or Authorized Project Designee, if applicable, and may request additional information, clarifications, and revisions to the materials, if necessary.

(c) Grounds for Initial Determination of Invalidation. DEP may determine that an DEP offset credit is invalid for the following reasons:

(1) The Offset Project Data Report contains errors that overstate the amount of GHG reductions or GHG removal enhancements by more than 5.00 percent;

(A) If DEP finds that there has been an overstatement by more than 5.00 percent, DEP shall determine how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period. Within 10 calendar days of this determination, DEP will notify the verification body that performed the offset verification and the Offset Project Operator or Authorized Project Designee. Within 25 calendar days of receiving the written notification by DEP, the verification body shall provide any available offset verification services information or correspondence related to the Offset Project Data Report. Within 25 calendar days of receiving the written notification by DEP, the Offset Project Operator or Authorized Project Designee shall provide data that is required to calculate GHG reductions and GHG removal enhancements for the offset project according to the requirements of this article, the detailed offset verification report prepared by the verification body, and other information requested by DEP. The Offset Project Operator or Authorized Project Designee shall also make available personnel who can assist DEP's determination of how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period.

1. DEP will determine the actual GHG reductions and GHG removal enhancements achieved by the offset project for the applicable Reporting Period based on, at a minimum, the following information:

a. The GHG sources, GHG sinks, and GHG reservoirs within the offset project boundary for that Reporting Period; and

b. Any previous Offset Project Data Reports submitted by the Offset Project Operator or Authorized Project Designee, and the Offset Verification Statements rendered for those reports.

2. In determining how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period, DEP may use the following methods, as applicable:

a. The applicable Compliance Offset Protocol;

b. In the event of missing data, DEP will rely on the missing data provisions pursuant to section 147.276, and, if applicable, the Compliance Offset Protocol; and

c. Any information reported under this article for this Reporting Period and past Reporting Periods.

3. DEP shall determine how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period using the best information available, including the information in section 147.285(c)(1)(A)(1.) and methods in section 147.285(c)(1)(A)(2.), as applicable.

(B) If DEP determines that an overstatement has occurred pursuant to section 147.285(c)(1), DEP shall determine the amount of DEP offset credits that correspond to the overstatement using the following equation, rounded to the nearest whole ton:

$$\text{If } I_{DEPOC} > R_{OPRC} * 1.05$$

$$\text{Then } O_R + I_{DEPOC} - R_{OPDR}$$

Where:

“O<sub>R</sub>” is the amount of overstated GHG reductions and GHG removal enhancements for the applicable Offset Project Data Report, rounded to the nearest whole ton;

“IDEPDC” is the number of DEP offset credits issued under the applicable Offset Project Data Report pursuant to section 147.281.1 or the Program for Recognition of Early Action Offset Credits;

“ROPDR” is the number of GHG reductions and GHG removal enhancements determined by DEP pursuant to section 147.285(c)(1) for the applicable Offset Project Data Report;

(2) The offset project activity and implementation of the offset project was not in accordance with all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in the applicable Compliance Offset Protocol, as determined pursuant to section 147.273(b), during the Reporting Period for which the DEP offset credit was issued.

(A) For offset projects using a protocol from sections 147.273(a)(2)(C)1, 2, or 5, if DEP finds that the offset project is out of regulatory compliance, then DEP shall determine how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period. Within 10 calendar days of this determination, DEP will notify the verification body that performed the offset verification and the Offset Project Operator or Authorized Project Designee. Within 25 calendar days of receiving the written notification by DEP, the verification body shall provide any available offset verification services information or correspondence related to the relevant Offset Project Data Report(s). Within 25 calendar days of receiving the written notification by DEP, the Offset Project Operator or Authorized Project Designee shall provide data that is required to calculate GHG reductions and GHG removal enhancements for the offset project according to the requirements of this article, the detailed offset verification report prepared by the verification body, and other information requested by DEP. The Offset Project Operator or Authorized Project Designee shall also make available personnel who can assist DEP’s determination of how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period.

1. DEP will determine the actual GHG reductions and GHG removal enhancements achieved by the offset project for the applicable Reporting Period based on, at a minimum, the following information:

- a. The GHG sources, GHG sinks, and GHG reservoirs within the offset project boundary for that Reporting Period;
  - b. Any previous Offset Project Data Reports submitted by the Offset Project Operator or Authorized Project Designee, and the Offset Verification Statements rendered for those reports; and
  - c. Any information relating to the regulatory compliance of the offset project provided by the Offset Project Operator, Authorized Project Designee, or regulatory oversight body.
2. In determining how many GHG reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period, DEP may use the following methods, as applicable:
    - a. The applicable Compliance Offset Protocol;
    - b. In the event of missing data, DEP will rely on the missing data provisions pursuant to section 147.276, and, if applicable, the Compliance Offset Protocol; and
    - c. Any information reported under this article for this Reporting Period and past Reporting Periods.
  3. DEP shall determine how many GHG emission reductions and GHG removal enhancements were achieved by the offset project for the applicable Reporting Period using the best information available, including the information in section 147.285(c)(2)(A)(1.) and methods in section 147.285(c)(2)(A)(2.), as applicable.
  4. If DEP determines that an offset project is out of regulatory compliance pursuant to section 147.285(c)(2), then DEP shall determine the amount of overstated DEP offset credits, rounded to the nearest whole number, that correspond to the time period that the offset project is determined to be out of regulatory compliance pursuant to section 147.273(b)(1)(E). All offset credits corresponding to this time period shall be deemed ineligible for crediting, and therefore any offset credits corresponding to this time period are subject to invalidation.

(B) For offset projects using a protocol from sections 147.273(a)(2)(C)3, 4, or 6. if DEP finds that the offset project is out of regulatory compliance, then DEP shall determine that all DEP offset credits issued for the applicable Reporting Period are subject to invalidation.

(3) DEP determines that offset credits have been issued in any other voluntary or mandatory program within the same offset project boundary and for the same Reporting Period in which DEP offset credits were issued for GHG reductions and GHG removal enhancements.

(4) The following shall not be grounds for invalidation:

(A) An update to a Compliance Offset Protocol will not result in an invalidation of DEP offset credits issued under a previous version of the Compliance Offset Protocol; or

(B) A reversal that occurs under a forest offset project. If such a reversal occurs the provisions in section 147.283 apply.

(d) Suspension of Transfers. When DEP makes an initial determination pursuant to section 147.285(c) it will immediately block any transfers of DEP offset credits for the applicable Offset Project Data Report. Once DEP makes a final determination pursuant to section 147.285(f) the block on transfers for any valid DEP offset credits will be cancelled.

(e) Identification of Affected Parties. If DEP makes an initial determination that one of the circumstances listed in section 147.285(c) has occurred, DEP will identify the following parties:

(1) The current holders that hold any DEP offset credits in their Holding and/or Compliance Accounts from the applicable Offset Project Data Report;

(2) The entities for which DEP transferred any DEP offset credits from the applicable Offset Project Data Report into the Retirement Account; and

(3) The current, or most recent (in the case of an offset project after the final crediting period), Offset Project Operator and Authorized Project Designee, and, for forest offset projects the current, or most recent (in the case of an offset project after the final crediting period), Forest Owner(s).

(f) Final Determination and Process of Invalidation. DEP will notify the parties identified in section 147.285(e) of its initial determination pursuant to section 147.285(c), and

provide each party an opportunity to submit additional information to DEP prior to making its final determination, as follows:

(1) DEP will include the reason for its initial determination in its notification to the parties identified in section 147.285(e).

(2) After notification the parties identified in section 147.285(e) will have 25 calendar days to provide any additional information to DEP.

(3) DEP may request any information as needed in addition to the information provided under this section.

(4) The Department will have 30 calendar days after all information is submitted under this section to make a final determination that one or more conditions listed pursuant to section 147.285(c) has occurred and whether to invalidate DEP offset credits.

(A) The parties identified pursuant to section 147.285(e) will be notified of DEP's final determination of invalidation pursuant to this section.

(B) Any approved program for linkage pursuant to subchapter 12 will be notified of the invalidation at the time of DEP's final determination pursuant to this section.

(g) Removal of Invalidated DEP Offset Credits from Holding, Compliance, and/or Forest Buffer Accounts. If the Department makes a final determination pursuant to section 147.285(f) that a DEP offset credit is invalid, then:

(1) DEP offset credits will be removed from any Holding, Compliance, or Forest Buffer Account, as follows;

(A) If n DEP offset credit is determined to be invalid due to the circumstance listed in section 147.285(c)(1) or 147.285(c)(2)(A), then:

1. DEP will determine which DEP offset credits will be removed from the Compliance and/or Holding Accounts of each party identified in section 147.285(e)(1) according to the following equation, truncated to the nearest whole ton:

$$H_{DEPOC} = (TOT_{Holding} / I_{DEPOC}) O_R$$

Where:

“OR” is the amount of overstated GHG reductions and GHG removal enhancements for the applicable Offset Project Data Report calculated pursuant to section 147.285(c)(1) or (c)(2)(A);

“ID<sub>DEPOC</sub>” is the number of DEP offset credits issued under the applicable Offset Project Data Report pursuant to section 147.281.1;

“TOT<sub>Holding</sub>” is the total number of DEP offset credits currently being held in a Compliance and/or Holding Account by each party identified in section 147.285(e)(1) for the applicable Offset Project Data Report; and

“H<sub>DEPOC</sub>” is the total number of DEP offset credits, rounded to the nearest whole ton, that will be removed from the Holding and/or Compliance Account of each party identified in section 147.285(e)(1).

2. DEP will determine the quantity of DEP offset credits issued under the applicable Offset Project Data Report in the amount calculated pursuant to section 147.285(g)(1)(A) and remove a quantity of DEP offset credits from any Holding and/or Compliance Account of the parties identified in section 147.285(e)(1).

3. DEP will determine the quantity of DEP offset credits issued under the applicable Offset Project Data Report, for all projects that contribute to the Forest Buffer Account, in the amount calculated pursuant to section 147.285(c)(1) or (c)(2)(A) multiplied by the project’s reversal risk rating and remove that quantity of DEP offset credits from the Forest Buffer Account.

(B) If a DEP offset credit is determined to be invalid due to the circumstances listed in sections 147.285(c)(2)(B) or (c)(3), DEP will remove all DEP offset credits issued under the applicable Offset Project Data Report from any Holding and/or Compliance Account of the parties identified in section 147.285(e)(1), and from the Forest Buffer Account.

(2) The parties identified pursuant to section 147.285(e) will be notified of which serial numbers were removed from any Compliance, Holding, and/or Forest Buffer Accounts.

(3) Any approved program for linkage pursuant to subchapter 12 will be notified of which serial numbers were removed from any Compliance, Holding, and/or Forest Buffer Accounts.

(h) Requirements for Replacement of DEP Offset Credits. If an DEP offset credit that is issued to a non-sequestration offset project or an urban forest project, or that is issued to a U.S. forest offset project on or after July 1, 2014, and is in the Retirement Account, and it is determined to be invalid pursuant to section 147.285(f) for any circumstance listed in sections 147.285(c)(2)(B) and (c)(3), then:

(1) The party identified in section 147.285(e)(2) must replace each DEP offset credit it requested DEP to transfer into the Retirement Account for the applicable Offset Project Data Report with a valid DEP offset credit or another approved compliance instrument pursuant to subchapter 4, within six months of notification by DEP pursuant to section 147.285(g)(2).

(2) If the party identified in section 147.285(e)(2) does not replace each invalid DEP offset credit within six months of the notice of invalidation pursuant to section 147.285(g)(2), each unreplaced invalidated DEP offset credit will constitute a violation for that party pursuant to section 147.314.

(A) If the party identified in section 147.285(e)(2) is no longer in business DEP will require the Offset Project Operator identified in section 147.285(e)(3) to replace each invalidated DEP offset credit and will notify the Offset Project Operator that they must replace them.

(B) If the Offset Project Operator is required to replace the DEP offset credits, the Offset Project Operator must replace each DEP offset credit with a valid DEP offset credit or another approved compliance instrument pursuant to subchapter 4, within six months of notification by DEP.

(C) If the Offset Project Operator is required to replace the DEP offset credits and the Offset Project Operator does not replace each invalid DEP offset credit within six months of notification by DEP, each unreplaced invalidated DEP offset credit will constitute a violation for that Offset Project Operator pursuant to section 147.314.

(3) The parties identified pursuant to section 147.285(e) will be notified of which serial numbers were invalidated.

(4) Any approved program for linkage pursuant to subchapter 12 will be notified of which serial numbers were invalidated.

(4) The Offset Project Operator, identified in section 147.285(e)(3), of an offset project that had DEP offset credits removed from the Forest Buffer Account pursuant to section 147.285(g)(1)(A)3. or (g)(1)(B) must replace a percentage of the DEP offset credits removed from the Forest Buffer Account equal to the percentage of DEP offset credits retired from the Forest Buffer Account for unintentional reversals as of the date the Secretary makes the final determination of invalidation, rounding up to the next whole number, with a valid DEP offset credit or another approved compliance instrument pursuant to subchapter 4, within six months of notification by DEP pursuant to section 147.285(g)(2). If the Offset Project Operator does not replace the required number of DEP offset credits within six months of notification by DEP pursuant to section 147.285(g)(2), each unreplaced invalidated DEP offset credit will constitute a violation for that Offset Project Operator pursuant to section 147.314.

(i) Nothing in this section shall limit the authority of the Commonwealth of Pennsylvania from pursuing enforcement action against any parties in violation of this article.

§ 147.286. Approval Requirements for Offset Project Registries.

(a) The approval requirements specified in this subchapter apply to all Offset Project Registries that will operate to provide registry services under this article.

(b) The Department may approve Offset Project Registries that meet and maintain the requirements specified in this section.

(1) Offset Project Registry Approval Application. To apply for approval as an Offset Project Registry, the applicant shall submit the following information to the Secretary:

- (A) Name of applicant;
- (B) Name of president or chief Secretary;
- (C) List of all board members, if applicable;
- (D) Addresses of offices located in the United States;
- (E) Documentation that the applicant carries at least five million U.S. dollars of professional liability insurance; and

(F) List of any judicial proceedings and administrative actions filed against the applicant within the previous five years, with a detailed explanation as to the nature of the proceedings.

(2) The applicant must submit, in writing, the procedures to screen and address internal conflicts of interest. The applicant must provide the following information to the Department:

(A) A staff, management, and board member conflict of interest policy where there are clear criteria for what constitutes a conflict of interest. The policy must:

1. Identify specific activities and limits on monetary and non-monetary gifts staff, management, or board members must not conduct or accept to meet the Offset Project Registry's internal policies of conflict of interest policy, or alternatively provide a comprehensive policy on the applicant's requirements for the reporting of any and all conflicts based on internal policies that guard against conflict of interest; and

2. Include a requirement for annual disclosure by each staff, management, or board member of any items or instances that are covered by the applicant's conflict of interest policy on an ongoing basis or for the previous calendar year.

3. The applicant must have appropriate conflict of interest and confidentiality requirements in place for any of its contractors;

(B) List of all service types provided by the applicant;

(C) The industrial sectors the applicant serves;

(D) Locations where services are provided; and

(E) A detailed organizational chart that includes the applicant and any parent, subsidiary, and affiliate companies.

(F) If the applicant under section 147.286 is going to designate a subdivision of its organization to provide registry services, then the prohibition in section 147.286(c)(1) on serving as an offset project consultant shall apply at the subdivision level and the applicant must provide the following general information for its self:

1. General types of services; and

2. General locations where services are provided.
- (3) The applicant has the following capabilities for registration and tracking of registry offset credits issued under this article:
  - (A) A comprehensive registration requirement for all registry participants;
  - (B) Tracking ownership and transactions of all registry offset credits it issues at all times; and
  - (C) Possesses a permanent repository of ownership information on all transactions involving all registry offset credits it issues under this article from the time they are issued to the time they are retired or cancelled.
- (c) The applicant's primary business must be operating an Offset Project Registry for voluntary or regulatory purposes and meet the following business requirements:
  - (1) The applicant may not act as an Offset Project Operator, Authorized Project Designee, or offset project consultant for offset projects registered or listed on its own Offset Project Registry and developed using a Compliance Offset Protocol once approved as an Offset Project Registry. The applicant must annually disclose to DEP any non-offset project related consulting services it provides to an Offset Project Operator or Authorized Project Designee who lists a project using a Compliance Offset Project with the applicant as part of the information included in the annual report required in section 147.287(j);
  - (2) The applicant may not act as a verification body or provide offset verification services pursuant to sections 147.277.1 and 147.277.2 once approved as an Offset Project Registry;
  - (3) If the applicant designates a subdivision of its organization to provide registry services, the applicant may not be an Offset Project Operator or Authorized Project Designee for offset projects listed at the subdivision's registry, act as a verification body, or be a covered entity or opt-in covered entity;
  - (4) The applicant must demonstrate experience in the continuous operation of a registry serving an Environmentally-focused Market for a minimum of two years in a regulatory and/or voluntary market. For the purposes of this section, an "Environmentally-focused Market" means a market that includes the trading of GHG-emissions based commodities. In the context of

Air Quality Management Districts or Air Pollution Control Districts, “Environmentally-focused Market” includes a market for air emission reduction credits; and

(5) The applicant’s primary incorporation or other business formation and primary place of business, or the primary place of business of the designated subdivision, if the applicant designates a subdivision to provide registry services pursuant to this section, must be in the United States of America.

(d) The Offset Project Registry must continue to maintain the professional liability insurance required in section 147.286(b) while it provides registry services to Offset Project Operators or Authorized Project Designees who are implementing offset projects using Compliance Offset Protocols.

(e) If any information submitted pursuant to sections 147.286(b) through (d) changes after the approval of an Offset Project Registry, the Offset Project Registry must notify the Secretary within 30 calendar days and provide updated information consistent with that required in sections 147.286(b) through (d).

(f) The Offset Project Registry must attest, in writing, to DEP as follows:

(1) “As the authorized representative for this Offset Project Registry, I understand that the Offset Project Registry is voluntarily participating in the Pennsylvania Cap-and-Trade Program under 25 Pa. Code Chapter 147 and the Offset Project Registry is now subject to all regulatory requirements and enforcement mechanisms of this program.”;

(2) “All information generated and submitted to DEP by the Offset Project Registry related to an offset project that uses a Compliance Offset Protocol will be true, accurate, and complete.”;

(3) “All information provided to DEP as part of an DEP audit of the Offset Project Registry will be true, accurate, and complete.”;

(4) “All registry services provided will be in accordance with the requirements of section 147.287.”;

(5) “The Offset Project Registry is committed to participating in all DEP training related to DEP’s compliance offset program or Compliance Offset Protocols.”; and

(6) The authorized representative of the Offset Project Registry must attest in writing, to DEP: “I certify under penalty of perjury under the laws of the Commonwealth of Pennsylvania I have authority to represent the Offset Project Registry and all information provided as part of this application is true, accurate, and complete.”.

(g) At least two of the management staff at the Offset Project Registry must take DEP provided training on DEP’s compliance offset program and pass an examination upon completion of training.

(h) The Offset Project Registry must have staff members who have collectively completed DEP training and passed an examination upon completion of training in all Compliance Offset Protocols.

(i) The Offset Project Registry must have at least two years of demonstrated experience in, and requirements for, direct staff oversight and review of offset projects, project listing, offset verification, and registry offset credit issuance.

(j) DEP Approval.

(1) Within 60 calendar days of receiving an application for approval as an Offset Project Registry and completion by all management staff of the training required in section 147.286(g), the Department will inform the applicant in writing either that the application is complete or that additional specific information is required to make the application complete.

(2) The applicant may be allowed to submit additional supporting documentation before a decision is made by the Department.

(3) Within 60 calendar days following completion of the application process, the Secretary shall approve an Offset Project Registry if evidence of qualification submitted by the applicant has been found to meet the requirements of section 147.286 and issue an Executive Order to that effect.

(4) The Department and the applicant may mutually agree, in writing, to longer time periods than those specified in subsections 147.286(j)(1) and 147.286(j)(3).

(5) The Department approval for an Offset Project Registry is valid for a period of 10 years, whereupon the applicant may re-apply. At the time of re-application, the Offset Project Registry must:

- (A) Demonstrate it consistently met all requirements in section 147.286;
- (B) Pass a performance review, which, at a minimum shows the Offset Project

Registry consistently:

1. Demonstrates knowledge of the DEP compliance offset program and Compliance Offset Protocols;

2. Meets all regulatory deadlines; and

3. Provides registry services in accordance with the requirements of this article; and

(C) Not have been subject to enforcement action under this article.

(k) Modification, Suspension, and Revocation of an Executive Order Approving an Offset Project Registry. The Department may review, and, for good cause, modify, suspend, or revoke approval to an Offset Project Registry.

(1) During revocation proceedings, the Offset Project Registry may not continue to provide registry services for DEP.

(2) Within five working days of suspension or revocation of approval, an Offset Project Registry must notify all Offset Project Operators or Authorized Project Designees for whom it is providing registry services or has provided registry services within the past 12 months of its suspension or revocation of approval.

(3) An Offset Project Operator or Authorized Project Designee who has been notified by an Offset Project Registry of a suspended or revoked approval must re-submit its offset project information with a new Offset Project Registry or DEP. An offset project listed at DEP or a new Offset Project Registry will continue to operate under its originally approved crediting period, provided that DEP may extend the crediting period or the relevant deadline in section 147.277(d) for one year if DEP determines that such extension is necessary to provide time for re-submission of information to the new Offset Project Registry or DEP.

(m) If the applicant under section 147.286 is going to designate a subdivision of its organization to provide registry services, all the requirements of section 147.286 may be applied at the designated subdivision level.

(n) An approved Offset Project Registry must make itself and its personnel available for a DEP audit.

§ 147.287. Offset Project Registry Requirements.

(a) The Offset Project Registry shall use Compliance Offset Protocols approved pursuant to section 147.271 to determine whether an offset project may be listed with the Offset Project Registry for issuance of registry offset credits. The Offset Project Registry may list projects under non-Compliance Offset Protocols but must make it clear any GHG emission reductions and GHG removal enhancements achieved under those protocols are not eligible to be issued registry offset credits or DEP offset credits.

(b) The Offset Project Registry must make the following information publicly available for each offset project developed under a Compliance Offset Protocol:

(1) Within 10 working days of the offset project listing requirements being deemed complete in section 147.275(f):

- (A) Offset project name;
- (B) Offset project location;
- (C) Offset Project Operator and, if applicable, the Authorized Project Designee;
- (D) Type of offset project;
- (E) Name and date of the Compliance Offset Protocol used by the offset project;
- (F) Date of offset project listing submittal and Offset Project Commencement date;

and

(G) Identification if the offset project is in an initial or renewed crediting period;

(2) Within 10 working days of the Offset Project Registry making a determination of registry offset credit issuance pursuant to section 147.280(b):

- (A) Reporting Period verified project baseline emissions;
- (B) Reporting Period verified GHG reductions and GHG removal enhancements achieved by the offset project;

(C) The unique serial numbers of registry offset credits issued to the offset project for the applicable Offset Project Data Report;

(D) Total verified GHG reductions and GHG removal enhancements for the offset project by Reporting Period for when an Offset Project Data Report was submitted;

(E) The final Offset Project Data Report for each Reporting Period; and

(F) Offset Verification Statement for each year the Offset Project Data Report was verified; and

(3) Clear identification of which offset projects are listed and submitting Offset Project Data Reports using Compliance Offset Protocols.

(c) Conflict of Interest Review by Offset Project Registries. The Offset Project Registry must apply the conflict of interest requirements in section 147.279 when making a conflict of interest determination for a verification body proposing to conduct offset verification services under sections 147.277.1 and 147.277.2. The Offset Project Registry must review and make sure the conflict of interest submittal in section 147.279(e) is complete. When an Offset Project Operator or Authorized Project Designee submits its information pursuant to section 147.281(b) to DEP, the Offset Project Registry must provide DEP with the information and attestation identified in section 147.279(e) within 15 calendar days.

(d) The Offset Project Registry may provide guidance to Offset Project Operators, Authorized Project Designees, or offset verifiers for offset projects using a Compliance Offset Protocol, if there is no clear requirement for the topic in a Compliance Offset Protocol, this article, or a DEP guidance document, after consulting and coordinating with DEP.

(1) An Offset Project Registry must maintain all correspondence and records of communication with an Offset Project Operator, Authorized Project Designee, or offset verifier when providing clarifications or guidance for an offset project using a Compliance Offset Protocol.

(2) Before providing such guidance, the Offset Project Registry may request DEP to provide clarification on the topic.

(3) Any Offset Project Operator or Authorized Project Designee requests for clarifications or guidance must be documented and the Offset Project Registry response must be

submitted on an ongoing monthly basis to DEP beginning with the date of approval as an Offset Project Registry.

(e) The Offset Project Registry must audit at least 10 percent of the annual full offset verifications developed for offset projects using a Compliance Offset Protocol.

(1) The audit must include the following checks:

(A) Attendance with the offset verification team on the offset project site visit;

(B) In-person or conference call attendance for the first offset verification team and Offset Project Operator or Authorized Project Designee meeting;

(C) In-person or conference call attendance to the last meeting or discussion between the offset verification team and Offset Project Operator or Authorized Project Designee;

(D) Documentation of any findings during the audit that cause the Offset Project Registry to provide guidance to, or require corrective action with, the offset verification team, including a list of issues noted during the audit and how those were resolved;

(E) A review of the detailed verification report and sampling plan to ensure that it meets the minimum requirements in sections 147.277.1 and 147.277.2 and documentation of any discrepancies found during the review; and

(F) An investigative review of the conflict of interest assessment provided by the verification body, which includes the following:

1. Discussions with both the lead verifier who submitted the conflict of interest assessment form and the Offset Project Operator or Authorized Project Designee to confirm the information on the conflict of interest assessment form is true, accurate, and complete;

2. An internet-based search to ascertain the existence of any previous relationship between the verification body and the Offset Project Operator or Authorized Project Designee, and if so the nature and extent; and

3. Any other follow up by the Offset Project Registry to have reasonable assurance that the information provided on the conflict of interest assessment form is true, accurate, and complete.

(2) All information related to audits of offset projects developed using a Compliance Offset Protocol must be provided to DEP within 10 calendar days of a DEP request.

(3) The audits must be selected to provide a representative sampling of geographic locations of all offset projects, representative sampling of verification bodies, representative sampling of lead verifiers, representative sampling of offset project types, and representative sampling of offset projects by size.

(4) The Offset Project Registry must provide an annual report to DEP by January 31 for its previous year's audit program of offset projects developed using Compliance Offset Protocols that includes:

(A) A list of all offset projects audited;

(B) Locations of all offset projects audited;

(C) Verification bodies associated with each offset project and names of offset verification team members;

(D) Dates of site visits;

(E) Offset Project Registry staff that conducted the audit; and

(F) Audit findings as required in section 147.287(e)(1)(D) through (F).

(f) The Offset Project Registry must review each detailed verification report provided in section 147.277.1(b)(3)(R)(4)(a) for completeness and accuracy and to ensure it meets the requirements of section 147.277.1(b)(3)(R)(4)(a) before accepting the associated Offset Verification Statement for the Offset Project Data Report and issuing registry offset credits.

(g) The Offset Project Registry must provide all information in its possession, custody, or control related to a listed offset project under a Compliance Offset Protocol within 10 calendar days of request by DEP.

(h) The Offset Project Registry must make its staff and all information related to listed offset projects under Compliance Offset Protocols by the Offset Project Registry available to DEP during any audits or oversight activities initiated by DEP to ensure the requirements in section 147.287 are being carried out as required by this article.

(i) The Offset Project Registry must remove or cancel any registry offset credits issued for an offset project using a Compliance Offset Protocol, such that the registry offset credits are no longer available for transaction on the Offset Project Registry system, once notified by DEP that the offset project is eligible to be issued DEP offset credits.

(j) The Offset Project Registry must provide an annual report by January 31 of the previous year's offset projects that are listed using a Compliance Offset Protocol. The report must contain the name of the offset project, type of offset project and applicable Compliance Offset Protocol, name of Offset Project Operator or Authorized Project Designee, location of offset project, status of offset project, associated verification body, crediting period, amount of any registry offset credits issued to date, amount of any registry offset credits retired or cancelled for the offset project by the Offset Project Registry to date.

(k) The Offset Project Registry may choose to offer insurance or other products to cover the risk of invalidation of DEP offset credits, but purchase or use of the insurance or other invalidation risk mechanisms will be optional for all entities involved with registry offset credits and DEP offset credit transactions.

§ 147.288. Record Retention Requirements for Offset Project Registries.

All information submitted, and correspondence related to, listed offset projects under Compliance Offset Protocols by the Offset Project Registry must be maintained by the Offset Project Registry for a minimum of 15 years.

## **Subchapter 14: Recognition of Compliance Instruments from Other Programs**

### § 147.290. Sector-Based Offset Credits.

Sector-based offset credits may be generated through reduced or avoided GHG emissions from within, or carbon removed and sequestered from the atmosphere by, a specific sector in a particular jurisdiction. The Board may consider for acceptance compliance instruments issued from sector-based offset crediting programs that meet the requirements set forth in section 147.293 and originate from developing countries or from subnational jurisdictions within those developing countries, except as specified in subchapter 13.

### § 147.291. Procedures for Approval of Sector-Based Crediting Programs.

The Department may approve a sector-based crediting program in an eligible jurisdiction that is not automatically recognized under this Chapter. Provisions set forth in this article shall specify which compliance instruments issued by an approved sector-based crediting program may be used to meet a compliance obligation under this Article.

### § 147.292. Sources for Sector-Based Offset Credits.

Sector-based credits may be generated from:

- (a) Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans.

### § 147.293. Requirements for Sector-Based Offset Crediting Programs.

(a) **General Requirements for Sector-Based Crediting Programs.** The Department may consider for approval a sector-based crediting program which may include the following sectoral requirements:

(1) **Sector Plan.** The host jurisdiction has established a plan for reducing emissions from the sector.

(2) **Monitoring, Reporting, Verification, and Enforcement.** The program includes a transparent system that regularly monitors, inventories, reports, verifies, and maintains accounting for emission reductions across the program's entire sector, as well as maintains enforcement capability over its reference activity producing credits.

(3) Offset Criteria. The program has requirements to ensure that offset credits generated by the program are real, additional, quantifiable, permanent, verifiable and enforceable.

(4) Sectoral Level Performance. The program includes a transparent system for determining and reporting when it meets or exceeds its crediting baseline(s) and evaluating the performance of the program's sector during each program's crediting period relative to the business as usual or other emissions reference level.

(5) Public Participation and Participatory Management Mechanism. The program has established a means for public participation and consultation in the program design process.

(6) Nested Approach. If applicable, the program includes:

(A) Offset project-specific requirements that establish methods to inventory, quantify, monitor, verify, enforce, and account for all project-level activities

(B) A system for reconciling offset project-based GHG reductions in sector-level accounting from the host jurisdiction.

§ 147.294. Quantitative Usage Limit.

Sector-based offset credits approved by DEP for compliance are subject to the quantitative usage limit specified in section 147.154.

§ 147.295 Additional Mandatory Offset Protocols

DEP shall develop additional offset protocols, applying the standards set forth in this chapter for the following activities, as further provided in this section.

(a) Abandoned Minelands Reclamation Projects. DEP shall, before the effective date of this chapter, develop a protocol to provide offset credits for the reduction in GHG emissions resulted from the reclamation of abandoned minelands. These shall include credits for extinguishing underground mine fires and preventing and extinguishing fires in abandoned waste coal piles, as well as credit for reforestation. This protocol may include the credit for projects initiated before the effective date of this chapter. DEP may further issue allowances without charge to abandoned minelands projects without charge from the within the cap established under this chapter, including waste coal to energy facilities, notwithstanding the ineligibility of

electricity facilities, where DEP determines that such allowances will encourage the reclamation that would not otherwise occur. DEP may not give credit or award allowances in connection with reclamation of any project resulted from mining coal after 1980.

(b) Within two years of the effective date of this chapter, DEP shall develop and publish a compliance offset protocol offsets created by the capture and geologic sequestration of emissions from the combustion of biomass. No usage limitation shall apply to offsets created pursuant to this protocol.

## **Subchapter 15: Enforcement and Penalties**

### § 147.310. Jurisdiction.

Any of the following actions shall conclusively establish a person's consent to be subject to the jurisdiction of the Commonwealth of Pennsylvania, including the administrative authority of DEP and the jurisdiction of the Environmental Hearing Board and the courts of the Commonwealth of Pennsylvania:

- (a) Registration with DEP pursuant to subchapter 5;
- (b) The purchase or holding of a compliance instrument issued by DEP, unless the entity holding the compliance instrument is registered in an approved External GHG ETS pursuant to subchapter 12;
- (c) Receipt of compensation of any kind, including sales proceeds and commissions, from any transfers of allowances or offset credits issued by DEP pursuant to subchapter 13 or recognized by DEP pursuant to subchapter 14; or
- (d) Verification of an offset credit to be issued by DEP.

### § 147.311. Authority to Suspend, Revoke, or Modify.

- (a) The Department may suspend, revoke, or place restrictions on the Holding Account of a voluntarily associated entity determined to be in violation of any provision of this chapter.
- (b) The Department may place restrictions on a Holding Account of a covered entity or an opt-in covered entity determined to be in violation of any provision of this chapter.
- (c) The Department may suspend, revoke, or modify any order issued under this article or under article 2 of this subchapter, including an order accrediting a verifier, for a violation of any provision of this chapter.

### § 147.312. Administrative Orders and Injunctions.

The Department may issue any order or seek any judicial remedy to enforce this chapter as authorized by the APCA.

### § 147.313. Penalties.

Penalties may be assessed pursuant to the APCA for any violation of this chapter.

§ 147.314. Violations.

(a) If an entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 147.156 or 147.157, and the procedures in 147.157(c) have been exhausted, there is a separate violation of this chapter for each required compliance instrument that has not been surrendered, or otherwise obtained by the Department under 147.157(c).

(b) A separate violation accrues every 45 days after the end of the Untimely Surrender Period pursuant to section 147.157 for each required compliance instrument that has not been surrendered.

(c) If an entity exiting the program pursuant to section 147.135(f)(1) fails to place the appropriate number of allowances into its compliance account and notify the Department, as required under section 147.190(k), there is a separate violation

(d) It is a violation to submit any record, information or report required by this chapter that:

- (1) Falsifies, conceals, or covers up by any trick, scheme or device a material fact;
- (2) Makes any false, fictitious or fraudulent statement or representation;
- (3) Makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry; or

(4) Omits material facts from a submittal or record.

(5) A fact is material if it could probably influence a decision by the Department.

(e) The violations stated in section 147.314(c) are additional to violations of any obligations of any entity subject to this regulation under other provisions of this article requiring submissions to DEP to be true, accurate and complete.

## **Subchapter 16: Administration by Approved Local Agencies**

### §147.320. General Authorization.

(a) Any municipality or group of municipalities with an authorized air pollution program pursuant to 25 Pa. Code Chapter 133 may apply to the Department to administer this GHG Cap-and-Trade program, including the auction, as a part of its existing program.

(b) A municipality or group of municipalities wishing to administer this CHG Cap-and-Trade program shall submit to the Department for its approval such modifications of its existing program as necessary to administer this GHG cap-and-trade program.

### §147.321. Allowances.

(a) No later than October 1 of each year, DEP shall allocate allowances to an approved local program equal to the emissions or product use requiring surrender in the jurisdiction with the approved program for the next calendar year.

(b) Allocated emissions shall be reduced for the municipality according to the same schedule as applicable to the statewide emissions budget.

### §147.322. Auctions, Direct Distribution of Allowances and Auction Proceeds.

(a) A municipality with an approved program may conduct its own auction or may elect to participate in the auction administered by the Department, in which case the allowances allocated to the municipality shall be treated as if they were consigned to the auction.

(b) The municipality with an approved program shall be entitled to proceed from the auction or sale of allowances allocated to the municipality and may use the proceeds as designated by the municipality and in accordance with its duty as a trustee under Article I, § 27 of the Pennsylvania Constitution.

(c) The municipality may make such direct allocations of allowances as it deems appropriate, provided that such direct allocation will not result in leakage and cause perverse results that will encourage GHG emissions.

## **Subchapter 17: Other Provisions**

### § 147.330. Severability, Effect of Judicial Order.

Each provision of this chapter shall be deemed severable, and in the event that any provision of this chapter is held to be invalid, the remainder of this chapter shall continue in full force and effect.

### § 147.331. Confidentiality.

(a) Emissions data submitted to DEP under this chapter is public information and shall not be designated as confidential.

(b) Any entity submitting information to the Department pursuant to this chapter may claim such information as “confidential” by clearly identifying such information as “confidential.” Any claim of confidentiality by an entity submitting information must be based on the entity’s belief that the information marked as confidential is either trade secret or otherwise exempt from public disclosure under the Pennsylvania Right to Know Law.

### § 147.332. Jurisdiction of Pennsylvania.

(a) Any party that participates in the Pennsylvania GHG Cap-and-Trade Program is subject to the jurisdiction of the Commonwealth of Pennsylvania unless the party is subject to the jurisdiction of an External GHG ETS to which Pennsylvania has linked its Cap-and-Trade Program pursuant to section 147.130(h) and subchapter 12.

(b) Notwithstanding section 147.310, subsection 147.322(a) or any other jurisdictional provision in this article, this chapter shall not be construed to abridge the rights and protections afforded foreign sovereigns, including the right of removal to federal court, pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. sections 1330, 1332, 1391(f), 1441(d), and 1602-1611.

(c) A party that has rights and protections under the Foreign Sovereign Immunities Act consents to civil enforcement of the laws, rules and regulations pertaining to this chapter in Pennsylvania’s courts, subject to the rights and protections afforded to entities subject to the Foreign Sovereign Immunities Act, including removal to federal court.

## Appendix A

Entity Information
Legal Name
Operating Name
U.S. Federal Tax Employer Identification Number
Value Added Tax Identification Number
Data Universal Numbering System Number
Date of incorporation
Place of Incorporation
Country of Incorporation
Business Number (Assigned by Pennsylvania Agency)
Physical Address (City, State, postal Code)
Mailing Address (City, State, postal Code)
Country
Contact Information (Name, address, phone, email)
Website Address
Type of Organization

Individual Information
First Name
Middle Name
Last Name
Personal Residence Address
Phone number
Email
Social Security Number
Date of Birth
Citizenship
Employer Name
Employer Address
Copy of a valid identity card issued by a state or province with an expiration date
Copy of a government-issued identity document
Copy of a Passport
Documentation of an open bank account
Documentation of any felony convictions during the previous five years

## Appendix B

### CITSS User Terms and Conditions

#### ACCESS AGREEMENT AND TERMS OF USE FOR THE CITSS

SIGN THE BOTTOM OF THE PAGE TO INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT.

Access to the Compliance Instrument Tracking System Service (CITSS) is subject to the terms and conditions set forth in this Access Agreement and Terms of Use (Agreement). You must accept this Agreement in order to access the CITSS application. Violation of this agreement may result in loss of access to CITSS and, if warranted, civil or criminal prosecution under state, provincial, or federal law.

This Agreement is between the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) and each registered Pennsylvania user of Compliance Instrument Tracking System Service (User). The Agreement sets forth the terms of use of CITSS. DEP provides User with access to the CITSS software application, for registering entities and holding compliance instrument. User understands and agrees that CITSS is provided “AS IS” and without any warranty, as set forth below in greater detail.

#### 1. CITSS Use

1.1 DEP hereby grants to User, and User hereby accepts, subject to the terms and conditions set forth in this Agreement, a non-exclusive and non-transferable right to access CITSS via the world-wide-web or the internet at times when the software and servers are available and operating.

1.2 User further acknowledges that it is not authorized to and may not possess or distribute any or all parts of the PAITSS software, including its source codes and program components. User is not authorized to install, run or operate CITSS on User’s or third-party computers or servers.

1.3 User is solely responsible for ensuring that all information, data, text, or other materials that User provides to DEP through use of CITSS (Content) are true, accurate, and complete and comply with DEP’s requirements for the compliance with the cap-and-trade

program under the Pennsylvania Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanisms (Regulation) (25 Pennsylvania Code Chapter 147).

1.4 User understands that DEP will retain and use the Content consistent with the applicable Regulation(s) and may disclose Content to the public to the extent the disclosure is required by Pennsylvania law or legal process, or to the extent that disclosure is not prohibited by Pennsylvania law.

1.5 DEP has included (as part of CITSS) security features including password protection to prevent a person other than the User from obtaining access through CITSS to User's Content. User understands that these security features depend on User protecting its password from disclosure to unauthorized persons. User also understands and acknowledges that despite security measures to prohibit unauthorized access to the Content through CITSS, unauthorized access could occur and in the event it does, DEP or WCI, Inc. may not be held liable for the unauthorized release of information, data, text or other materials that have been submitted to DEP using CITSS.

1.6 DEP does not endorse or provide support for software or web-based interfaces offered by third parties for purposes of submitting data to DEP. Use of a third-party interface or software product in order to access CITSS does not relieve the user of the need to ensure that information required by the applicable Regulation has been properly submitted to DEP and received by the applicable deadline and that all certifications required for use of CITSS have been submitted.

1.7 User is responsible for maintaining a copy of all data submitted to CITSS. The loss of electronic information, data, text, or other materials during use of CITSS or the unavailability of the CITSS system does not excuse User from the requirements in the applicable Regulation.

## 2. CITSS User Agreement

The permission granted in Section 1 above is expressly made subject to and limited by the following restrictions, in addition to the limitations and restrictions set forth in other sections of the Agreement:

2.1 User agrees not to access CITSS by any means other than using internet browsers.

2.2 User further agrees that it shall NOT:

- a. Deliberately attempt to access any data, documents, email correspondence, or programs contained on systems for which User does not have authorization;
- b. Engage in activity that may harass, threaten or abuse others, or intentionally access, create, store or transmit material which may be deemed offensive, indecent or obscene, or that is illegal according to local, state, provincial, or federal law;
- c. Engage in activity that may degrade the performance of CITSS;
- d. Deprive an authorized user access to CITSS;
- e. Obtain extra resources or login privileges beyond those authorized;
- f. Circumvent CITSS security measures;
- g. Violate copyright law of copyrighted material;
- h. Attempt to disassemble, decompile or reverse engineer CITSS;
- i. Attempt to create derivative works based on CITSS;
- j. Attempt to copy, reproduce, distribute or transfer CITSS;
- k. Provide access to CITSS to any third parties for any improper purpose;
- l. Obtain for personal benefit, or engage in political activity, unsolicited advertising, unauthorized fund raising, or solicit performance of any activity that is prohibited by any local, state, or federal law.

2.3 User's right to access CITSS automatically terminates upon User's violation of any provisions of this Agreement.

2.4 User further agrees that it will immediately inform DEP or the CITSS administrator by emailing [help@wci-citss.org](mailto:help@wci-citss.org) or calling at 1-866-682-7561 if any of the following occurs:

- a. User observes any unauthorized access or misuse of CITSS;
- b. User has any reason to believe that the security of their User ID, password, or security question(s) has been compromised;

c. User has any reason to believe that weaknesses in computer security, including unexpected software or system behavior, may result in unintentional disclosure of information or exposure to security threats.

2.5 User further agrees that:

a. User will maintain the security of their CITSS User ID, password, and security questions for use of the CITSS;

b. User will not disclose their CITSS User ID, password, and security questions information to anyone;

c. User will maintain an active email account listed in the CITSS at which User can receive important notifications of changes related to User's personal information or transfers involving any general account or compliance account that User represents as a Primary Account Representative, Alternate Account Representative, Account Viewing Agent, or other CITSS User;

d. Any submission User makes using the CITSS has and will have the same legal effect as if it were made in hardcopy form certified by User's handwritten signature.

2.6 If, at any time, User determines it is no longer able or willing to abide by the terms of this Agreement, User shall immediately cease all use of the CITSS and promptly notify DEP or the CITSS administrator in writing of its determination so that DEP or the CITSS administrator may formally suspend or revoke the User's access to the CITSS.

### 3. Disclaimer of Warranties

EXCEPT AS REQUIRED BY APPLICABLE LAW, THIS SERVICE IS MADE AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND. DEP SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, OR ANY WARRANTIES REGARDING THE CONTENTS OR ACCURACY OF THE SOFTWARE.

### 4. Limitation on Liability

4.1 Except to the extent required by applicable law, in no event is DEP liable to User on any legal theory for damages of any kind arising from the use of or the inability to use the CITSS, even if DEP has been advised of the possibility of such damages. The unavailability of, or problems with the use of CITSS, does not excuse User from the reporting and compliance deadlines in the applicable Regulation.

## 5. Copyright and Proprietary Information

5.1 User shall not permit any person who is not registered as a User to access the CITSS and shall not copy, reproduce or distribute, or allow any other person to copy, reproduce or distribute, the CITSS, in whole or in part, without DEP's prior written consent.

## 6. Term

This Agreement commences upon User's acceptance of this Agreement and access to the CITSS for the first time. The Agreement shall terminate upon User's written notification to DEP under Section 2.5 of this Agreement or upon other termination or discontinuation of User's access to the CITSS, except that Sections 3, 4 and 5 survive any termination of this Agreement. DEP reserves the right to terminate this Agreement at any time, subject to the exception that Sections 3, 4 and 5 survive any termination of this Agreement.

## 7. Governing Law and General Provisions

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The failure of DEP to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provisions, and the other provisions of the Agreement remain in full force and effect.

This Agreement is not intended to modify and cannot modify any provision in the applicable Regulation, including the Pennsylvania Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanisms. If any part of this Agreement is found to conflict with any provision(s) in the applicable Regulation(s), the applicable Regulation(s) shall control.

This Agreement constitutes the entire agreement between User and DEP with respect to use of the CITSS. There are no understandings, agreements or representations with respect to the software program that are not specified in this Agreement.

This Agreement may only be modified in a writing signed by User and the Secretary of the DEP.

#### Appendix C: Quarterly Auction and Reserve Sale Dates

**EXHIBIT A**  
**IDENTIFICATION OF PETITIONERS**

The parties identified below subscribe to and have duly authorized the submission to the Pennsylvania Environmental Quality Board of the attached *Petition Pursuant to 25 Pa. Code §§23.1-23.5, Article I, §27 of the Pennsylvania Constitution, and the Pennsylvania Air Pollution Control Act to Adopt the Attached Regulation Establishing a Comprehensive Program to Limit Greenhouse Gas Emissions to Conserve and Maintain a Stable Climate and Other Public Resources for Which The Commonwealth is a Trustee* and to be identified as Petitioners on said Petition.

1. Clean Air Council  
Petitioner Joseph Minott as Executive Director and Chief Counsel and in his individual capacity  
135 South 19<sup>th</sup> Street, Suite 300  
Philadelphia PA 19103  
215-567-4004

Petitioner Clean Air Council is a member-supported environmental organization headquartered in Philadelphia, Pennsylvania. The Council is dedicated to protecting and defending everyone's right to breathe clean air. The Council works through a broad array of related sustainability and public health initiatives, using public education, community action, government oversight, and enforcement of environmental laws. The Council is currently fighting for strong regulations of carbon dioxide ("CO<sub>2</sub>") and methane at both the state and national level. These pollutants make up over 90% of America's greenhouse gas emissions. Due to its emissions of CO<sub>2</sub> and methane, Pennsylvania alone is responsible for a full 1% of the world's greenhouse gasses.

2. Commonwealth Law School Environmental Law and Sustainability Center  
John Dernbach, Commonwealth Professor of Environmental Law and Sustainability, in his capacity as Director and in his individual capacity  
380 Vartan Way  
Harrisburg, Pennsylvania 17106  
(717) 541-1933  
[jcdernbach@widener.edu](mailto:jcdernbach@widener.edu)
3. Robert B. McKinstry, Jr.  
Romeade Farm  
548 School House Rd.  
Kennett Square PA 19348  
[bobby@robertbmckinstryjr.com](mailto:bobby@robertbmckinstryjr.com)  
610-444-4449

4. eco(n)law LLC  
C. Baird Brown, in his capacity and Principal and in his individual capacity  
230 South Broad St.  
Philadelphia, PA 19102  
215-586-6615  
[baird@eco-n-law.net](mailto:baird@eco-n-law.net)
  
5. Lansdowne Friends School  
John R. McKinstry, in his capacity as Head of School and in his individual capacity  
Judy N. Asselin, in her capacity Clerk of the School Committee and in her individual capacity  
110 Lansdowne Ave.  
Lansdowne, PA 19050  
610-623-2548  
[jmckinstry@lansdownefriendsschool.org](mailto:jmckinstry@lansdownefriendsschool.org)  
[judynasselin@gmail.com](mailto:judynasselin@gmail.com)
  
6. Physicians for Social Responsibility- Pennsylvania (“PSR”)  
Robert Little, MD, President PSR/Harrisburg  
4621 Tarryton Road  
Harrisburg, Pennsylvania 17109  
717-497-9282  
[rlittle@verizon.net](mailto:rlittle@verizon.net)

Walter Tsou, Interim Executive Director, PSR Philadelphia  
1501 Cherry Street  
Philadelphia, PA 19102  
[walter@psrphila.org](mailto:walter@psrphila.org)  
(267) 519-5299

PSR is a national network of 50,000 members and activists who provide a vital health voice to policy makers and the public. PSR has the science and the credible solutions to combat climate change, nuclear weapons and toxics in the environment.

7. Capital Markets Partnership (“CMP”)  
Mike Italiano, CEO  
4919 Ashby St., NW  
Wash., DC 20007  
202-298-6556  
[mts@sustainableproducts.com](mailto:mts@sustainableproducts.com)

CMP is a nonprofit coalition that defined the business case as released at the NYSE that statistically in 10 years of data, green bonds and their underlying assets are more profitable, less risky, and preferred by investors with over \$70 trillion in assets. With leading investment banks, CMP developed consensus underwriting standards identifying increased green bond cash flow that resulted in higher bond credit ratings, and is structuring green bonds with investment banks,

rating agencies, and investors. CMP is working to stimulate the economy and reduce the near term \$6 trillion / 60 gigatons in carbon pollution identified in the *Business Case*, to keep dangerous climate manageable and allow resilience to work, up 10 times since 2009.

8. Donald A. Brown, Scholar in Residence and Professor of Sustainability Ethics and Law  
Widener University Commonwealth Law School  
380 Vartan Way  
Harrisburg, Pennsylvania 17106  
Email: [dabrown57@gmail.com](mailto:dabrown57@gmail.com)  
717-802-1009

9. Amy Sinden, James E. Beasley Professor of Law  
Temple University Beasley School of Law  
1719 N. Broad St.  
Philadelphia., PA 19122  
[asinden@temple.edu](mailto:asinden@temple.edu)  
215-204-4969

10. A Call to the Bar: Lawyers for Common Sense on Climate Change  
Stephen G. Harvey, in his capacity as President and in his individual capacity  
1880 JFK Boulevard, Suite 1715  
Philadelphia, PA 19129  
[steve@calltothebar.org](mailto:steve@calltothebar.org)  
215-438-6600

A Call to the Bar is a national, nonpartisan, nonprofit group of lawyers, law professors, law students, and citizens that seeks to advance the law with common sense solutions to climate change.

11. Central Philadelphia Monthly Meeting of the Society of Friends  
Dana Reinhold, as Clerk and in her individual capacity  
1515 Cherry Street  
Philadelphia, PA 19102  
215-241-7260  
[Dreinhold99@comcast.net](mailto:Dreinhold99@comcast.net)

12. Germantown Monthly Meeting of the Society of Friends  
William Cozzens, as Clerk of the Environmental Concerns Committee and in his individual capacity  
47 West Coulter Street  
Philadelphia PA 19144  
215-951-2235  
[William.cozzens@alumni.upenn.edu](mailto:William.cozzens@alumni.upenn.edu)

13. Westtown Monthly Meeting of the Society of Friends  
Margaret Haviland, as Clerk and in her individual capacity  
975 Westtown Road  
West Chester, PA 19382  
610-344-7613  
[clerk@westtown.monthlymeeting.net](mailto:clerk@westtown.monthlymeeting.net)

14. Pennsylvania Environmental Defense Foundation  
Ron Evans, President  
P.O. Box 371  
Camp Hill, PA 17001  
[pedfinfo@gmail.com](mailto:pedfinfo@gmail.com)

Through legal action, PEDF helps the citizens of PA assert their right to a clean healthy environment.

15. Friends Fiduciary Corporation  
Jeffery W. Perkins, Executive Director  
1650 Arch Street, Suite 1904  
Philadelphia, PA 19103  
215-241-7272  
[info@friendsfiduciary.org](mailto:info@friendsfiduciary.org)

We are a Quaker non-profit organization providing cost effective, professional socially responsible investment management services exclusively to Friends meetings, churches, schools and organizations.

16. Liz Robinson, Executive Director  
Philadelphia Solar Energy Association  
7821 Flourtown Avenue  
Wyndmoor, PA 19038  
215-285-2710  
[Lizrob2@gmail.com](mailto:Lizrob2@gmail.com)

17. Anton Andrew  
26 Sothridge Drive  
Kennett Square, PA 19348  
[anewtonandrew@gmail.com](mailto:anewtonandrew@gmail.com)  
484-202-0965

18. RER Energy Group and Sunvestment Energy Group  
Jim Kurtz, President  
4700 Pottsville Pike  
Reading, PA 19065  
610-332-7232  
[jkurtz@reenergygroup.com](mailto:jkurtz@reenergygroup.com)

19. Eco-Justice Collaborative of Philadelphia Yearly Meeting  
Patricia Finley, Clerk  
1515 Cherry St  
Philadelphia, PA 19102  
267-475-039  
[finleyp2932@gmail.com](mailto:finleyp2932@gmail.com)
20. Frankford Friends Meeting  
Jesse White, Clerk  
1500 Orthodox Street  
Philadelphia, PA 19118  
267-357-7657  
[Pigeonarts1@gmail.com](mailto:Pigeonarts1@gmail.com)
21. Chestnut Hill Friends Meeting  
Jeff Perkins, Clerk  
20 East Mermaid Lane  
Philadelphia, PA 19118  
215-247-3553  
[clerk@chestnuthillquakers.org](mailto:clerk@chestnuthillquakers.org)
22. Graboyes Efficiency Tenant, LLC  
Sam Klein, MBA, LEED AP, President  
4050 South 26th Street, Suite 160  
Philadelphia, PA 19112  
610-909-5213  
[sam@graboyes.com](mailto:sam@graboyes.com)
23. Chestnut Hill United Church  
Joy Bergey as Director and in her Individual capacity  
The Environmental Justice Center of Chestnut Hill United Church  
8812 Germantown Ave.  
Philadelphia, PA 19118  
215-313-1311  
[joybergey@gmail.com](mailto:joybergey@gmail.com)
24. Citizens for Pennsylvania's Future (PennFuture)  
610 North Third Street  
Harrisburg, PA 17101

PennFuture is the independent, nonpartisan voice leading the transition to a clean energy economy in Pennsylvania and beyond. We are protecting our air, water and land, and empowering citizens to build sustainable communities for future generations.

25. East Marlborough Township  
Richard P.S. Hannum, Chairman, Board of Supervisors  
Laurie Prysock, Township Manager  
721 Unionville Road  
Kennett Square, PA 19348  
610-444-0725  
[Rhannum@eastmarlborough.org](mailto:Rhannum@eastmarlborough.org)  
[lprysock@eastmarlborough.org](mailto:lprysock@eastmarlborough.org)
26. Geoenergy LLC  
Leo Cicone, General Manager  
5004 MT. Vernon St.  
Suite #1  
Temple, PA 19560  
610-823-3143  
[geoenergy@comcast.net](mailto:geoenergy@comcast.net)
27. Northeast Pa. Audubon Society  
Jim Sanders, President  
Box 711  
Honesdale, PA 18431.  
570-253-9250  
[audubonworks@gmail.com](mailto:audubonworks@gmail.com)

We are a chapter of National Audubon Society whose mission is "to conserve and restore our environment to benefit humanity as well as birds and wildlife through education, action, and advocacy." We have approximately 500 members in Wayne, Pike, Lackawanna, and Pike Counties in Pennsylvania.

28. Philadelphia Quarterly Meeting (of the Religious Society of Friends)  
Hollister Knowlton, Clerk  
1515 Cherry Street  
Philadelphia, PA 19102  
267-971-6800  
[hollisterknowlton@gmail.com](mailto:hollisterknowlton@gmail.com)
29. Lansdowne Friends Meeting  
Dana Robinson, Clerk  
120 N. Lansdowne Ave.  
Lansdowne, PA 19050  
610-623-7098  
[fdanarobinson@gmail.com](mailto:fdanarobinson@gmail.com)

30. Nottingham Monthly Meeting (also known as Oxford Friends Meeting) of the Religious Society of Friends  
Gail Pietrzyk, as Clerk and in her individual capacity  
260 S. Third St.  
Oxford, PA 19362  
(610) 563-0096  
[gail.pietrzyk@verizon.net](mailto:gail.pietrzyk@verizon.net)
31. Swarthmore Friends Meeting  
Lois Sellers, Clerk  
12 Whittier Place  
Swarthmore, PA 19081  
610.328.8699  
[meeting@swarthmore.edu](mailto:meeting@swarthmore.edu)
32. evolveEA  
Marc Mondor, AIA, Principal  
6020 Broad Street  
Pittsburgh PA 15206  
412-362-2100  
[marc@evolveea.com](mailto:marc@evolveea.com)
33. Melman Security & Communications Corp. dba/ Main Line Security & Energy Services  
Andrew J. Melman, President  
625 E. Lancaster Avenue  
Apt. B102  
Wynnewood, PA. 19096  
[drew@mainlinesecurity.com](mailto:drew@mainlinesecurity.com)
34. O'Donnell Roofing Co.  
Larry O'Donnell  
311 Lenox Road  
Havertown, Pa. 19083  
610-449-8188  
[Larry@odonnellroofingco.com](mailto:Larry@odonnellroofingco.com)
35. Sunrise Energy, LLC  
David N. Hommrich, President  
151 Evandale Drive  
Pittsburgh, PA 15220  
412-921-2758  
[dhommrich@sunrise-energy.net](mailto:dhommrich@sunrise-energy.net)

36. Energy Coordinating Agency  
Walt Yakabosky, Director of Training  
106 W. Clearfield St.  
Philadelphia PA 19133  
215-609-1000  
[Walty@ecasavesenergy.org](mailto:Walty@ecasavesenergy.org)
37. BrightEye Solar  
Jim Noden, CEO/ Founder  
1200 Corporate Blvd. Ste. 16  
Lancaster, PA 17601  
717-207-8449  
[jim@brighteyesolar.com](mailto:jim@brighteyesolar.com)
38. Adam Solar Resources  
Adam Rossi, Owner  
1912 Mayview Road  
Bridgeville PA 15017  
412-220-1900  
[adam@AdamSolarResources.com](mailto:adam@AdamSolarResources.com)
39. Exact Solar  
Dara Bortman, Cofounder  
1655 Fairfield Road  
Yardley, PA 19067  
215-621-8353  
[dara@exactsolar.com](mailto:dara@exactsolar.com)
40. REPOWER by Solar Universe of Northeast PA  
Tony DellDonna, Owner / Operator  
12 Blytheburn Road  
Mountain Top PA 18707  
570-868-7861  
[tdelldonna@repoweramerica.solar](mailto:tdelldonna@repoweramerica.solar)
41. Evoke Solar, Inc  
Wes & Roshelle Checkeye, Owners  
323 Linden Avenue,  
Hellertown PA 18055  
877-714-3228  
[wes@evokesolar.com](mailto:wes@evokesolar.com)  
[roshelle@evokesolar.com](mailto:roshelle@evokesolar.com)

42. Dynamic Energy Solutions, LLC  
Keshika Vasudevan, Financial Analyst  
1550 Liberty Ridge Drive, Suite 310  
Wayne, PA 19087  
877-809-8884  
[KVasudevan@dynamicenergy.com](mailto:KVasudevan@dynamicenergy.com)
43. G.G.E., Inc.  
Dale Perry, Project Manager  
18 Oak Tree Ct.  
W. Middlesex, PA 16159  
724-528-2793  
[DPerry9780@aol.com](mailto:DPerry9780@aol.com)
44. Vivint Solar  
Erica Dahl, Vice President, Public Policy and Government Affairs  
1800 W Ashton Blvd.  
Lehi, UT 84043  
385-455-5501  
[Erica.dahl@vivintsolar.com](mailto:Erica.dahl@vivintsolar.com)
45. Robert Smith, Retired President, National Healthcare Services, In.  
9 West Lake Rd,  
Bear Creek Village, Pa 18602  
570-709-9112  
[rs12@mac.com](mailto:rs12@mac.com)
46. Old Haverford Monthly Meeting of the Religious Society of Friends  
Stephen Loughin, as Clerk and in his individual capacity  
235 East Eagle Road  
Havertown, PA 19083  
[sloughin@gmail.com](mailto:sloughin@gmail.com)
47. Temple Environmental Law Society  
Annie Fox, in her capacity as Vice-President and in her individual capacity  
Student Affairs  
Barrack Hall, 103F  
1819 N. Broad Street  
Philadelphia, PA 19122  
347-276-4350  
[Annie.fox12@gmail.com](mailto:Annie.fox12@gmail.com)

48. Lily McIntyre  
129 W. Mt. Pleasant Ave.  
Philadelphia, PA 19119  
215-888-3616  
[jenniferemcintyre@me.com](mailto:jenniferemcintyre@me.com)

Lily was one of the petitioners in *Funk v. Wolf*, 144 A.3d 228 (Pa. Cmwlth. 2016), which sought mandamus to require the Commonwealth to regulate greenhouse gases. The Commonwealth Court specifically found that Lily had “sufficiently alleged facts conferring her standing to assert the claims in the Petition.” 144 A.3d at 246-47.

49. Darius Abrams  
5405 Oakland St.  
Philadelphia, PA 19124  
(15-537-1961  
[dariusabranshses@gmail.com](mailto:dariusabranshses@gmail.com)

Darius was one of the petitioners in *Funk v. Wolf*, 144 A.3d 228 (Pa. Cmwlth. 2016), which sought mandamus to require the Commonwealth to regulate greenhouse gases.

50. Westtown School  
Tori Jueds, in her capacity as Head of School and in her individual capacity  
975 Westtown Rd.  
West Chester, PA 19382  
610-399-0123  
[Tori.jueds@westtown.edu](mailto:Tori.jueds@westtown.edu)

51. Environmental Rights Institute at Widener University Delaware Law School  
Kenneth T. Kristl, Professor of Law and Co-Director of the Environmental Rights Institute  
Delaware Law School  
4601 Concord Pike  
Wilmington, DE 19803  
302-477-2053  
[ktkristl@widener.edu](mailto:ktkristl@widener.edu)

52. Plymouth Monthly Meeting of the Society of Friends  
Paige Menton, Clerk, Peace and Social Concerns Committee  
2150 Butler Pike  
Plymouth Meeting PA 19462  
610-941-4371  
[paigementon@gmail.com](mailto:paigementon@gmail.com)

53. PA Solar Energy Industries Association  
Ron Celentano, President  
7821 Flourtown Avenue  
Wyndmoor, Pa. 19038  
215-836-9958  
[celentanor@aol.com](mailto:celentanor@aol.com)
54. Sustainable Futures Communications Inc.  
Maureen Mulligan, Principal  
33 Greening Life Lane  
Shermans Dale, PA. 17090  
717-582-7484  
[Maureenamulligan1@gmail.com](mailto:Maureenamulligan1@gmail.com)
55. Conservation Voters of Pennsylvania  
Josh McNeil, as Executive Director and in his Individual Capacity  
P.O. Box 2125  
Philadelphia, PA 19103  
215-564-3350  
[Joshua.mcneil@conservationpa.com](mailto:Joshua.mcneil@conservationpa.com)
56. Kennett Monthly Meeting of the Religious Society of Friends  
Barbara Clarke, as Clerk and in her individual capacity  
125 W. Sickie St.  
Kennett Square, PA 19348  
610-444-1012  
[info@kennettfriends.org](mailto:info@kennettfriends.org)  
[maplelane125@msn.com](mailto:maplelane125@msn.com)
57. Goshen Monthly Meeting, Religious Society of Friends  
Sallie Welte, on behalf of the Meeting and in her individual capacity  
814 N Chester Rd  
West Chester, PA 19380  
610-306-5718  
[weltesc@aol.com](mailto:weltesc@aol.com)
- 58.
59. Additional petitioners wish to join this petition and will be added by way of supplementation to this Exhibit.

## **EQB Climate Petition: Pennsylvania Cap-and-Trade Fact Sheet**

- Article I, Section 27 of the Pennsylvania Constitution (“the Environmental Rights Amendment”) provides: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” This requires the Commonwealth to control greenhouse gas emissions, which pose a threat to human health and the environment, and, at a minimum, to limit such emissions to the extent consistent with the social cost of carbon.
- Given the need to adopt a regulation addressing greenhouse gases, we intend to file a Petition for Rulemaking with the Environmental Quality Board (“EQB”), pursuant to Title 25, Chapter 23 of the Pennsylvania Code, to adopt a proposed regulation establishing an economy-wide auction-cap-and-trade program for Pennsylvania. Adoption of such a program has proven to be an effective means of controlling greenhouse gas emissions in other jurisdictions and would satisfy the requirement under Article I, Section 27. There is considerable legal authority and flexibility to promulgate such a regulation under the Pennsylvania Air Pollution Control Act (“APCA”).
- In two recent landmark decisions, the Pennsylvania Supreme Court confirmed that the Environmental Rights Amendment creates individual rights to a clean environment for all people, including future generations, and creates an enforceable duty for all agencies and entities of the Commonwealth government, both statewide and local, to conserve and maintain the public natural resources of the Commonwealth. Those resources should include a natural climate that is not disrupted by excessive concentrations of greenhouse gases in the atmosphere.
- Section 4005 of the APCA grants EQB the power, and imposes upon it the affirmative duty, to “[a]dopt rules and regulations, for the prevention, control, reduction and abatement of air pollution . . . which shall be applicable to all air contamination sources” and to “[e]stablish and publish maximum quantities of air contaminants.” Greenhouse gases are regulated air pollutants within the meaning of the federal Clean Air Act and the APCA.
- Accordingly, we have drafted a proposed regulation – based on the California auction-cap-and-trade program – that will be attached to the petition. If adopted, the regulation will establish a Pennsylvania program where emissions from covered sources of greenhouse gas emissions would be capped, with the cap declining each year by an amount equal to three percent of 2016 emissions starting with 2018. If the program starts in 2020, the cap that year would be 91% of the baseline. This would put Pennsylvania on track to achieve carbon neutrality by 2052, consistent with the goal established by the United Nations Framework Convention on Climate Change, as defined in the Paris Agreement.
- We are looking to recruit co-signers. Once submitted, the petition will trigger a formal process for consideration under 25 Pa. Code Chapter 23 that will require the Department of Environmental Protection (“DEP”) to review and evaluate the proposal and make recommendations to EQB on how to proceed. Our petition will be supported by a substantial legal and factual record.

Here's how our regulation would work:

- o DEP would auction or distribute allowances equal to the cap, with each allowance equal to one metric ton of CO<sub>2</sub>e, as defined and determined under the Environmental Protection Agency's Mandatory Greenhouse Gas Reporting Rule (MRR). Sources that are required to report their emissions under the MRR, or otherwise required to report direct emissions, will be required annually to surrender a number of allowances equal to their total annual GHG emissions (in CO<sub>2</sub>e).
- o Distributors of fossil fuels (petroleum fuel and petroleum fuel products, natural gas, propane and natural gas liquids used for fuel, and coal) will be required annually to surrender a number of allowances equal to the total annual GHG emissions (in CO<sub>2</sub>e) that will be released into the ambient atmosphere from combustion of the fuels.
- o Sales of fossil fuels to entities required to surrender allowances based on their GHG emissions will be exempt from the requirement for the surrender of allowances. Likewise, sales of fossil fuels that for the purpose of the manufacture of products that will not release GHGs, such as plastics, will be exempt from the requirement for the surrender of allowances. No allowances need to be surrendered for biogenic CO<sub>2</sub> and geologically sequestered CO<sub>2</sub>.
- o Most allowances will be distributed by auction, subject to a reserve price that will move towards the social cost of carbon and start initially at \$10/ton and increase by 10% per year plus the rate of inflation, until it reaches the California reserve price. Auctions will occur periodically. If any allowances are unsold, up to 25% will be offered at sale in the next auction (subject to the reserve price) and any allowances that are unsold for more than two years will be retired or placed in an allowance price containment reserve.
- o Industries with products (excluding fossil fuel and electricity generation) subject to international and interstate competition will be entitled to apply to DEP for the distribution of some allowances free of charge, upon a showing that this is necessary to prevent "leakage," which might result if production were moved to other states or nations that do not put a price on GHG emissions. The number of free allowances would initially be based on a company's 2018 GHG emissions and would be reduced by 5% annually. If a company closes, it would lose the right to receive allowances and, if it moves any portion of its production out of the state, the free allowances would be reduced proportionately. DEP would be entitled to distribute free allowances to new businesses subject to international or interstate competition from any unsold allowances or the containment reserve in order to assure that this program does not discourage new business formation. Allowances may be bought by any person and may be freely traded. Allowances may also be banked for future use.
- Because Pennsylvania's greenhouse gas emissions are globally significant, the proposed regulation will represent a significant step in mitigating climate disruption. Pennsylvania's total greenhouse gas emissions in 2014 exceeded all but 21 countries of the world (16 countries exceeded Pennsylvania, while 5 had emissions approximately equal to Pennsylvania).
- Based on the experience of states in the Regional Greenhouse Gas Initiative (RGGI), which is a narrower program, we anticipate that the proposed regulation will result in economic growth, including both job growth and increased gross state product.

LEE, GREEN & REITER, INC.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JOSEPH P. GREEN  
DENNIS O. REITER  
ROBERT A. MIX

115 EAST HIGH STREET  
POST OFFICE BOX 179  
BELLEFONTE, PA 16823-0179  
(814) 355-4769  
FAX (814) 355-5024  
WWW.LMGRLAW.COM

December 28, 2018

DONALD E. LEE  
(1961 - 2010)

David Pribulka  
Township Manager  
Ferguson Township Municipal Office  
3147 Research Drive  
State College, PA 16801

Re: Ferguson Township v. Navistar and Allegheny Truck

Dear Dave:

I had recently reported that there is an offer of settlement on the table in the amount of \$27,500.00, the "lions share" of which would be payable by Navistar. The exact breakdown is not known to me for certain but I believe it is in the range of Navistar paying \$25,000.00 with the additional \$2,500.00 being paid by Allegheny Truck. The terms of settlement would, of course, include the Township keeping the medium duty truck manufactured by Navistar which is known as 2014 Terrastar.

This is one of those cases which could go either way in terms of verdict if the case were tried. Also, there would be additional trial and discovery costs which I would estimate to be \$6,500.00 to \$7,500.00 from this point forward. These expenses would be 'saved' if the case is settled.

Current and existing legal costs and deposition advancements amount to about \$2,500.00 which would need to be deducted from the settlement figure thus generating a 'net' to the Township of about \$25,000.00.

This proposal was discussed at the recent executive session and I also understand that you and Steve McDonald would concur with my recommendation that this case be settled and discontinued at the present time. A release will need to be signed, payment made, and the case formally marked discontinued. I would think that this would probably take about 30 days to finalize.

At this point, I request and recommend that the Board of Supervisors consider and approve this proposal at the next regular meeting. If acceptable, a motion along these lines might be appropriate:

LEE, GREEN & REITER, INC.

**Moved that the offer of settlement in the amount of \$27,500.00 made by the defendants, Navistar and Allegheny Truck, to settle the pending litigation in the Centre County Court of Common Pleas (Docket #15-4057) be accepted and settled on that basis with the execution of an appropriate release and discontinuance documents by the litigants. The terms of settlement include the Township remaining the owner of the unit.**

If this is approved, please advise and I will see that Navistar and Allegheny Truck put into motion the steps necessary for making payment.

If this can be placed on the agenda for the next meeting, that will expedite the process.

Very truly yours,

LEE, GREEN & REITER, INC.,

A handwritten signature in black ink, appearing to read 'J.P. Green', written in a cursive style.

Joseph P. Green, Esquire

JPG/gmr

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA, APPROVING A SETTLEMENT OFFER WITH NAVISTAR, INC. AND ALLEGHENY TRUCKS, INC. TO RESOLVE PENDING LITIGATION IN THE CENTRE COUNTY COURT OF COMMON PLEAS DOCKET #15-4057.**

**BE IT RESOLVED**, by authority of the Township of Ferguson, Centre County, Pennsylvania, and it is hereby resolved by authority of the same, that the offer of settlement in the amount of \$27,500.00 made by the defendants, Navistar, Inc. and Allegheny Trucks, Inc., to settle the pending litigation in the Centre County Court of Common Pleas (Docket #15-4057) be accepted and settled on that basis with the execution of an appropriate release and discontinuance document by the litigants. The terms of settlement shall include the Township remain the owner of the unit.

**RESOLVED**, this 7<sup>th</sup> day of January 2019.

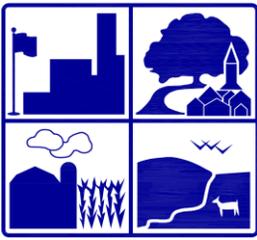
**TOWNSHIP OF FERGUSON**

By: \_\_\_\_\_  
Board of Supervisors, Chairperson

[ S E A L ]

**ATTEST:**

By: \_\_\_\_\_  
David G. Pribulka, Secretary



# TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801  
Telephone: 814-238-4651 • Fax: 814-238-3454  
[www.twp.ferguson.pa.us](http://www.twp.ferguson.pa.us)

TO: Ferguson Township Board of Supervisors

FROM: Raymond J. Stolinas Jr., AICP, Director of Planning & Zoning  
Lindsay K. Schoch, Community Planner

DATE: January 3, 2019

SUBJECT: Harner Farm Concept Plan

On December 4, 2018, the Ferguson Township Planning Commission, as part of their Agenda, conducted a Pre-Application Conference with the Applicant for the purpose of reviewing and discussing a proposed subdivision or land development. As a result, the Pre-Application Conference is not mandatory and not regarded as a formal application. The following are general questions or comments that the Planning Commission posed to the applicant:

1. Are the Stormwater Basins illustrated on the Concept Plan actual size? Mr. Sepp stated that the proposed plan does not show the actual size of the stormwater basins—only the potential areas for stormwater basins.
2. Mr. Keough spoke to his concern about the gas pumps at Sheetz in regard to the draft Sourcewater Protection Ordinance. He explained that the Sourcewater Protection Ordinance has not been tested with anything in the Township yet and he is concerned about unintended consequences.
3. Mr. Keough inquired about the Zoning designation of the remaining Harner tax parcels #24-004-,067D,0000-(RA), #24-004-,067B,0000-(RA), #24-004-,067C,0000-(RA), #24-004-,067A,0000-(RA) and #24-004-,069,0000-(RA) after the approved rezoning.
4. Mr. Crassweller asked about how the site will connect with UAJA facilities. Mr. Sepp explained that his firm is still researching different options. The property is in the Sewer Service Area (SSA) and there are a couple of different options for that development, including the installation of a pump station.
5. Mr. Thompson offered a question regarding potential drive-thru service. Mr. Brent Brubaker, Sheetz Engineer Manager, explained that there is a drive-thru lane for Sheetz. Mr. Brubaker went on to explain that the drive-thru lane is a convenience for a certain margin of Sheetz customers. Sheetz only does about 10% of its business through the drive-thru, compared to McDonald's, which does about 70% of its business through its drive-thru. Mr. Brubaker referred to the proposed plan on the PowerPoint and explained how the drive-thru would work in that location. In response to a question from Mr. Keough, Mr. Brubaker stated that Sheetz will be looking at getting an alcohol license for beer and wine.
6. In response to a question from Mr. Scott, Mr. Brian Dinges, Sheetz Real Estate Department, clarified that the proposed Sheetz building is 6,077 square feet, which is the largest building that Sheetz builds currently.
7. In response to a question from Mr. Wheland, Mr. Dinges stated that there are about 50-70 Sheetz stores with drive-throughs. Mr. Dinges explained that there are two windows in the drive-thru for customers to pick up food and there is also an escape lane if there were a car at the first window waiting for their items so that the second car at the second window could drive around the first car to leave. In response to a question from Ms. Strickland, Mr. Dinges stated that he believes that 45 parking spaces for the Sheetz building is sufficient because the customer's visit is a quick turnaround.

8. In response to a question from Mr. Wheland, Mr. Ressler stated that sidewalks will be required on West College Avenue and Whitehall Road, even though there are no other sidewalks on either of those roads.
9. Ms. Strickland expressed her concern about the Sheetz lighting affecting the neighboring residential housing. Mr. Sepp stated that Sheetz will have to meet the Township's lighting ordinance.
10. In response to a question from Mr. Keough, Mr. Justin Mandel, Aspen Whitehall Partners, stated that there have been preliminary discussions about the possible tenants and spaces within the proposed mixed-use building. He explained that a bank with a drive-thru is a possible tenant, as well as another food user that is not a competitor of Sheetz. The other uses would be for office space, and a possible professional medical space. He went onto explain that the second story apartments make sense for this area, but they will need to explore this option further.

**Staff Recommendation:** The Board of Supervisors review the Harner Farm Concept Plan in addition to Planning Commission comments made at the December 4, 2018 Pre Application Conference and give Concept Plan feedback to the applicant.

## **Harner Farm Concept Plan**

November 28, 2018

Aspen Whitehall Partners, LLC and Aspen Route 26 Partners, LLC are proposing the development of the 27-acre portion of the Harner Farm south of Whitehall Road. The proposed development includes 36 single-family lots ranging in size from 0.25 acres to 0.50 acres and two commercial lots. The commercial lot at the intersection of West College Avenue and West Whitehall Road will be slightly under 5 acres and the second commercial lot will be slightly under 3.5 acres. Two public roads will be constructed to serve the project. One road will access West College Avenue and the second road will access West Whitehall Road.

Each of the single family lots will access Township roads. These roads will be built to Township standards and will include sidewalks and street trees. The two commercial lots will also access the Township roads. The five acre corner commercial lot will also have access to West Whitehall Road.

The project is located in the Corridor Overlay and will meet the Corridor Overlay ordinances in terms of access, landscaping, setbacks and building appearance.

The five acre commercial lot will be developed as a Sheetz Convenience Store with a drive thru. The store will be 6,488 S.F. and will include 8 MPDs (gas station islands).

The 3.5 acre commercial lot may be developed as a mixed use building with retail/office on the first floor and apartments on the second floor. This use is in the concept stage and may change prior to submission of a land development plan. This use will be used for the Traffic Impact Study.

A Preliminary Subdivision Plan will be submitted showing the proposed residential lots and two commercial lots. Once the Preliminary Plan is approved, a final subdivision plan for the Sheetz Lot and for a portion of the single family lots will be submitted. A land development plan for the Sheetz Store will also be submitted.

Construction is planned to begin in summer, 2019.

WEST COLLEGE AVENUE SR 0026

40' FRONT YARD SETBACK  
FOR COMMERCIAL ZONING  
IN CORRIDOR OVERLAY.

WEST WHITEHALL ROAD

Tax Parcel  
24-004-69

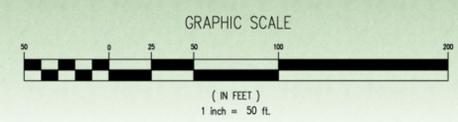
Existing Electrical Substation

Tax Parcel  
24-004-67A

Tax Parcel  
24-004-67B

Tax Parcel  
24-004-67C

Tax Parcel  
24-004-67D



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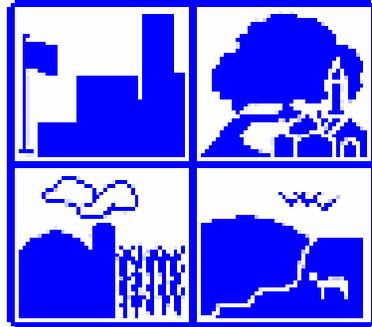
Designer	MJA
Draftsman	MJA
Proj Manager	JCS
Surveyor	XXX
Perimeter Ok	XXX
Book	XXX Pg XXX
Drawn P:	Layout XXX
Acad	XXX

**HARNER FARM**  
FERGUSON TOWNSHIP  
CENTRE COUNTY  
PENNSYLVANIA

CONCEPT PLAN

PROJECT NO.	17125
DATE	NOVEMBER 7, 2018
SCALE	1" = 50'
SHEET NO.	1

P:\ddp\2017\17125\Design\sheet plans\17125-SK19-11-16.dwg, 11/27/2018 2:38:29 PM, 1:1



## **TOWNSHIP OF FERGUSON PERSONNEL MANUAL**

Readopted: April 20, 2015

Revised: November 6, 2017

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Table of Contents	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b>	<b>Date of Revision:</b>		

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**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Table of Contents	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Table of Contents	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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Red indicates Non-Uniform Employees Only

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Foreward	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>		

**FOREWARD**

This Policy Manual has been prepared for Ferguson Township employees. It contains personnel policies of the Township. These are the rules and regulations governing employment and conduct. The policy Manual is intended to assist each employee in understanding his/her responsibilities and performing his/her duties.

The Township Manager and/or Board of Supervisors may waive or add to any of the requirements set forth in this Policy Manual. The Township Manager retains authority to interpret and apply all policies. Any matter not addressed herein falls within the authority of the Township Manager to decide.

Employee suggestions for change to policy or to the Policy Manual are welcome.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Personnel Policy Adoption	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	1.0	1-1

**PERSONNEL POLICY ADOPTION**

A. Introductory Statement

Set forth in this Personnel Policies Manual are certain of the policies of Ferguson Township (Township) which relate to personnel matters. In Resolution 2015-14 2015, this personnel policy document was adopted by the Ferguson Township Board of Supervisors as reflecting the general personnel philosophy of the Township. This document is not an ordinance and, therefore, should not be viewed as a "law" of the Township. It is a flexible document which must be, and will be, from time to time, changed as circumstances dictate the necessity for change. Accordingly, the Township reserves the right to add to, delete from, or otherwise modify this document when it determines that such changes to the document are necessary. The Township invites and encourages input from its employees regarding the contents of this document, but reserves to itself the right to ultimately determine what will be the personnel policies of the Township. The contents of this document should be of interest and importance to every employee in the Township, and this includes those employees who are covered by a collective bargaining agreement. It is not intended that this document conflict with or even supplement the terms and conditions stated in any collective bargaining agreement between the Township and the Ferguson Township Police Association. However, the manual does contain information regarding Township benefits, procedures and other matters which will be of value to employees whether or not they are organized into a collective bargaining unit.

The law and Constitution of Pennsylvania provide to the Township certain powers and rights relating to Township personnel and personnel management. It is not the intention of these personnel policies, or of the resolution which adopted them, to diminish or modify those rights and powers. Some laws, such as Act 111 of 1968 and Act 195 of 1970 do modify traditional municipal employer powers in the area of personnel management. It is not the intention of these personnel policies, or the resolution which adopted them, to further modify or diminish management's powers and right to manage its personnel, particularly those personnel covered by Act 111 and Act 195 bargaining units. In the same vein, certain Pennsylvania statutes and certain aspects of the Pennsylvania Constitution provides to municipal employees rights, without regard to whether those employees are employed in positions covered by a collective bargaining agreement. Nothing in these personnel policies is intended to or is designed to diminish or otherwise modify those guaranteed statutory and constitutional rights.

From time to time this document will be modified. The Township will attempt to keep you abreast of those modifications and will provide you with supplemental data to be included in these manuals to reflect such modifications. You should keep this manual in a secure place so you can refer to it

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Personnel Policy Adoption	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	1.0	1-2

from time to time. The Township suggests that you keep the document at home with other important papers such as insurance policies, mortgage documents, etc.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Non-Discrimination	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	2.0	2-1

**NON-DISCRIMINATION**

Ferguson Township will not discriminate against applicants for employment or employees on the basis of race, religion, age, gender, non-work related handicap, color, or national origin.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Access to Personnel Files	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	3.0	3-1

**ACCESS TO PERSONNEL FILES**

Employees or their designated representatives may inspect the contents of their personnel file during normal business hours. The records are centralized in the Township Manager's Office. Those who wish to review their files are to schedule a time which is mutually convenient for the employee and the Township Manager. If an employee desires to authorize a representative to review the employee's personnel file, the employee must provide written authorization for such review to the Township Manager. Employees or their representatives may not alter or remove any of the documents in the file. The employee may note discrepancies on a separate sheet and request that such become a permanent part of their personnel record. Viewing of employee records by the employee or his/her representative will be monitored by the Township Manager or his designee.

Medical information is maintained as a confidential medical record and is not considered to be part of the employer's personnel file. If an employee desires to review such information, in addition to the personnel record, a specific request should be made to the Township Manager.

Any employee who has a change of address, telephone number, marital status, dependents, or any other change which would affect the information necessary for the administration of payroll or benefits, is to report the change as soon as possible and specify an effective date for the change.

It is policy of the Township to maintain the confidentiality of information about its employees within the limits imposed by law. Information which will be disclosed to third parties without a release from the employee is limited to documents which are considered to be public records under state law or which are subject to proper civil/criminal process. No other information will be disclosed without a release signed by the employee or in the case of former employees, submitted to the Township Manager.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Employment Categories	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	4.0	4-1

**EMPLOYMENT CATEGORIES**

- Regular Full Time: Positions which require a daily work schedule of at least 7.8 hours of work and 2,028 hours of work per year.
- Regular Part Time: Positions which require a maximum weekly work schedule of 21.5 hours of work and 1,118 hours of work per year.
- Part Time (Casual): Positions which are irregular in their requirement for daily or weekly hours of work, but which require at least 450 hours of work per year.
- Temporary: Positions which last for not more than 90 work days regardless of hours worked.
- Probationary: The first twelve (12) months of employment with Ferguson Township in any capacity of paid employment plus any extension approved by the Township Manager up to six (6) months.
- Exempt: Under the Fair Labor Standards Act. a position which is exempt from the requirement to pay overtime wages.
- Non-exempt: Under the Fair Labor Standards Act. a position which is eligible for overtime wages for all hours worked in a work week in excess of forty (40).

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Definitions & Requirements	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	5.0	5-1

**DEFINITIONS/REQUIREMENTS**

Work Week: The seven day time period from midnight on Saturday until midnight on the following Saturday, consisting of 168 hours.

Work Schedule: The five day period of time within a work week during which a regular, full time employee will be scheduled to work 40 hours.

Hours Worked: The compensable hours of employment within the work schedule.

Work Day:

1. Regular full time employees in the Department of Public Works are scheduled to work during the work week between the hours of 7:00 AM and 3:30 PM with thirty (30) minutes for lunch. These hours may be changed by the Director of Public Works when in his/her judgment there is justification to do so.
2. Regular full time employees covered by this policy other than the Department of Public Works will work between Monday and Friday of the work week between the hours of 8:00 AM and 5:00 PM with one (1) hour off for lunch. The work day on Friday, except for regular full time employees in the Department of Public Works, will commence at 8:00 AM and end at 4:00 PM with thirty (30) minutes for lunch. These hours may be changed by the Department Head when in his/her judgment there is justification to do so.

Overtime:

1. All hours worked in excess of forty (40) within a work week by an employee in a position which is not exempt from the overtime pay requirements of law shall be paid at the overtime rate. The overtime rate is one and one half (1 ½) times the non-exempt employees hourly rate of pay.
2. Regular, full-time non-exempt Public Works Department employees shall be paid double time for time worked on Sundays and holidays. No additional time off shall be granted for Sunday or a holiday when double time pay is granted. There shall be no pyramiding of overtime.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Definitions & Requirements	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	5.0	5-2

3. No employee of Ferguson Township, employed in a position which is non-exempt, may work for the Township in excess of forty (40) hours per work week without the authorization from a Department Head.

Call Back:

1. Non-exempt employees who are at their home and are required to report to work during hours other than their normal work schedule shall be compensated for not less than three (3) hours at their regular rate of pay. However, only hours worked shall apply to any overtime which may accrue in the eligible employees work schedule. Time which accrues towards hours worked commences when the employee arrives for work at the designated work area and ends when he/she is dismissed by the immediate supervisor.
2. An employee who is required to remain on the job after the work day shall be compensated at regular hourly wages for hours worked unless his/her work hours exceed forty (40) in a work week.

Compensatory Time:

1. Compensatory time is applicable to only non-exempt, non-uniformed Public Works Department employees and only in the limited instances described as follows:
  - A. During emergency situations where the employee is needed to provide continued service to the Township due to snow, ice or other emergency situations;
  - B. During the time period of 12:00 AM (Midnight) and 7:00 AM; and
  - C. For no more than 2.5 hours in any 24-hour period.
2. Eligible Public Works Department Employees that are required to report to work between 12:00 AM and 7:00 AM may receive compensatory time consistent with the following example: If an employee is called into work at 1:00 AM, and all work is completed by 6:30 AM, the employee shall receive 2.5 hours of compensatory time and shall be required to return home for rest. This policy equates to one-half hour of compensatory time for each hour of work during the time period of 12:00 AM and 7:00 AM up to a maximum of 2.5 hours. The compensatory time shall be included in

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Definitions & Requirements	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	5.0	5-3

the employee's total hours worked for the purposes of calculating overtime for hours worked beyond 40 hours in any work schedule.

3. There shall be no carryover of compensatory time.

Seniority:

1. **Departmental Seniority**  
Seniority shall accrue on the basis of continuous, uninterrupted employment within a Department as a regular, full time employee. Persons with the earliest hiring date as regular, full time employees in the Department where they currently work will be the most senior.
2. **Township Seniority**  
Total employment seniority with Ferguson Township will be calculated from the earliest hiring date as a regular full time employee of the Township. It will include only the time spent in regular full time employment and will be expressed in months. Persons with the largest number of months of regular full time employment will be the most senior.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Alternate Work Hours	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	5.0	5-4

**Alternate Work Hours Policy**

Implementing an alternate work hours policy will apply only to Office Personnel and not to Police or the Department of Public Works Maintenance Section.

1. The normal office business hours of the Township will remain as Monday through Thursday 8 a.m. to 5 p.m. and Friday 8 a.m. to 4 p.m.
2. It is the responsibility of the Department Head to assure that the department is adequately staffed with office personnel to provide customer service throughout the normal business hours. THIS IS CRITICAL TO MEET CUSTOMER SERVICE EXPECTATIONS.
3. The Department Head will be solely responsible for determining if an employee's work schedule can be adjusted to allow for the use of alternate work hours. The Department Head will consider all relevant factors such as but not limited to the amount of staffing to provide customer service, department work load and the leave schedule for other department personnel.
4. Alternate work hours work hours may be established for eligible employees subject to Department Head approval as a standardized 8 hour period excluding lunch between 7:30 a.m. to 5:30 p.m. Monday through Thursday, and a 7.5 hour period excluding lunch between 7:30 a.m. and 5:00 p.m. on Friday. Examples: An employee begins work at 7:30 a.m. with a one-half hour lunch they would be able to leave work at 4:00 p.m.; an employee begins work at 8:30 a.m. with a one hour lunch they could leave work at 5:30 p.m.
5. The use of alternate work hours does not mean variable work hours. An established work schedule using alternate work hours is required except in the instances of other department employees scheduled leave where the employee that is starting early or later than the normal business hours may be required to adjust their alternate work hours to provide department coverage and customer service. Employees cannot use alternate work hours to start and end days of work randomly for personal business, doctor's appointments or other reasons where personal leave or vacation time should be used.
6. For non-exempt employees a time sheet shall be submitted every two weeks to the Accountant/Bookkeeper showing the hours of work, e.g. 8 a.m. to 5 p.m.; 7:30 a.m. to 4:30 p.m. (one hour lunch) etc.
7. This policy will not affect current employees as of the effective date of this policy that have an alternate work hours schedule that deviates from the alternate work hours established in this policy. (Original effective date of 9/25/03)

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Regular Pay Periods	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	6.0	6-1

**REGULAR PAY PERIODS**

1. Employees shall be paid twice (2) monthly. Scheduled pay days are the 15<sup>th</sup> day and the last day of each calendar month. Pay checks will normally be distributed by 12:00 noon on the scheduled pay day.
2. If a scheduled pay day falls on a holiday or weekend, pay checks will be distributed on the last Township business day before the holiday or weekend.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Work/Time Records	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	7.0	7-1

**SUBMISSION OF WORK/TIME RECORDS**

1. An official Ferguson Township work/time record shall be completed by every non-exempt employee on a daily basis. On the last work day of each work week, the non-exempt employee shall examine the time record and initial it with his/her initials to certify its accuracy.
2. The record must be passed on to the supervisor for verification, and for his/her certification of accuracy. It is then the official record of hours worked.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Breaks & Meal Times	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	8.0	8-1

**BREAKS AND MEAL TIME**

1. Each employee shall be granted two (2) ten (10) minute work breaks daily to be taken at a time that is convenient to fit the work schedule.
2. Each employee of the Public Works Department shall have a thirty (30) minute meal time during the work day.
3. All other employees shall be granted a one (1) hour meal time during the work day except on Friday, when the meal time is thirty (30) minutes.
4. Meal time is not compensable. The supervisor of each employee shall determine the time of each work break and shall establish a meal time.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Probationary Period	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	9.0	9-1

**PROBATIONARY PERIOD**

1. The term "Probationary Period" shall mean that at the time of employment, each new employee will be informed by the Township Manager that he/she is employed on a probationary basis and that probation shall last for at least twelve (12) months. A person on probation has no reasonable expectation of continued employment until the probationary period has expired. During the probationary period or any extension thereof, employment may be terminated at any time by the Township Manager. The starting date of employment will be used for computation of length of service and employee benefit programs.
2. Probation may be extended upon the recommendation of the Department Head for up to six (6) months. Probation will be extended if an approved absence occurs during the initial probationary period for a length of time equal to the approved absence.
3. In the event of a promotion, a special probationary period of six (6) months begins. If the special probationary employee fails to demonstrate that he/she can completely and satisfactorily perform the job within the special probationary period, or if the employee determines he/she is not suitable for the promoted position, the Township may return the employee to her/her former job without loss in seniority. In this circumstance, other employees who are promoted to fill a vacancy created by a promotion will be returned to their former positions.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Flexible Leave Time	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	10.0	10-1

**FLEXIBLE LEAVE TIME**

A department head can grant a probationary department employee up to but no more than 7 hours of leave in a given day within a pay period without a leave slip. The employee must make up the leave during the same pay period. Documentation of the hours of leave taken (time and day e.g.: 7:00am to 8:00am on 02/17/00) and documentation of time made up (time and day e.g.: 3:30pm to 4:30pm on 2/18/00) is required. This flexible leave is granted at the request of the employee and subject to the approval of the department head. The time and day that hours are made up is subject to approval of the department head. Any request for flexible leave greater than 7 hours in a day, or for consecutive work days, is subject to review by the Manager and can only be granted by the Manager.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Holidays	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	11.0	11-1

**HOLIDAYS**

1. Ferguson Township will observe seven (7) scheduled holidays per year. They are:  

New Years Day	Presidents Day
Memorial Day	Independence Day
Labor Day	Thanksgiving Day
Christmas Day	
2. Regular, full time employees will receive their normal pay for any holiday which occurs during their employment. No other employment category is eligible for pay on a holiday unless the employee works on that day.
3. If a scheduled holiday falls on a Saturday, it will be observed on the preceding Friday. If a scheduled holiday falls on a Sunday, it will be observed on the succeeding Monday.
4. Any regular, full time employee who is required to work on a holiday will receive his/her regular daily pay plus time and one half for hours actually worked on that day.
5. Holiday work must have the prior approval of the Township Manager or a Department Head.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Vacation	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	12.0	12-1

**VACATION**

1. Annual vacation shall accrue according to this schedule:
  - 0 to 12 months of continuous service - 6 Work days earned at the rate of one-half day per month
  - 13<sup>th</sup> month through the 108<sup>th</sup> month of continuous service - 10 Work days
  - 109<sup>th</sup> month through the 168<sup>th</sup> month of continuous service -15 Work days
  - 169<sup>th</sup> month through the 288<sup>th</sup> month of continuous service - 20 Work days
  - 289<sup>th</sup> month of continuous service or more -1 additional day per every 12 months of service up to a maximum of 22 work days
2. Probationary time counts toward the accrual of service for this benefit.
3. Vacation time may be accumulated up to a maximum of twenty (20) days per vacation year and carried forward to the next vacation year. The vacation year for each employee shall be the twelve (12) month period following the anniversary date of employment of the employee.
4. Only regular, full time employees qualify for vacation. Vacation shall be scheduled annually during the months of January, February, and March by seniority. Vacation is authorized by the Department Head, based on the work requirements of the Department. Requests at any other time are on a first come-first approved basis, but subject to the schedule which is approved at the end of March which has first priority. Vacation may be taken in minimum one (1) hour increments. Time taken in less than one (1) hour increments will be rounded up to the next whole hour. Wages will not be paid annually in lieu of vacation.
5. Upon terminating employment, an employee may receive pay for all unused vacation up to twenty (20) days. The vacation account must be exhausted at the time an employee receives his/her final pay check at termination.
6. Service as a regular part time, part time, or temporary employee does not accumulate toward the service requirement for regular full time employment.
7. An absence from work without pay for any reason except workers compensation leave time, FMLA or military leave will constitute time which is not applicable toward service time for vacation accrual.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Personal Days	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	13.0	13-1

**PERSONAL DAYS**

1. Each regular full time employee shall be entitled to seven (7) personal days of absence with pay, per calendar year, after completion of the probationary period.
2. During the probationary period, regular full time employees shall receive one (1) personal day after each two (2) months of continuous employment. This entitlement must be used within the twelve (12) month calendar year. No regular full time employee is entitled to more than seven (7) personal days per calendar year. This benefit is not cumulative and will not be paid if not used.
3. Personal days must be scheduled prior to use and may not be taken in less than one (1) hour increments. Use requires the prior approval of the employees immediate supervisor.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Family Death	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	14.0	14-1

**DEATH IN IMMEDIATE FAMILY**

1. The immediate family shall be a spouse to which a regular full time employee is currently married, children, mother, father, brother, and sister.
2. In the event of death of an immediate family member, a regular, full time employee is entitled to an absence of up to three (3) consecutive working days with pay at the time of the funeral.
3. A regular full time employee may receive one (1) working day off, with pay, in the event of death of a grandmother, grandfather, aunt, uncle, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Sick & Medical	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-1

**SICK AND MEDICAL**

1. Regular full time employees accrue sick and medical time at the rate of one (1) work day per month or twelve (12) days annually, This time may be used for injury or illness, visits to the doctor, visits to the dentist, and illness or injury to spouse or children where the employee's absence from work is necessary. Employees must notify their immediate supervisor, prior to their scheduled work shift, of their need for a sick or medical absence and must obtain authorization from the supervisor before charging sick and medical leave time. The Department Head may require an employee to provide a statement of diagnosis from the treating physician for any illness which exceeds three (3) consecutive work days and from an employee with chronic absences. Sick and medical leave may be accumulated up to a maximum of one hundred twenty (120) days, and may only be used for the reasons given above. Accumulated sick and medical leave is a non-compensable benefit at the time of resignation, termination, or retirement.
2. An employee must report any on-the-job injury to his/her Department Head in writing within twenty-four (24) hours of the incident regardless of whether the injury required medical attention.
3. Failure by an employee to report to the Department Head within twenty-four (24) hours any injury sustained by him/her shall raise a presumption that the injury was sustained apart from employment.
4. Any employee injured while engaged in outside employment shall not be eligible for sick leave.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Family and Medical Leave Act Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-2

**FAMILY AND MEDICAL LEAVE ACT POLICY**

It is the policy of Ferguson Township to comply with the provisions of the Family and Medical Leave Act (FMLA) by providing eligible employees with up to 12 weeks of unpaid, job-protected leave during a 12-month period. Leave may be taken:

- Following the birth of a son/daughter in order to care for that son/daughter;
- Following the placement of a child with the employee for adoption or foster care;
- To care for a spouse, son/daughter, or parent who has a serious health condition;
- If the employee has a serious health condition which makes the employee unable to perform one or more essential functions of their job;
- For qualifying exigencies if the employee has a spouse, son/daughter, or parent who is on covered active duty or call to covered active duty status.

Eligible employees will be provided with up to 26 weeks of unpaid, job-protected leave during a single 12-month period to care for a spouse, son/daughter, parent, or next of kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. Eligible employees may take FMLA leave in subsequent years to care for an adult son or daughter with a serious health condition due to injury or illness sustained during military service, as long as all other FMLA requirements are met.

**A. Eligibility**

Active employees are eligible for FMLA leave if they have been employed by Ferguson Township for at least 12 months prior to the start of the leave, if during the previous 12-month period they worked at least 1,250 hours, and if employed at a worksite where 50 or more employees are employed within 75 miles of the worksite. Hourly and part-time employees are eligible if they meet these requirements.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Family and Medical Leave Act Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-3

**B. Length of FMLA Leave**

The maximum length of an FMLA leave is 12 work-weeks (or 26 work-weeks for care of an injured member of the Armed Forces or veteran) in a 12-month period of time. Absences of more than three consecutive days from work may be designated as FMLA leave. FMLA leave taken for birth and care of a son/daughter, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

In certain circumstances, intermittent leave may be taken in separate blocks of time rather than one continuous period of time. FMLA leave may also be taken by working a reduced schedule, provided the total hours of leave do not exceed the equivalent of 12 regular work-weeks of the employee involved. Intermittent or reduced schedule leave may be granted if medically necessary for a serious health condition of an employee or their spouse, son/daughter, parent, covered service member or veteran, or due to a qualifying exigency. Intermittent leave taken for the birth or adoption of a child must be approved. Employees must make a reasonable effort to schedule intermittent leave so as not to disrupt the employer's operations.

Ferguson Township has the right to temporarily transfer an employee on intermittent leave or reduced schedule leave to a job that is more suitable during the leave. Such transfer will be to an equal position with equal pay and benefits.

In cases where a husband and wife are employed by Ferguson Township, they are limited to a combined total of no more than 12 weeks in any 12-month period for birth of a son/daughter, placement for adoption or foster care, or to care for a parent with a serious health condition, or a combined total of no more than 26 weeks to care for a recovering service member or veteran (if all other requirements are met).

**C. Determining the Leave Year**

Ferguson Township will use the rolling 12-month period measured backward from the date an employee uses any FMLA leave to determine the 12-month period of leave. Entitlement to FMLA leave for the birth or placement of a child for adoption or foster care expires 12 months after the birth or placement. Ferguson Township shall determine the single 12-month period in which the 26-week leave entitlement is taken to care for a service member or veteran using the 12-month period measured forward from the date an employee's first FMLA leave for this purpose begins.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Family and Medical Leave Act Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**D. Definition of Son or Daughter**

FMLA defines son or daughter as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability. The age of the son or daughter at the onset of the disability (before or after age 18) is irrelevant. In loco parentis (in place of a parent) commonly refers to a person who lawfully assumes parental obligations without going through a legal adoption of a child.

**E. Employee Notification Requirements**

Employees are expected to give Ferguson Township at least 30 days' notice when applying for FMLA leave when the employee knows in advance the date or approximate date of the needed leave. When dates are not known in advance, employees must comply with Ferguson Township's usual and customary notice procedures for requesting leave, giving as much notice as possible and practicable, except in emergency situations. Employees must notify Ferguson Township if the leave is to be taken intermittently or on a reduced schedule basis.

If proper notice is not given, the leave may be denied or delayed. During the leave, employees may be required to report periodically on their leave status and intent to return to work. Ferguson Township may periodically contact the employee while on FMLA leave.

**F. Certification Requirements**

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Employees will be required to submit to Ferguson Township a Certification of Health Care Provider form to verify that the leave is due to the employee's own serious health condition or that of their spouse, son/daughter, or parent. A Certification of Qualifying Exigency form will be required for leave taken because a family member is an active duty service member. A Certification for Serious Injury or Illness of Current Service member form or Certification for Serious Injury or Illness of a Veteran form will be required for military caregiver leave. Certification forms are available from Ferguson Township and must be submitted within 15 days of application for FMLA leave. In the case of an emergency medical leave, Ferguson Township may grant the FMLA leave, but employees are required to submit a medical certification as soon as possible. Ferguson Township reserves the right to delay or terminate the leave if the employee fails to provide certification in a timely manner. Periodic recertification may be required. Ferguson Township may obtain clarification and authentication of a certification with the employee's permission. In addition, Ferguson Township may request a second and third medical opinion at the Township's expense if there is reason to doubt the validity of a medical certification.

**TOWNSHIP OF FERGUSON  
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**G. Employer Notification Requirements**

When an employee requests an FMLA leave, or Ferguson Township acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, Ferguson Township will provide the employee with a Notice of Eligibility and Rights and Responsibilities form within five business days. If the employee is not eligible for FMLA leave, the notice will state the reason. When Ferguson Township has enough information to determine that the leave is being taken for an FMLA-qualifying reason, the employee will receive an FMLA Designation Notice form within five business days. Copies of the FMLA leave notices will be filed in the employee's records. Employees may not work for any other employer, including self-employment, while on FMLA leave.

**H. Compensation and Benefits During FMLA Leave**

Leave of absence under this FMLA policy will be without pay, except when paid leave time is used or when an employee is eligible for short-term or long-term disability benefits under any insurance policy. Ferguson Township will require employees to use paid sick time (if available) for all or part of any unpaid FMLA leave. The use of accrued paid sick time runs concurrently with unpaid FMLA leave.

Ferguson Township will maintain health benefits for employees on FMLA leave of absence under the same conditions as if the employee had been continuously working. Ferguson Township will continue to pay our portion of company-paid benefits. Employees are expected to pay their portion of all benefits for themselves and for their dependents, if applicable. If premiums go unpaid for more than 30 days after payment is due, coverage may be terminated upon 15 days' notice to the employee.

**I. Returning from FMLA Leave**

Employees returning from FMLA leave will be reinstated to the position they had before the leave, or to a position with equal benefits, pay, and other terms and conditions of employment. In cases where the employee's leave was for a personal serious health condition, the employee must provide a fitness-for-duty certificate from a health care provider stating that the employee may return to work.

Under limited circumstances, certain highly-paid, salaried "key employees" may not be reinstated. Ferguson Township will notify the employee in writing of his/her status as a "key employee" (as defined by FMLA) when the employee gives notice of the need for FMLA leave, or as soon as practicable after being notified. This notice will also include the reason for denying job restoration and provide the employee with a reasonable opportunity to return to work after so notifying the employee.

**TOWNSHIP OF FERGUSON  
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**J. Failure to Return from FMLA Leave**

If an employee decides at any time during an FMLA leave that he/she will not be returning to work, the employee must provide Ferguson Township with a written notice of resignation. Employees who are unable to return to work following an FMLA leave may be terminated from employment. Ferguson Township reserves the right to recover the cost of any benefits paid during the leave from an employee who does not return to work. If a terminated employee recovers from a serious medical condition or is again able to return to work, Ferguson Township will consider the employee for rehire based on the needs of the company and the employee's work record during employment with the Township.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Military Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-7

**MILITARY LEAVE OF ABSENCE POLICY AND THE UNIFORMED SERVICES EMPLOYMENT AND RE-EMPLOYMENT RIGHTS ACT (USERRA)**

It is the policy of Ferguson Township to comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) regarding military leave of absence. USERRA protects the reemployment rights and health care benefits of uniformed service members who leave their civilian jobs for military service.

**A. Eligibility**

USERRA applies to people serving in the Army, Navy, Air Force, Coast Guard, and Marine Corps, including members of the Reserves and National Guard, commissioned corps of the Public Health Service, and service as a disaster-response appointee upon activation of the National Disaster Medical System. Service includes active duty, active and inactive duty for training, examination to determine fitness for duty, and funeral honors duty by National Guard or Reserve members.

Employees who return from military service are eligible for reemployment and continuation of health coverage if they meet the following criteria:

- The employee is absent from their position because of his or her service in the uniformed services;
- The employee must notify Ferguson Township at least 30 days in advance of the impending military service. This notice may be in writing or verbally. (Failure to provide advance notice is excused only if giving notice was impossible, unreasonable, or precluded by military necessity.);
- The employee's leave of absence for uniformed service does not exceed five years. (Under certain circumstances, employees who serve more than five years may still have reemployment rights.);
- The employee must return to work or apply for reemployment in a timely manner after the conclusion of military service.

Service members must have an existing employment relationship with Ferguson Township to be eligible for USERRA continuation coverage. Service members who are dependents of active employees, or who are retirees, are not entitled to elect USERRA continuation coverage.

An employee loses his or her reemployment rights if discharged from military service for dishonorable or other conduct.

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<b>Subject:</b> Military Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**B. Compensation**

Eligible employees who serve in the uniformed service will be compensated at their regular pay for 15 days per calendar year for military service. If the 15 days are exhausted, the employee's remaining military leave will be unpaid unless the employee chooses to use accrued personal or vacation time, if available.

**C. Continuation of Health Care Coverage**

Under USERRA, employees who are members of *any uniformed service* and their covered dependents have the right to continue their existing Ferguson Township health care coverage for up to 24 months during military leave. Employees and their covered dependents must elect continuation coverage within 60 days of giving notice of military service. If the employee leaves work for military service without electing continuation coverage, Ferguson Township may cancel the employee's health care coverage upon the employee's departure for military service (if the period of military service lasts for more than 30 days). Dependents must make the same decision as the employee regarding electing or waiving USERRA continuation coverage.

If the employee is on military duty for less than 31 days, Ferguson Township will continue to pay our portion of the premium for health care coverage. The employee must pay his/her share of the premium for him/herself and covered dependents in order to keep the benefits active. This is the same amount the employee would have paid had they been at work instead of on leave.

If the employee is on military duty for more than 31 days, he/she may be required to pay up to 102% of the full premium (the employee's share plus the employer's share plus administrative costs). USERRA continuation coverage is available for up to 24 months.

The employee's premium payment obligation begins on the first day of the continuation coverage. The initial premium payment must be made within 45 days after the date of election. Subsequent payments are due monthly on the first day of each month within a 30-day grace period with each subsequent period. Continuation coverage will be cancelled if payments are not received by the end of the grace period.

When the employee returns to work following military leave, the employee and his/her eligible dependents' coverage under the group health plan will be reinstated without a waiting period.

If the employee does not return to work at the end of the military leave, the employee may be required to reimburse Ferguson Township for the cost of the premiums paid by Ferguson Township to maintain coverage during the military leave of absence.

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In addition to the rights an employee has under USERRA, an employee and his/her covered dependents (if any) may also be entitled under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to continue the health coverage they had (if any). The 24 months of continuation coverage under USERRA runs concurrently with continuation coverage provided under COBRA.

**D. Health Care Flexible Spending Account (FSA)**

The Heroes Earnings Assistance and Relief Tax (HEART) Act allows military reservists who are called to active duty to receive distribution from unused funds in their health care FSA without penalty. The law allows reservists to avoid forfeiting the money under the “use it or lose it” rule that generally applies to cafeteria plan benefits. To qualify, the reservist must be called to active duty for at least 180 days, and distribution must be requested on or after the day the reservist is called to active duty.

**E. Returning to Work/Applying for Reemployment**

Employees must return to work (if service was for less than 31 days) or apply for reemployment (if service was for more than 31 days) in a timely manner after the conclusion of military service. Reemployment will occur within two weeks of the employee’s application for reemployment, when possible. Employees who do not return to work or notify Ferguson Township of their intent to return to work will lose their right to continuation coverage under USERRA. The time required for returning to work depends on the period of uniformed service as follows:

- Less than 31 days, or any period if for purposes of an examination for fitness to perform uniformed service: The beginning of the first regularly scheduled work period on the day following the completion of service, after allowing for safe travel home and an eight-hour rest period. If this is impossible through no fault of the employee, as soon as is possible;
- More than 30 days but less than 181 days: An application for reemployment must be submitted (written or oral) within 14 days after completion of service. If that is unreasonable or impossible through no fault of the employee, on the first full day on which it is possible to do so;
- More than 180 days: An application for reemployment must be submitted (written or oral) within 90 days after completion of service;
- Any period if the employee was hospitalized for, or is recovering from, an injury or illness incurred or aggravated as a result of service: Report to work or submit an application for reemployment as above, except that time periods begin when the employee has recovered from the injury or illness rather than upon completion of service. The maximum period for recovery is limited to two years from completion of service, but may be extended if necessary.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Disability Leave of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-10

**DISABILITY LEAVE OF ABSENCE POLICY**

It is the policy of Ferguson Township to provide leave of absence to eligible employees who are disabled and unable to work due to a non-work related illness, injury, or pregnancy with or without accommodations. The purpose of the policy is to give employees who need extended leave for reasons of illness or injury a reasonable time to recuperate and recover and to encourage those employees to return to work.

**A. Eligibility**

All regular full-time and part-time employees are eligible for disability leave if they have been actively employed by Ferguson Township prior to the start of the leave, and are unable to work due to non-work-related illness, injury (other than self-inflicted or intentional injury), or pregnancy.. An employee receiving workers' compensation pay or disability pay under any state or federal plan or private insurance policy may not be eligible for this benefit. The employee must not engage in outside employment and is expected to avoid activities that may delay recovery and a timely return to work.

**B. Medical Certification**

A physician's statement certifying the disability, including start and expected end dates, must be submitted before the start of the leave of absence (or as soon as possible thereafter), and may be requested periodically during the leave of absence. Ferguson Township may, at our expense, require an employee to obtain the opinion of a second health care provider designated or approved by Ferguson Township. If there is a conflict between the two opinions, Ferguson Township may, at our own expense, require a third opinion.

**C. Notice Requirements**

Employees are expected to give Ferguson Township at least 30 days' written notice when applying for disability leave when the employee knows in advance the date or approximate date of the needed leave. When dates are not known in advance, employees are expected to give as much notice as possible and practicable, except in emergency situations. During the leave, employees may be required to report periodically on their leave status and intent to return to work. Ferguson Township may periodically contact the employee while on disability leave.

**D. Compensation and Benefits During Disability Leave**

Leaves of absence for eligible employees who are disabled and unable to work due to a non-work related illness, injury, or pregnancy will be without pay, except when paid sick time

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Disability Leave of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-11

is used. Ferguson Township will require employees to use some paid annual and/or sick leave (if available) for all or part of any disability leave. However, employees will not be required to exhaust their accrued paid annual and/or sick leave during a disability leave of absence. The use of accrued paid leave time runs concurrently with unpaid disability leave.

As long as an eligible employee remains disabled, subject to the medical certification requirements stated above, the disability leave for purposes of continuing health, dental, vision, and life insurance coverage may continue for up to a maximum of 12 months from the date of disability, even if the leave of absence began prior to the effective date of this policy.

Ferguson Township will continue to pay our portion of company-paid benefits for employees on disability leave of absence. Employees are responsible for paying their portion of the cost of all benefits, if applicable. If premiums go unpaid for more than 30 days after payment is due, coverage may be terminated upon 15 days' notice to the employee.

Employees will not accrue paid time off while on disability leave, but previously accrued paid time off will not be forfeited due to a disability leave.

Eligible employees whose absence has been designated as FMLA leave will be entitled to up to 12 weeks of unpaid leave and continuation of health insurance benefits as provided by the Family and Medical Leave Act. A disability leave of absence runs concurrently with an FMLA leave.

**E. Americans with Disabilities Act**

Ferguson Township will make reasonable accommodations to assist disabled employees covered by the Americans with Disabilities Act to return to work, under the terms of the Act. Such accommodations must be recommended by the employee's health care provider and requested by the employee in writing prior to the end of the disability leave of absence. An employee may be eligible for leave of absence, or an extension of existing leave of absence, as a reasonable accommodation, even if the employee is not eligible for, or has exhausted all Ferguson Township-provided leave.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Disability Leave of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-12

**F. Returning to Work**

Employees must return to work as soon as permitted by their health care provider. A written medical certification from a health care provider stating that the employee may return to work must be submitted to Ferguson Township. Ferguson Township will make every reasonable effort to return employees to their previous positions after a disability leave of absence if they are still able to perform the job either with or without reasonable accommodations. Employees on disability leave may return to their previous position if they return no later than 12 months after the leave began. However, there is no guarantee that Ferguson Township will be able to hold the employee's previous position if the disability leave of absence lasts longer than 12 months.

If at the end of the disability leave, an employee is still not able to return to their previous position because they are unable to perform the job, either with or without reasonable accommodation, due to illness or injury, Ferguson Township will allow the employee to apply for any unfilled position that the employee is qualified for and capable of performing with or without accommodation. Ferguson Township reserves the right to hire the most qualified applicant for unfilled positions per our hiring policies.

Eligible employees whose absence has been designated as FMLA leave will be reinstated as provided by the Family and Medical Leave Act and any FMLA policy.

**G. Failure to Return from Disability Leave of Absence**

If an employee decides at any time during a disability leave that he/she will not be returning to work, the employee must provide Ferguson Township with a written notice of resignation. Employees who remain disabled after a period of 12 or more months from the date of injury/illness, and are unable to return to either their previous position or an unfilled position which they are qualified for and able to perform, either with or without reasonable accommodation, may be terminated from employment.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Workers Compensation	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-13

**WORKERS COMPENSATION LEAVE POLICY**

**Policy**

It is the policy of Ferguson Township to comply with federal and state laws that require us to provide workers' compensation coverage to eligible employees who have a work-related illness or injury. The purpose of the policy is to provide employees who suffer work-related injury or illness with medical care, rehabilitation services, and compensation for lost wages, or death and burial benefits for surviving dependents. This policy is not intended to supersede or replace the terms or requirements of any state or federal law. If the terms of this document conflict with the terms of any other governing document, then the terms of that document will control over this document, unless otherwise required by law.

**A. Eligibility**

All regular full-time and part-time employees are eligible for workers' compensation benefits if they are unable to work due to a work-related illness/injury (other than self-inflicted or intentional injury). An employee on workers' compensation must not engage in outside employment during the leave and is expected to avoid activities that may delay recovery and a timely return to work.

**B. Reporting a Work-Related Injury or Illness**

Ferguson Township has established a procedure for reporting work-related injuries and illnesses and a list of designated health care providers. The name, address, and telephone number of the company that administers the workers' compensation benefits is posted at all work sites.

Employees who suffer a work-related injury/illness must notify their supervisor or Ferguson Township immediately, or as soon as they are aware of an injury or illness. Employees will be given information and instructions on workers' compensation benefits, rights, and responsibilities.

If the injury/illness happens after normal business hours and the employee needs immediate care, they should follow the instructions on the posted information sheet. Employees should notify Ferguson Township on the next scheduled work day, or have a family member contact Ferguson Township. Emergency room visits are to be used for life threatening injuries only.

An employee, or someone on the employee's behalf, must notify Ferguson Township of the injury/illness within 21 days of the injury/illness date in order for retroactive workers' compensation benefits to be paid. Failure of an employee, or someone on the employee's behalf, to notify Ferguson Township of the injury/illness within 120 days of the injury date will result in no workers' compensation benefits being paid.

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PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Workers Compensation	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-14

Ferguson Township uses a panel of designated health care providers for treatment of work-related injuries/illnesses. Employees will be given the names, addresses, and telephone numbers of the health care providers they are required to see at the time of the injury/illness. The first 90 days of treatment following a work-related injury/illness must be provided by a designated health care provider. Treatment from non-designated providers during the 90-day period shall be at the employee's expense (and will most likely not be covered by health insurance because the treatment is for a work-related illness or injury). After the 90-day period has ended, employees may seek treatment from any health care provider. Employees must notify Ferguson Township within five days of treatment with a new provider, after the initial 90 days.

**C. Workers' Compensation Benefits  
Wage-loss Benefits**

Workers' compensation indemnity benefits are paid when disability results in the loss of earnings. Benefits are equal to two-thirds (66 2/3%) of an employee's gross salary, subject to a minimum and maximum designated by the state, following the waiting period. Indemnity benefits are not considered taxable wages. Indemnity benefits may be offset if other earnings, unemployment compensation, or pension benefits are received by the employee.

For a disability of 7 days or less, no indemnity benefits are paid. For disabilities of 8 to 13 days, indemnity benefits are paid only for days 8 through 13. For disabilities of 14 days or more, indemnity benefits are paid for the entire disability.

Employees may use accrued paid leave to supplement the workers' compensation indemnity benefits. Paid leave will be a supplemental pay equal to the difference between workers' compensation indemnity benefits and an employee's net salary. Employees must notify Ferguson Township of their decision to use paid leave.

**Medical Benefits**

Employees who suffer a work-related injury/illness have the right to have all reasonable medical supplies and treatment related to the injury/illness paid for by their employer, in accordance with the law and the terms of the employer's workers' compensation policy. All medical, surgical, and hospital services and supplies, and prescription drugs are paid at the rate prescribed by the workers' compensation fee schedule. Rehabilitation services, orthopedic appliances, prostheses, and appliances such as hearing aides, glasses, and false teeth are also paid.

**Specific Loss Benefits**

Specific loss benefits are paid when an employee has a loss of, or loss of use of, a body part. Benefits are paid according to a schedule of payment, plus a healing period.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Workers Compensation	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**Death Benefits**

Burial expenses, subject to a maximum amount, are paid directly to the funeral home or to the surviving dependent with a paid receipt. Surviving dependents will receive death benefits if the employee's death results from a work-related injury/illness.

**Insurance Continuation**

Please refer to the Ferguson Township Disability Leave of Absence Policy for information on continuation of company-paid benefits for employees on disability leave of absence. A workers' compensation leave of absence runs concurrently with a disability leave of absence.

Eligible employees whose absence has been designated as FMLA leave will be entitled to continuation of health insurance benefits as provided by the Family and Medical Leave Act.

**D. Length of Workers' Compensation Benefits**

Indemnity benefits (wage-loss) for total disability may last indefinitely as long as the employee remains disabled, subject to the seven-day waiting period. Indemnity benefits for partial disability are paid for a maximum of 500 weeks. Indemnity benefits generally continue until the employee returns to work.

Employees are expected to return to either full or modified work, if available, as soon as possible.

**E. Family and Medical Leave Act (FMLA)**

Most work-related injuries/illnesses meet the definition of a serious health condition, and therefore, are covered by FMLA. Eligible employees whose absence has been designated as FMLA leave in accordance with the employer's FMLA policy will be entitled to up to 12 weeks of unpaid leave as provided by the Family and Medical Leave Act. A workers' compensation leave of absence runs concurrently with an FMLA leave.

**F. Heart and Lung Act**

Law enforcement personnel, as defined under the Heart and Lung Act, will be entitled to benefits under this Act when they are injured while performing an official duty, where the initial expectation is that the incapacity will be temporary, and where the incapacity completely prevents the employee from doing his/her job during this temporary period. If the incapacity is also compensable under workers' compensation, any workers' compensation benefits received or collected by the employee shall be turned over to Ferguson Township, or shall be deducted from any gross salary, while the employee is receiving Heart and Lung Act benefits.

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<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-16

**G. Americans with Disabilities Act**

Ferguson Township will make reasonable accommodations to assist disabled employees covered by the Americans with Disabilities Act to return to work, under the terms of the Act. Such accommodations must be recommended by the employee's health care provider and requested by the employee in writing prior to the end of the leave of absence. An employee may be eligible for leave of absence, or an extension of existing leave of absence, as a reasonable accommodation, even if the employee is not eligible for, or has exhausted all Ferguson Township-provided leave.

**H. Returning to Work**

Employees must return to work as soon as permitted by their health care provider. A written medical certification from a health care provider stating that the employee may return to work with full or modified duties must be submitted to Ferguson Township.

If at the end of the leave, an employee is still not able to return to the same or equivalent classification because they are unable to perform the job, either with or without reasonable accommodation, due to illness or injury, Ferguson Township will allow the employee to apply for any unfilled position that the employee is qualified for and capable of performing with or without accommodation. Ferguson Township reserves the right to hire the most qualified applicant for unfilled positions per our hiring policies.

Eligible employees whose absence has been designated as FMLA leave and who return to work following their FMLA leave period will be reinstated as provided by the Family and Medical Leave Act and any FMLA policy.

**I. Modified Duty**

Modified duty (also known as transitional or light duty) **may** be offered to an employee if available and if the employee is able to perform the work in a limited capacity and if the prognosis for the injury/illness indicates that the employee will be able to resume all duties of the current position within a reasonable period of time. The employee will be notified in writing of their modified duty status. The modified duty assignment may be terminated if it becomes apparent that the employee will not be able to resume the full duties of his/her classification.

**J. Failure to Return from Workers' Compensation Leave**

If an employee decides at any time during a workers' compensation disability that he/she will not be returning to work, the employee must provide Ferguson Township with a written notice of resignation. Employees who remain disabled after any statutorily defined period of time from the date of injury/illness and are unable to return to either their previous position or an unfilled position which they are qualified for and able to perform may lose all employee rights and benefits.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Other Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	15.0	15-17

**OTHER LEAVES OF ABSENCE**

1. Application for leave of absence with or without pay, requested by an employee, must be made in writing. Leave will not be granted without consent of the department head and approval of the Township Manager. Absence without prior authorization shall be without pay and subject an employee to disciplinary action. Unauthorized absence of two work days is deemed to be job abandonment. The absentee is deemed to have quit.
2. Except for military leaves or FMLA leaves no leave of absence shall be for more than ninety (90) calendar days unless approved by the Township Supervisors.
3. Other leaves of absence shall be divided into two types:

A. Business Leave of Absence:

Where the Township Manager determines that a legitimate Township government purpose is served by granting a business leave of absence with pay to a regular full time employee, the employee shall be considered to be a regular full time services as if he/she were physically present for work with Ferguson Township during the leave.

B. Personal Leave of Absence:

1. Personal leaves of absence are at the discretion of the Township and this policy does not establish a right to a leave of absence. Where the Township Manager determines that a leave of absence is for personal reasons, all benefits, accrual for seniority, accumulation of vacation and personal days will cease for the duration of the leave. The employee must first exhaust his/her accumulated vacation, after which a leave of up to ninety (90) days without pay may be approved. The employee may continue membership in hospitalization, health and accident, and life insurances for up to ninety (90) days by paying the total premium costs for those benefits, subject first to the terms and conditions of the insurance policy.
2. Personal leaves of absence without pay are not available to employees in the probationary period nor will they be considered for employees who have less than five (5) years continuous, regular full time employment with the Township.

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<b>Subject:</b> Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform Employees	<b>Date of Revision:</b>	15.0	15-18

**RECALL OF WORK RELATED INJURED EMPLOYEES FOR MODIFIED DUTY**

This will serve as the procedure & policy of the Township for Non Uniform employees that are injured while at the workplace and subsequently released by their attending provider for modified duty.

Intent

It is the intent of this policy to provide employees returning to work on modified duty status guidance on ongoing physical therapy and/or medical treatment and how such activities will be treated during modified duty work periods.

Modified Duty

The Township will be the sole determiner of whether modified duty will be provided to an employee that is released by their attending medical provider for such work. Modified duty is not required to be provided to every employee. Modified duty may be available to employees injured at work and receiving workers compensation benefits. Workers Compensation ceases when an employee is returned to Modified Duty. Workers Compensation for medical expenses may continue until the employee is released for full duty. Modified duty will be available on a case by case basis as determined by the Department Head and/or Supervisor.

Physical Therapy during Modified Duty Assignment

- 1) At Home Exercising/Therapy  
Exercises and therapy pre-ordered by a professional physical therapist, medical professional or physician (medical provider) performed by the employee during scheduled modified duty work week is not considered compensable work time. For example, an officer has a work period scheduled from 8 a.m. to 5 p.m. and decides to perform exercises or therapy from 8 AM to 9 AM prior to reporting to work is not compensable time and shall not accrue to the officers' required work period.
- 2) Physical Therapy and Medical Appointments During Scheduled Modified Duty Work Period
  - a. Physical therapy and/or medical appointments that are scheduled by the employee that occur during the modified duty work period are compensable when appointments are local and occur during the scheduled work period. Employees are encouraged to schedule appointments at times other than scheduled work period hours if appointment times are available. Employees with the approval of the Department Head and/or Supervisor may attend physical therapy and/or medical appointments while on modified duty work period

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<b>Subject:</b> Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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hours when the physical therapy and/or medical appointment is prescribed or required by the approved Physicians Panel doctor, and

- b. The appointment time is limited to 1.5 hours, including travel time, for local appointments.

**NOTE:** *The limit on appointment time and travel may be modified by the Department Head and/or Supervisor depending on the distance of travel the employee must travel for the appointment from the Township Office*

- c. A local appointment for physical therapy and/or medical appointment is defined as any appointment within 15 radius miles of the Township office. During modified duty status mileage at the currently approved rate will be paid for prescribed or required appointments further than 15 radius miles from the Township Office when the Physician's Panel doctor certifies the therapy or appointment cannot be obtained locally.

All travel to medical and physical therapy appointments will be via private (non Township) vehicle unless otherwise approved by the Department Head and/or Supervisor.

- d. In no case will overtime be payable for physical therapy or medical appointments.

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<b>Subject:</b> Leaves of Absence	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform Employees	<b>Date of Revision:</b>	15.0	15-20

**NON WORK RELATED INJURY  
NON UNIFORM EMPLOYEE REQUESTING TEMPORARY MODIFIED DUTY ASSIGNMENT**

This will serve as the procedure & policy of the Township for Non Uniform Employees that are injured outside of the workplace and subsequently released by their attending provider for modified duty.

Intent

It is the intent of this policy to provide employees returning to work on modified duty status guidance on ongoing physical therapy and/or medical treatment and how such activities will be treated during modified duty work periods.

Modified Duty

The Township will be the sole determiner of whether modified duty will be provided to an employee that is released by their attending medical provider from a non-work related illness or injury. Modified duty is not required to be provided to every employee. Modified duty may be available to employees injured outside of the workplace in very limited circumstances on a case by case basis as determined by the Department Head and/or Supervisor. Modified duty under this policy must be of short duration, and may be granted only when the date or range of dates of return to full duty is provided by the attending physician.

Physical Therapy During Modified Duty Assignment

1) At Home Exercising/Therapy

Exercises and therapy pre-ordered by a professional physical therapist, medical professional or physician (medical provider) performed by the employee during scheduled modified duty work week is not considered compensable work time. For example, an employee has a work period scheduled from 8 a.m. to 5 p.m. and decides to perform exercises or therapy from 8 AM to 9 AM prior to reporting to work is not compensable time and shall not accrue to the employees required work period.

**TOWNSHIP OF FERGUSON  
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2) Physical Therapy and Medical Appointments During Scheduled Modified Duty Work Period

Physical therapy and/or medical appointments that are scheduled by the employee that occur during the modified duty work period are not compensable. Employees with the approval of the Department Head and/or Supervisor may attend physical therapy and/or medical appointments while on modified duty work period hours by:

- a. Using paid sick leave time
- b. Making up the period of time attending the physical therapy and/or medical appointment during the same pay period.
- c. Scheduling such appointments during non-work periods.

Travel to local medical and physical therapy appointments will be via private (non-Township) vehicle and no mileage stipend will be provided. The Department Head and/or Supervisor may permit usage of a Township vehicle for local appointments in limited circumstances, such as when the appointment is scheduled in close proximity to a work related site out of the off

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Educational Assistance	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	16.0	16-1

**EDUCATIONAL ASSISTANCE**

Ferguson Township will reimburse fifty (50%) percent of the charge for tuition, books, and course materials for academic coursework which applies toward an Associates Degree, Bachelors Degree, or Graduate Degree or an educational certification under the following conditions:

1. Educational assistance is available to regular full time employees not on a paid or unpaid leave.
2. A request for educational assistance must be submitted by September 30<sup>th</sup> of the year before the course(s) begin.
3. The employee must show a relationship between coursework and the job he/she currently holds with Ferguson Township when making the request.
4. The employee must be in regular full time employment with Ferguson Township at the beginning of the term/semester through the end of the term/semester for which reimbursement is sought.
5. The employee will be reimbursed for (50%) percent of the cost of tuition, books required for that course and course materials required for that course upon showing that a grade of "C" or above was attained, or that a passing grade was attained in those courses which are marked pass-fail.

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<b>Subject:</b> Court Duty	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	17.0	17-1

**COURT DUTY**

1. Employees subpoenaed for jury duty will be paid the difference between the jury fee paid by the Court and their regular base pay. Any mileage allowance paid by the Court will not be included in the calculation.
2. Employees who are voluntarily involved in judicial processes or in actions not involving them in their role as Township employee are not eligible for the differential compensation allowed under this policy.
3. Employees who are subpoenaed as a witness in actions not involving them in their role as Township employees are not eligible for the differential compensation allowed under this policy.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Business Expenses Incurred	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	18.0	18-1

**EXPENSES INCURRED WHILE CARRYING OUT OFFICIAL TOWNSHIP BUSINESS**

1. Each purchase of commodities, goods, or services on behalf of the Township must be authorized in advance by the Township Manager except in cases of extreme emergency. Receipts must be obtained for each purchase or expense and submitted to the Township Manager. If an employee is required to use personal money in the amount of \$20 or less, it will be reimbursed from the Township petty cash within one (1) week after submission of receipts for all expenses. If amount is greater than \$20 it will be reimbursed by Township check in the next check run after submission of receipts for all expenses.

*Please note, when possible employee should use purchasing card.*

2. At Ferguson Township, purchasing cards are used to acquire goods and services from various suppliers. Cardholders must sign a Cardholder agreement, including a code of ethics, an anti-kickback clause, and a conflict of interest statement. The cards are intended to be used for purchases following the normal purchasing policies of the Township. Requisition Forms are required for all purchases, except as specifically exempted. Purchase orders are required for purchases above \$1,000 as specified in the purchasing policy.  
  
Cardholders are strongly encouraged to acquire goods and services from preferred suppliers whenever possible.
3. For authorized use of a private vehicle, reimbursement shall be at the mileage rate determined by the Township Supervisors.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Travel Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	18.0	18-2

**TRAVEL POLICY**

**I. Responsibilities**

Each Departmental Head with budget responsibility is responsible to ensure that travel expenses incurred comply with the Travel Policy.

It is Ferguson Township's policy to reimburse its employees for all necessary and reasonable expenses incurred while traveling on behalf of the Township, provided they are fully explained and approved on the expense reimbursement form. It is expected that employees traveling on Township business will do so in reasonable comfort, safety, and at a reasonable cost. Excessive expenses, however will be challenged and may be deemed personal expenses.

Guidelines have been established to implement this Travel Policy. It is the responsibility of each employee to adhere to these guidelines when involved with expenditure of township funds while traveling on Township business. While these guidelines attempt to be comprehensive, it is impossible to anticipate every situation encountered by the employee. The employee is expected to adhere to the following general principles:

- \* Plan travel well in advance to maximize savings.
- \* Exercise good business judgment with respect to expenses while traveling.
- \* Spend the Township's money as carefully and judiciously as you would your own.

**II. Advances**

Employees are not expected to travel on their own funds. To obtain an expense advance, a completed Ferguson Township requisition form signed by the department's head must be forwarded to the Finance Department at least 16 days in advance.

**III. Ground Transportation**

**Travel to and from the Airport**

Travel to and from the airport may be accomplished by driving a personal automobile or by using taxi or shuttle service. Travelers driving their personal vehicles are reimbursed for the amount of parking fees and mileage to and from the airport at the present IRS rate.

**Township Vehicles**

If travel is to be by car, it is recommended a township vehicle be used if available. If personal travel is anticipated, except for incidental use in conjunction with business travel, a personal vehicle should be used. To obtain a vehicle, contact your Department Head.

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**Personal Vehicles**

It should be noted that an employee driving a personal car on Township business is not covered by township insurance, but rather is covered only by the employees' personal insurance. In the event of an accident, the Township will cover the employee's auto insurance deductible up to \$500. However, if the employee is deemed to be responsible for the accident, the deductible will not be paid. Auto Rentals, Taxis, and Shuttles should be used whenever possible. When available, employees should use airport/hotel shuttle to and from their hotels. Auto rentals, when necessary, are an allowable expense while traveling on Township business. When determining whether a rental car is needed, consider the location to be visited, the amount of driving that will be required, and the availability of other transportation options (taxis, complimentary hotel shuttle, public transportation, etc.) before requesting a rental car. Evaluate the cost of daily car rental and mileage, hotel parking, and site parking in comparison to other available transportation for the same amount of travel.

**IV. Lodging/Meals/Entertainment**

**Lodging Expenses**

Expenses for upgraded rooms are the responsibility of the employee. Hotel reservations can be guaranteed for late arrival through the Township credit card. "No show" or non-cancellation charges are the responsibility of the employee for non-work related reasons. Double occupancy should be utilized whenever appropriate.

**Meals**

Meals purchased by an employee traveling on Township business are reimbursable at the actual expenditure plus taxes and tips or service charges at a reasonable amount. Maximum daily limit for three meals should not exceed the established meal allowance set by the Township Fee Schedule Resolution (domestically). Good judgment should be exercised on meal costs.

**Day Trip Meals:** Receipts are required for reimbursement as follows:

- \* Breakfast - when travel begins before 6 AM and extends beyond 8 AM
- \* Lunch - when travel begins before 12 PM and extends beyond 2 PM
- \* Dinner - when travel extends beyond 8 PM. No reimbursement is authorized for a

dinner meal when the meeting is completed in sufficient time for the employee to return to either the Township building or home by 6 PM.

Meal reimbursements should be requested on the travel expense form.

**TOWNSHIP OF FERGUSON  
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**Business Meals/Entertainment**

Employees who entertain business associates from outside the Township will be reimbursed for reasonable expenses. Entertainment must have a specific business purpose and justification. The dimensions of entertainment should reflect the status of the guest and the nature and importance of his/her relationship to the Township. Extravagant expenses will not be approved and will be deemed a personal expense. Details should be recorded on the back of the reimbursement form. All business entertainment should be pre-approved with the Township Manager at least five (5) days before the guest arrives.

**Telephone Cards/Credit Cards**

**Telephone Cards**

A telephone credit card will authorize billing of business phone calls to the Township. Hotel charges can add substantially to the cost of long distance calls, therefore, the Township telephone calling card or a personal calling card must be used for calls from hotels, airplane telephones, rental car telephones, and pay telephones. When using your calling card from the hotel, upon completion of a call, dial star (\*) instead of hanging up to keep your outside line. In many instances this will help you avoid additional outside-line charges.

A Township credit card is to be used for business-related travel (airline, hotel, ground transportation and meals). Employees must return the credit card with attached receipts to the Finance Department within four (4) days of return from travel.

**VI. Miscellaneous Other Expenses**

**Tips:** Reasonable tips (15%) such as for porter services, baggage storage at airports and hotels will be reimbursed. The traveler is expected to give an explanation on the travel expense form.

**Parking and Tolls:** Whether in a personal auto, rental auto, or township auto, parking and tolls will be reimbursed with the necessary receipts.

The following items are not considered reimbursable expenses for business travel:

- \* Airline Club Memberships
- \* Family accompanying employee
- \* Hotel mini bars
- \* Personal care (shoe shine, haircuts, health club usage)
- \* Personal entertainment (radio, television, video rentals, airline movies and headsets, hotel movies)

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Travel Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	18.0	18-5

- \* Social memberships
- \* Moving/Parking Violations
- \* Trip or flight insurance
- \* Alcoholic Beverages
- \* Other non-customary travel expenses

VII. Travel Report Forms

Cash Advance

Requisition form is used to request cash advance for township related expenses while traveling.

Expense Reimbursement Form

The expense reimbursement form is for use by employees to report expenses incurred while on township business. The traveler should complete an expense form, attach one of the following documents for each expense item (credit card bill, actual or copy of receipt, register tape), and forward it to his/her Department Head. Upon approval, the Township Manager should forward the expense form to the Finance Department. Forms with errors other than mathematical errors will be corrected and returned for initialing by employee.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Health, Life, AD&D Insurances	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	19.0	19-1

**INSURANCES**

1. Regular full time employees of Ferguson Township shall be eligible for health, life, and accidental death and dismemberment insurance through commercial providers specified by the Township and subject to such premium contributions by employees as may be required. The language of those policies shall control eligibility, qualification, covered services, and exclusions. It is the obligation of the employee to become familiar with, to enroll and to know the provisions of these plans. Ferguson Township will make the above-specified insurance available and remit premiums for regular full time employees during their period of active employment.
2. In the event of an authorized absence without pay from Township Employment, it is the obligation of the employee to arrange for continued coverage during that absence and to become familiar with the consequence of a break in service, break in coverage, and any benefit elimination which may result there from. Participation in insurance while on authorized leave of absence without pay is subject to the terms and conditions of the insurance policy, but limited to 90 calendar days except as set forth in the Family Medical Leave Act policy.
3. The obligation to pay premiums for health, life, and accidental death and dismemberment insurances during an authorized leave of absence without pay rests with the employee. Employees who separate from employment may be entitled to continue health insurance coverage for up to three years under the provisions of the federal law known as COBRA.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Hospitalization Insurance Incentive Payments Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	19.0	19-2

**HOSPITALIZATION INSURANCE INCENTIVE PAYMENTS POLICY**

In the event an employee has health insurance coverage under another policy and elects to waive health insurance provided by the Township, the employee shall file written proof of alternative health insurance coverage, and a written waiver, signed and executed by the employee that he/she does not wish to be covered by the health insurance provided by the Township.

Beginning the first month after receipt of such proof of alternate health insurance and the waiver, the employee's health insurance coverage shall be terminated. In the event the employee loses the coverage on which the employee relied in waiving the health insurance, the employee will have the right to be re-admitted to health insurance coverage in accordance with the procedures set forth by the Township's health insurance carrier.

For each full month that passes after the employee's health insurance is terminated (pursuant to this provision) the employee will receive an amount equal to 20% of the premium that would have been paid by the Township for the employee's health insurance coverage had the employee not waived health insurance coverage. This amount will be paid in the month following the month of (non) coverage. No daily pro-ration will be made.

In the event the employee elects to return to coverage, then the incentive pay shall be terminated. Insurance coverage and incentive pay termination will be effective the 1<sup>st</sup> day of the next month and will be simultaneous with each other. It is understood and agreed that pension contributions will not be taken from payments pursuant to this provision and that any payments made pursuant to this provision shall not be considered salary for pension purposes.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Hospitalization Insurance Incentive Payments Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	19.0	19-3

Agreement

I, \_\_\_\_\_ agree to waive my hospitalization insurance as provided for by Ferguson Township effective \_\_\_\_\_ in accordance with the above stated policy.

Employee's Signature: \_\_\_\_\_  
 Employee's Printed Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Witness Signature: \_\_\_\_\_  
 Printed Witness Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

Example Using Current Hospitalization Rates as of 8/1/04

Family: \$747.88  
 Couple: \$633.09  
 Individual \$280.00

**Example: Family Rate**

$\$747.88 \times 12 = \$8,974.56 \times 20\% = \$1,794.91 / 24 = \$74.79$  per pay

Depending on how you choose to take this additional money it may or may not be taxable. For instance, if you place it in a Section 125 account (up to the maximum allowed) or into your 457 Deferred Compensation account it may not be taxable. You may want to discuss this with the Finance Director.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Employee Assistance Program	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	19.0	19-4

**EMPLOYEE ASSISTANCE PROGRAM**

The Township will provide counseling services to employees and their families.

Prior arrangements have been made with SunPointe Health, an organization of independently practicing mental health professionals, qualified and experienced in providing services to persons in emotional distress.

SunPointe Health, on a confidential basis, will provide up to five counseling sessions per year at no cost to the employee. Typically, one would pay \$25+ per visit, but since the Township has agreed to establish this program, the Township pays for these initial five visits per year.

An employee does not have to notify anyone that they are accessing this service. Simply call and make an appointment (814-867-0670) with a counselor and then tell the counselor to have the bill noted Ferguson Township EAP. Since this is a confidential service your name will not appear on the invoice the Township receives for the counseling services.

Some of the issues that can be treated at SunPointe Health are: anger management, anxiety, depression, bipolar, cultural and identity concerns, grief, OCD, parenting, sexual issues and traumatic experiences.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> COBRA	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	19.0	19-5

**GROUP HEALTH CONTINUATION COVERAGE UNDER COBRA**

On April 7, 1986, a federal law was enacted (Public Law 99-272, Title X) requiring that most employers sponsoring group health plans offer employees and their families the opportunity for a temporary extension of health coverage (called "continuation coverage") at group rates in certain instances where coverage under the plan would otherwise end. This notice is intended to inform you, in a summary fashion, of your rights and obligations under the continuation coverage provisions of the law. [Both you and your spouse should take the time to read this notice carefully.]

If you are an employee of Ferguson Township covered by the Township's Group Health Plan you have the right to choose this continuation coverage if you lose your group health coverage because of reduction in your hours of employment or the termination of your employment (for reasons other than gross misconduct on your part).

If you are the spouse of an employee covered by the Township's Group Health Plan, you have the right to choose continuation coverage for yourself if you loose group health coverage under the Township's Group Health Plan for any of the following four reasons:

1. The death of your spouse;
2. A termination of your spouse's employment (for reasons other than gross misconduct) or reduction in your spouse's hours of employment with the Township;
3. Divorce or legal separation from your spouse; or
4. Your spouse becomes entitled to Medicare.

In the case of a dependent child of an employee covered by the Township's Group Health Plan, the employee has the right to continuation coverage if group health coverage under the Township's Group Health Plan is lost for any of the following five reasons:

1. The death of the employee;
2. A termination of the employee's employment (for reasons other than gross misconduct) or reduction in the employee's hours of employment with the Township;
3. The employee's divorce or legal separation;
4. The employee becomes entitled to Medicare; or
5. The dependent child ceases to be a "dependent child" under the Township's Group Health Plan.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> COBRA	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	19.0	19-6

Under the law, the employee or a family member has the responsibility to inform the Township's Group Health Plan Administrator of a divorce, legal separation, or a child losing dependent status under the Township Group Health Plan within 60 days of the date of the event. The Township has the responsibility to notify the Plan Administrator of the employee's death, termination, reduction in hours of employment or Medicare entitlement.

When the Plan Administrator is notified that one of those events has happened, the Plan Administrator will in turn notify you that you have the right to choose continuation coverage. Under the law, you have at least 60 days from the date you would lose coverage because of one of the events described above to inform the Plan Administrator that you want continuation coverage.

**If you do not choose continuation coverage on a timely basis, your group health insurance coverage will end.**

If you choose continuation coverage, the Township is required to give you coverage which, as of the time coverage is being provided, is identical to the coverage provided under the plan to similarly situated employees or family members. The law requires that you be afforded the opportunity to maintain continuation coverage for 36 months unless you lost group health coverage because of a termination of employment or reduction in hours. In that case, the required continuation coverage period is 18 months. This 18 month period may be extended for affected individuals to 36 months from termination of employment if other events (such as a death, divorce, legal separation, or Medicare entitlement) occur during that 18-month period.

In no event will continuation coverage last beyond 36 months from the date of the event that originally made a qualified beneficiary eligible to elect coverage. The 18 months may be extended to 29 months if a qualified beneficiary is determined by the Social Security Administration to be disabled (for Social Security Disability purposes) at any time during the first 60 days of COBRA coverage. This 11-month extension is available to all individuals who are qualified beneficiaries due to a termination or reduction in hours of employment. To benefit from this extension, a qualified beneficiary must notify the Plan Administrator of that determination within 60 days and before the end of the original 18-month period. The affected individual must also notify the Plan Administrator within 30 days of any final determination that the individual is no longer disabled.

A child who is born to or placed for adoption with the covered employee during a period of COBRA coverage will be eligible to become a qualified beneficiary. In accordance with the terms of the Township's Group Health Plans and the requirements of federal law, these qualified beneficiaries can be added to COBRA coverage upon proper notification to the Plan Administrator of the birth or adoption.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> COBRA	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	19.0	19-7

However, the law also provides that continuation coverage may be cut short for any of the following five reasons:

1. The Township no longer provides group health coverage to any of its employees;
2. The premium for continuation coverage is not paid on time;
3. The qualified beneficiary becomes covered under another group health plan that does not contain any exclusions or limitation with respect to any pre-existing condition the employee may have;
4. The qualified beneficiary becomes entitled to Medicare;
5. The qualified beneficiary extends coverage for up to 29 months due to disability and there has been a final determination that the individual is no longer disabled.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) restricts the extent to which group health plans may impose pre-existing condition limitations. These rules are generally effective for plan years beginning after June 30, 1997. HIPAA coordinates COBRA's other coverage cut-off rule with these new limits as follows.

If you become covered by another group health plan and that plan contains a pre-existing condition limitation that affects you, your COBRA coverage cannot be terminated. However, if the other plan's pre-existing condition rule does not apply to you by reason of HIPAA's restrictions on pre-existing condition clause; Capital Blue Cross or the current Group Health Plan provider may terminate your COBRA coverage.

You do not have to show that you are insurable to choose continuation coverage. However, continuation coverage under COBRA is provided subject to your eligibility for coverage; the Township Group Health Plan Administrator reserves the right to terminate your COBRA coverage retroactively if you are determined to be ineligible.

Under the law, you may have to pay all or part of the premium for our continuation coverage. There is a grace period of at least 30 days for payment of the regularly scheduled premium. At the end of the 18-month, 29-month or 36-month continuation coverage period, qualified beneficiaries will be allowed to enroll in an individual conversion health plan provided under Capital Blue Cross or the current Group Health Insurance Provider.

If you have any questions about COBRA, please contact the Executive Assistant to the Township Manager. Also, if you have changed marital status, or you or your spouse have changed addresses; please notify the Executive Assistant to the Township Manager.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> NU Pension- Required Minimum Employee Contribution	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	19.0	19-8

**Non-Uniform Pension - Required Minimum Employee Contribution**

**Overview**

Ferguson Township provides a defined contribution pension plan for all full-time non-uniformed employees through the ICMA Retirement Corporation (ICMA-RC). The pension benefit is provided through a combined 401 (a) Money Purchase Plan and a 457 Deferred Compensation Plan as provided for through the plan documents.

These plans may be amended from time to time to keep the plans in compliance with changes in federal law. Employees have access to the ICMA-RC web site and their individual plan accounts.

**Contributions to the Plans**

**Township Contribution**

The Township contributes a percentage of each eligible employee's base salary to each employee's 401 (a) Money Purchase Plan account. The percentage of the Township's contribution is determined by the Board of Supervisors under the plan documents. The current percentage contribution is 10% of an employee's base salary.

**Employee's Contribution**

The Township requires each eligible employee to contribute a minimum of 2% of base salary to their 457 Deferred Compensation Plan account in order to be qualified to receive the employer's contribution to their 401 (a) Money Purchase Plan account.

**Investment Options**

The ICMA-RC provides a number of investment fund options for employees to consider. These investment fund options are limited by the Township for the 401 (a) Money Purchase Plan accounts to the "Model Portfolios" as may be offered by ICMA-RC. These "Model Portfolios" are actively managed to achieve certain fund goals and objectives. ICMA-RC offers the same investment fund options are offered to employees in the 457 Deferred Compensation Plan. Employees' investment options under this plan are not limited since employees are investing their own money.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Medical Examinations	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	20	20-1

**MEDICAL EXAMINATIONS**

1. No person shall be considered an employee of Ferguson Township until he/she has successfully completed both a medical examination and started work.
2. The Township physician will be advised by the Township Manager of the type of work expected to be performed. The Township physician will conduct a medical examination, for purposed prescribed by the Township and form an opinion concerning the ability of that person to meet the physical and medical requirements of the job for which he/she was examined with or without reasonable accommodation. The examining physician's findings and opinions will be sent to the Township Manager for placement in the employee's confidential personnel file. This medical examination will be at the expense of Ferguson Township.
3. The Township reserves the right to require Township employees to have medical and/or psychological examinations at any time during their term of employment, consistent with federal and state law.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Employment of Relatives	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	21.0	21-1

**EMPLOYMENT OF RELATIVES**

1. No person will be hired or transferred with the result that he/she will supervise, work with or under the direct supervision of his/her spouse, parent, parent-in-law, stepson, stepdaughter, brother, sister, brother-in-law, sister-in-law, first cousin, uncle, aunt, niece, nephew, or grandchildren.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Outside Employment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	22.0	22-1

**OUTSIDE EMPLOYMENT**

1. Employees may not engage in outside employment which would in any way hinder their objective and impartial performance of their Township duties, embarrass Ferguson Township, or impair their efficiency on the job. Employees who wish to obtain outside employment must obtain prior written approval from the Township Manager. Employees who are granted permission to engage in outside employment must sign the following waiver:
  
2. “The undersigned, an employee of Ferguson Township, does hereby waive and release Ferguson Township from any liability, expense, or costs due to any injury or sickness incurred by reason of any employment accepted by the undersigned other than as an employee of Ferguson Township. I further release the Township for any claim for wages or other benefits during any absence caused by such injury or sickness. This waiver shall be binding upon my heirs, representatives, or assigns.”

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Political Activity Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	23.0	23-1

**POLITICAL ACTIVITY**

It is the policy of Ferguson Township that employees shall not be subject to direct or indirect political influence as a condition of their employment, nor shall employees engage in partisan political activity while in the workplace. In order to ensure integrity of governmental offices and the public services, employees of the Township are further prohibited from (1) use of official authority or influence for the purpose of interfering with the election or nomination for office or affecting the results thereof (except by casting the employee's vote); and (2) directly or indirectly coercing or attempting to coerce, commanding or advising any officer or employee to pay, lend or contribute any part of the employee's salary or compensation, or anything else of value to any part, committee, organization, agency, or person for political purpose. In addition those employees of the Township who are covered by the Hatch Act, 5 U.S.C. §1501 et seq., are prohibited from becoming a candidate for partisan elective office.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Conflicts of Interest	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	24.0	24-1

**CONFLICT OF INTEREST**

1. Every employee of Ferguson Township shall fulfill to the best of his/her ability the duties of his/her office or position.
2. When acting in an official capacity, the employee shall pursue the common good and not only be impartial, but so as not to endanger impartiality, no employee shall engage in any activity or enterprise inconsistent, incompatible, or in conflict with his/her duties as a Township employee, or which has the appearance of inconsistency, incompatibility, or being in conflict with his/her duties as a Township employee. If an employee believes that some aspect of Township governance or management needs to be changed or corrected, it is the duty of that employee to first discuss his/her beliefs with elected or appointed management before criticizing the employer to any other person or entity. This rule does not apply in the case or actions which are perceived by the employee as illegal. In such a case, the employee should report his/her concern to appropriate law enforcement officials.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Courtesy & Conduct	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	25.0	25-1

**COURTESY AND CONDUCT**

1. Courtesy and civility toward the public is required of each employee. Conduct to the contrary will subject an employee to discipline. Employees in their conduct shall be civil and orderly, and at all times attentive and zealous in the discharge of their duties, controlling their tempers, and exercising patience and good judgment.
2. In the performance of their duty, employees must refrain from using coarse, violent, profane, or insolent language.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Equipment & Supplies	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	26.0	26-1

**HANDLING OF EQUIPMENT AND SUPPLIES**

1. Employees shall be responsible for good care of Township property assigned to their use or keeping. They shall promptly report to the immediate supervisor any loss of, damage to, or unserviceable condition of such property. Roughness or carelessness in the handling of Township property shall be the basis for discipline.
2. Any employee found guilty of the alteration, mutilation, or destruction of Township property either through willfulness or neglect may be required to pay all costs for replacement thereof, and will be subject to discipline for the careless use or destruction of public property.
3. No employee may make personal use of Township property nor may any Township employee convert Township property into an object or service for his/her personal profit.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Performance Appraisals	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	27.0	27-1

**PERFORMANCE APPRAISAL**

1. The Township Manager and/or his/her designee will conduct performance appraisals for each employee at a minimum of one year intervals. The result of the performance appraisal shall be reviewed by the appraiser with each employee and retained in each employee's personnel file.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Work Rules	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	28.0	28-1

**WORK RULES**

The reason for setting forth work rules is to provide a guide to employees so that their actions will not interfere with orderly and proper procedures. The purpose of disciplinary action is not to punish but to discourage repetition of misbehavior by the offender or by another following the employee's example. The rules listed below, not excluding others, are designed to fairly and impartially regulate an employee's actions. It is not possible to draft rules of conduct so that every potential inappropriate action is met with a specific rule. An employee will not be immune to disciplinary action simply because the employee engages in improper conduct not specifically governed by one of the below listed rules.

The violations of some rules are more serious than the violations of other. Where appropriate, it is the policy of the Township to utilize progressive discipline. Disciplinary action may include an oral warning, written reprimand, suspension or discharge, depending on the severity of the misconduct. All disciplinary action, including oral warnings, shall be documented in writing with copies placed in the employee's personnel file. Employees are required to sign the written documentation of the disciplinary action in order to acknowledge receipt of a copy.

Progressive discipline will generally not be used for employees during their probationary period and for any extensions of the probationary period.

Disciplinary action or dismissal may result from work-related offenses which will include, but not be limited to:

1. Conviction of a crime.
2. Insubordination, including deliberate refusal to comply with work assignments or instructions.
3. Failure to comply with conditions of employment.
4. Abuse of sick leave.
5. Absence without leave.
6. Excessive tardiness

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Work Rules	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	28.0	28-2

7. The use of illegal drugs or narcotics or the use of alcoholic beverages while on duty or immediately prior to reporting to work, or being under the influence of alcohol while at work. Refer to Drug Free Workplace Policy.
8. Theft
9. Any conduct which reflects unfavorably on the Township, indecent conduct, including use of abusive, obscene or threatening language or physical acts.
10. Solicitation of pay for activities considered a part of the employee's duties.
11. Violation of personnel policies and procedures.
12. Falsification of information on employee application.
13. Fighting or other acts of violence.
14. Sexual harassment.
15. Unauthorized disclosure of confidential information, including personnel records, financial data, pay data, or Township records.
16. Inefficiency, negligence, or a lack of effort on the job.
17. Falsifying or altering time, production, or other Township records.
18. Deliberate destruction or removal of property belonging to the Township or another employee.
19. Carrying concealed weapons.
20. Negligent conduct which endangers others, which results in damage to Township property, or which has the potential for doing either of these things.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Disciplinary Procedure	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	29.0	29-1

**DISCIPLINARY PROCEDURE**

1. Disciplinary action shall be taken and discipline imposed in accordance with the following procedures. When employee performance, behavior, or conduct results in a written record of discipline, notice of discipline shall be given to the employee in writing.
2. Notification shall contain a description of the facts of performance, behavior, or conduct setting forth specific acts, times, and places and shall specify the cause for discipline.
3. Discipline may consist of:
  - A. A warning letter
  - B. A letter of censure or reprimand
  - C. Disciplinary probation
  - D. Demotion
  - E. Suspension without pay
  - F. Discharge
4. If an employee receives three warning letters or higher level of discipline in a twelve (12) month period of time, the employee shall be discharged. If an employee is free of written warning for a twelve (12) month period of time, all warning letters received prior to that twelve (12) month period shall not be considered as applicable toward discharge except where the employee has a pattern of manipulating this rule to avoid discharge. This rule is intended to apply to those circumstances where an employee engages in multiple minor infractions and shall not limit the Township's ability to discharge or impose other disciplinary action at any time based upon the type of and severity of the offense.
5. An employee may appeal a written disciplinary action to the Township Manager provided that he/she does so, in writing, within seven (7) working days from the date he/she receives written notification of disciplinary action.
6. This article and its provisions do not apply to employees in the initial period of probation who may be terminated at any time.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Disciplinary Actions	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	30.0	30-1

**CAUSES OF DISCHARGE, SUSPENSION, DEMOTION, OR TERMINATION**

1. The Township Manager retains the right to discharge, suspend, demote, or terminate any employee whose employment is treated in this handbook. A Township employee may be terminated at any time during the probationary period or extension thereof. All Township employees covered by this handbook, whether probationary or non-probationary are considered “at-will” employees who may be terminated with or without cause. A Township employee, after completing probation, may be discharged, suspended, or demoted. The following are examples of reasons an employee may be subject to discharge, suspension, demotion, or termination although discharge, suspension, demotion, or termination may be made for other reasons. That the employee:
  - A. Has been convicted of a felony or a misdemeanor involving moral turpitude; or
  - B. Has violated any of the provisions of the Policy Manual; or
  - C. Has been guilty of any conduct unbecoming an employee of the Township; or
  - D. Has violated any lawful official regulation or order, or failed to obey any proper direction made and given by a supervisor; or
  - E. Has been under the influence of intoxicants or illegal drugs while at work; or
  - F. Has been guilty of insubordination or disgraceful conduct; or
  - G. Is offensive in his/her conduct or language in public, or towards the public; or
  - H. Is incompetent or inefficient in the performance of the duties of his/her position; or
  - I. Is careless or negligent with the money or other property of the Township; or
  - J. Has induced or has attempted to induce an officer or employee in the service of the Township to commit an unlawful or improper act or to act in violation of any lawful departmental or official regulation or order; or
  - K. Has solicited and/or received any fee, gift, or other valuable thing in the course of work or in connection with it; or

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<b>Subject:</b> Disciplinary Actions	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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- L. Is habitually tardy for work or falsifies a document which is offered as a statement of fact; or
  - M. Abuses sick leave benefits; or
  - N. Has unauthorized absence from work or excessive absenteeism.
2. In addition to the above reasons for suspension, discharge, or demotion, an employee can receive al discharge, suspension, demotion to the extent the employee demonstrates an inability to perform the functions of his/her position with or without reasonable accommodation and without substantial risk of injury to himself/herself or others.

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<b>Subject:</b> Grievance Procedure	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	31.0	31-1

**GRIEVANCE PROCEDURE**

1. It shall be the responsibility of all Department Heads of the Township, within the authority delegated by the Township Manager, to take prompt and appropriate action on any grievance submitted to them by employees of the Township.
2. Any employee seeking relief from a grievance involving wages, hours, or conditions of employment, in the presentation of such grievance, shall adhere to the following procedure.
3. An employee who feels he/she has a legitimate grievance concerning his/her wages, hours, or conditions of employment shall, within five (5) working days of that event, present the facts and circumstances orally to the Department Head who shall, within five (5) working days of that notification, take appropriate action or meet with the appropriate persons in an effort to resolve that grievance. The aggrieved employee shall be notified orally within eight (8) working days from the time he/she presents the grievance of the outcome of such meetings as it pertains to him/her. A Department Head shall not have authority to deviate from the Personnel Rules and Regulations or commit the expenditure of Township funds in review of a grievance without the approval of the Township Manager.
4. If, after a determination or decision by the Department Head, an employee feels that the grievance has not been properly resolved, he/she may, after notifying the Department Head, present the facts and circumstances of such grievance to the Township Manager or a designated representative for further consideration. Such facts and circumstances shall be presented in writing no more than five (5) working days from the date when the employee was informed of the determination or decision of the Department Head and specify why the decision was not proper. Upon receipt of such appeal, the Township Manager, or designated representative, shall commence a review, act on that review, and inform the employee, in writing, of the findings and decision, all within ten (10) working days of receipt of the appeal.
5. In the event the employee is not satisfied with the findings of the Township Manager, or a designated representative, he/she, within five (5) working days from receipt of the findings, shall set forth the facts and circumstances of such grievance and appeal to the Chair of the Board of Appeals, a body consisting of three (3) Township Supervisors whose action shall be considered final.
6. The findings of the Board of Appeal shall be considered final. If the Board of Appeal does not undertake review of the Township Manager's action on the grievance within sixty (60) calendar days, the Township Manager's action shall be considered final.
7. The grievance procedure shall not be applicable to situations involving disciplinary action.

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<b>Subject:</b> Resignation Procedures	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	32.0	32-1

**RESIGNATION PROCEDURES**

1. Each employee who intends to resign must present a resignation, in writing, to the Township Manager and the Department Head.
2. Advance notice of resignation is required. The standard for advance notice is as follows:
  - A. Department Heads: Six (6) weeks prior to the last day at work
  - B. All Other Employees: Four (4) weeks prior to the last day at work
3. Resignation which is an instantaneous quit may be immediately accepted by the Township Manager.

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<b>Subject:</b> General Information Technology Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	33.0	33-1

**GENERAL INFORMATION TECHNOLOGY POLICY**

The Township's computer systems are essential to the operations of the Township. Changes to the computer systems need to be carefully evaluated prior to implementing changes. Current unwritten policies and practices need to be firmly established with the engagement of a contracted IT consulting firm that will have maintenance responsibilities for the computer system. The established local area network design and security has segregated departments and users within the network allowing appropriate access to files and folders within the network.

**Purpose:**

The purpose of this Policy is to establish minimum criteria for access, control, use, and security of Ferguson Township ("Township") computers, networks, and information systems.

**Scope:**

This procedure applies to employees, elected and appointed officials, volunteers, members, contractors, consultants, temporary employees, students, and others at the Township who have access to any computer equipment, including all personnel affiliated with third parties. This procedure applies to any equipment that is owned or leased by the Township, as well as any personal devices that may be used to conduct Township business in accordance with the Township's Bring Your Own Device (BYOD) Policy, as may be amended.

**Enabling Policy - Communications Policy:**

Township computers, networks, and information systems shall be used only for Township related activities and in fulfillment of the Township's mission. Due care shall be exercised by system users to protect Township computers, networks, and information systems from unauthorized use, disclosure, alteration, or destruction. No employee may use the Township's computer resources knowingly to download or distribute pirated or outside software or data. No outside software may be loaded or installed on any of the Township's computers, as such installations may violate licensing agreements or may contaminate the Township's entire computer system with a computer virus or other malicious ware. The Township's computers, networks, and telephone system hardware may not be altered, enhanced, extended or modified in any way.

All data created or recorded using any computer equipment owned, leased, or controlled by the Township is at all times the property of the Township. Because of the need to protect the Township computers/networks, the Township cannot guarantee the confidentiality of information stored on any computer/network device belonging to the Township, except that it will take all steps necessary to secure the privacy of all protected information and sensitive data in accordance with all applicable laws.

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All computers, related systems and software that are property of the Township are subject to use and search at any time by the system user's supervisors or other authorized personnel. **There is no "expectation of privacy."**

System users are prohibited from the personal use of Township-owned equipment except on designated break times or during lunch and provided that personal use does not constitute any other violations of this policy or other policies governing the behavior and conduct of Township employees.

**Authority:**

The Township Manager has overall authority to govern and enforce the provisions of this procedure. It is an obligation of supervisory personnel to monitor employee use of Township-owned equipment, Wide Area Network/Local Area Network, and Internet.

**Definitions of Terms:**

Information System: An electronic data storage and retrieval systems used to store and process computerized data. Such systems may include, but are not limited to, computers, terminals, peripherals, smart phones, networks, software, and data.

Computer Abuse: Includes, but is not limited to, unauthorized access, update, or use; interference with operation; unauthorized access to data, including software; and "impersonation" to gain access.

Computer Account: An authorization for an individual to access a specific Township-owned computer system for Township-related activities. Accounts are a privilege, and access to an account can be revoked at the discretion of the Township Manager or his designee. All computer accounts are restricted so that the user has access to a set of application programs and limited access to Township computers, networks, and information systems.

Database Administration - The function of applying formal guidelines and tools to manage the Township's information resource and specifying, implementing, and maintaining access control to assure that Data Users have the appropriate authorized access needed to perform assigned duties or to fulfill Township roles is termed database administration. Responsibility for database administration activities is based on a recommendation by Department Heads to the Township Manager and implemented by the IT Systems Administrator.

IT Systems Administrator – an assigned person or consultant with expertise, knowledge and skill with responsibility for System Administration. IT System Administrators are responsible for

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administering security tools, auditing security practices, identifying and analyzing security threats and solutions, implementing specific security controls and responding to security violations. They have administrative control over User IDs and passwords and the associated processes for reviewing, logging, implementing access rights, emergency privileges, exception handling, and reporting requirements. The IT Systems Administrator reports to the Township Manager or his designee.

Network: A collection of independent computing systems, together with a mechanism that allows them to exchange information with one another.

Password: An alphanumeric character string that acts as a key for a user to access a specific computer account. It differs from the User ID since the User ID is known or can be determined by any user of the system. The password is the private knowledge of the system user and must not be shared.

Sensitive Data: Information that is protected against unwarranted disclosure. Types of information that constitute sensitive data include, but are not limited to, personal information, protected health information as defined by the Health Insurance Portability and Accountability Act of 1996, customer record information, confidential personnel information, and information cited in Section 708 of the Pennsylvania Right-to-Know Law, which protects certain records from disclosure.

System Administration: The function of maintaining and operating hardware and software platforms is termed system administration. Responsibility for system administration activities belongs to the IT Systems Administrator.

System User: Any employee of the Township who uses any Township computer, network, or information system resource or service.

**Responsibilities:**

Township Manager:

The Township Manager shall set the overall procedure for use of computers, networks, and information systems use and protection.

IT System Administrator:

The IT System Administration shall implement Township-wide policies, controls, and procedures to protect the Township's computers, network, and information systems from intentional or inadvertent modification, disclosure or destruction, as well as monitor user adherence to these policies; arbitrate and resolve issues and problems pertaining to ownership, accessibility and updating

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responsibility of the Township's data resources; and educate the user community to the ethical usage of computer information and network facilities.

In addition, the IT System Administrator shall:

- Respond only to helpdesk tickets concerning operational issues from system users, with the exception of the Township Manager, Assistant Township Manager, or Department Heads;
- Not install software or hardware without first securing authorization from the Township Manager, Assistant Township Manager, or appropriate Department Head;
- Not change a system user's level of access or permissions without first securing authorization from the Township Manager.

Assistant Township Manager and Department Heads:

The Assistant Township Manager and Department Heads shall ensure that all system users within their area of accountability are aware of their responsibilities as defined in this procedure. Specifically, they are responsible for validating the access requirements of their staff according to their job functions, prior to submitting requests for the provision of access to the Township Manager, and for ensuring a secure physical environment with regard to Township computers, networks, and information systems.

In addition, they are responsible for:

- Requesting a user identification code, password and initial basic capabilities for new system users within their areas of accountability;
- Monitoring usage of Township-owned equipment, Wide Area Network/Local Area Network, and Internet for compliance with all Township policies;
- Requesting access for system users to needed production applications, both on-line and batch;
- Ensuring that cessation of access to the Township computers and information systems by system users terminating employment is promptly requested;
- Addressing and reporting violations of Township data access and use policies and agreements to the Township Manager or his designee.

System users:

Users are responsible for all transactions occurring during the use of their user ID and password. Computer accounts and passwords must not be shared with anyone under any circumstances.

System users must:

- Ensure that they make use of services and facilities only as required in the performance of their job function.
- Safeguard Township computers, networks, and information systems, data storage devices and report any breach of security or compromise of safeguards to their immediate supervisors, who will then forward any such report to the Department Head, Township Manager or his designee;

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- Follow password strength and security guidelines and password protection guidelines, as enumerated below, to prevent unauthorized account access.
- Abide by the terms of software licensing agreements and copyright laws.

System users must NOT:

- Perform any intentional act that impairs the operation of Township computers, networks, or information systems.
- Use the computer, network, or information systems resources to gain unauthorized access to remote computers.
- Attempt to modify in any way a program supplied by the Township.
- Run, install, or cause to be installed any software on any Township computer, network, or information system, without prior written authorization from the Township Manager or his designee.
- Attempt to circumvent protection schemes or uncover security loopholes.
- Reveal your account password to others or allow the use of your account by others. This includes family and other household members when work is being done at home.
- Use Township computers, networks, and information systems for personal financial gain.
- Deliberately perform acts that are wasteful of computing resources. These acts include, but are not limited to, sending mass mailings or chain letters; obtaining unnecessary output; creating unnecessary multiple jobs or processes; creating unnecessary network traffic;
- Avoid, where possible, printing, storing on any system, or moving across the network any excessively large document or file.
- Store Sensitive Data on external storage media including, but not limited to, cloud solutions (Dropbox, Box, Google Docs, etc.) and removal storage devices (flash drive, CD-ROM, etc.).
- Engage in any activity not mentioned above that may fall into the category of unacceptable use.

It is a further responsibility of each system user to read and understand this procedure. Ignorance of this procedure does not excuse violations.

**Miscellaneous Provisions:**

**Password protection guidelines:**

The following guidelines shall apply to passwords protecting access to all Township hardware, software, and data. Additional password policies, such as requirements for password resets, password strength requirements, and others may apply to specific applications.

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- Do not write passwords down, tell anyone your passwords, or send passwords by email.
- Do not include passwords in a non-encrypted stored document.
- Do not reveal password hints or answers to security questions.
- Do not use all or parts of your login name in your password.
- Take care to prevent others from seeing you type your password.
- If anyone requests your passwords, refer them to the IT Systems Administrator.
- Immediately report any suspicion of your password being broken to the IT Systems Administrator.

Access to Township computers, networks, information systems, accounts, and resources is limited only to those individuals authorized by the Township. Authorization for such access, including the purpose of the account, issuance of passwords and designation of computer accounts, must be approved in writing through the respective Department Heads, Assistant Township Manager, or their authorized representatives with final approval by the Township Manager. The unauthorized use of Township computers, networks, information systems, accounts, or resources; the unauthorized use of another person's computer account; and providing false or misleading information for the purpose of obtaining access to any of such, are prohibited and will be subject to sanctions.

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<b>Subject:</b> Communications Policy- Voice Mail, Electronic Mail and Internet	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	33.0	33-7

**COMMUNICATIONS POLICY -VOICEMAIL, ELECTRONIC MAIL AND INTERNET**

A. Policy Statement

Voice Mail, e-mail, text messaging and usage of the Internet are considered by Ferguson Township (hereinafter referred to as Township) to be important forms of business communications. All communications within our intra-office computer network or telephone network and sent or received through the Internet, including the contents of an employee's computer, are the property of the Township and should be for business purposes only. All communications should be professional in nature. The use of these systems for defamatory, obscene, sexually explicit, illegal, offensive, threatening or other inappropriate communications is strictly prohibited. In order to protect the security and integrity of the computer and network resources against unauthorized or improper use, and to protect authorized users from the effects of such abuse or negligence, the Township reserves the rights, at its sole discretion, to limit, restrict, or terminate any account or use of the computer and network resources and to inspect, copy, remove or otherwise alter any data, file, or system resources which may undermine authorized use. Improper use of the Township's computer resources or network and telephone resources or network is grounds for discipline up to and including discharge. This policy is intended to supplement the township's General Information Technology Policy. Nothing in this policy is intended or will be construed as superseding the provisions of the General Information Technology Policy, as may be amended.

B. Monitoring and Control

The Township retains the right to monitor all Internet usage, voice mail, text messages and email messages during the ordinary course of its business without notice to the user, sender or recipient of the message, except as restricted by applicable law. For example, monitoring may be necessary to protect and ensure the systems security, to ensure that employees are not using voicemail or email to communicate improper content, such as unlawful harassment, improper management techniques, unauthorized disclosure of confidential information, and to ensure that employees are not communicating to unauthorized recipients. The Township Manager or his appointed designee may actively monitor Internet usage, voicemail and email communications, and reserves the right to inspect any and all files stored in our computer network or telephone network in order to ensure compliance with policy.

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**C. No Expectation of Privacy**

Since all voicemail, text messages and email messages transmitted using Township-issued devices or to conduct Township business are the property of the Township. The Township Manager or his designee may monitor these communications to ensure that our computer and telephone systems are being used for legitimate business purposes only, and to protect the Township from liability. Employees and those communicating with employees must realize that they have no legal right or expectation of privacy in their voice or email communications. All messages are subject to review by management, and all communications are subject to scrutiny, except as restricted by applicable law.

**D. Permanency of Communications**

Deleting voicemail, text messages or email messages does not guarantee that they are erased from the system. Employees should not believe that privacy of voicemail or email communications is created by their efforts to delete incoming or outgoing messages. In addition, in the case of litigation, technology may exist to restore deleted voicemail or email. Employees should be prepared to defend in court under oath the content of anything communicated in a voicemail or email.

**E. No Harassment**

No voicemail, text messages or email messages should be created or sent which might constitute intimidating, hostile or offensive material on the basis of sex, race, color, religion, national origin, age, sexual preference or disability. Harassment is broadly defined as anything that has improper (e.g. sexual) content and is both unwelcome and offensive to a reasonable person. The display of any kind of sexually explicit image or document in the Township's system is prohibited. In addition, sexually explicit material may not be archived, stored, distributed, edited or recorded using Township computer or telephone resources. Please refer to the Township's policy against sexual harassment.

**F. Internet Usage**

These same policies apply to the use of the Internet and the use of outside software. The Internet is to be used only for legitimate business purposes and communications but not for personal use except as provided for in this policy. Personal use is permissible within reasonable limits and if consistent with restrictions defined in this policy. Users understand that use of the Township-provided system is a privilege. Unauthorized use will result in loss

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of access for the user and, depending on the seriousness of the infraction, may result in disciplinary action as deemed appropriate. Examples of what could be considered limited personal use include:

1. Scheduling of appointments;
2. Communicating regarding work-related social events including birthdays, births, etc.;
3. Posting of personal information such as items for sale; and
4. As with the telephone, other limited uses that do not interfere with the employee's responsibilities or conflict with the Township's Personnel Policy.

Employees are not permitted, without prior authorization, to establish web pages that suggest a Township affiliation without authorization by the Township. Employees may access and use the Internet through the Township's system, computers, modems or lines only for approved purposes. Any software or files downloaded via the Internet into the Township's network become the property of the Township. Any such files or software may be used only in ways that are consistent with their licenses or copyrights. The Township's Internet facilities and computer resources may not be used knowingly to violate in any material way the laws and regulations of the United States or any other nation, or the laws or regulations of any state city, province or jurisdiction. All communications on the Internet to or from the Township's system or computers owned and operated by the Township are subject to monitoring, except as prohibited by law, and to all of the Township's standard policies.

**G. Consequences of Misuse/Abuse**

Abuse and/or misuse of the Internet, text messaging, voicemail or email systems, including unauthorized communications to third parties through use of the Internet or through the use of the Township's intra-office voicemail or email systems, or unauthorized disclosure of confidential business information through these systems, is grounds for disciplinary action up to and including termination.

**H. Waiver**

Employees who are assigned access to the Township email or Internet system shall be required to sign an acknowledgement that states that the employee understands and will abide by this policy. This acknowledgement establishes the employees understanding that the communications covered by this policy are subject to review to determine compliance with this policy.

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<b>Subject:</b> Social Media Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**FERGUSON TOWNSHIP SOCIAL MEDIA POLICY**

I. Definitions

- A. Blog – A self-published diary or commentary on a particular topic that may allow visitors to post responses, reactions, or comments. The term is short for “Web Log.”
- B. Page – The specific portion of a social media website where content is displayed and managed by an individual or individuals with administrator rights.
- C. Social Media – A category of Internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, MySpace), microblogging sites (Twitter, Nixle), photo- and video-sharing sites (Flickr, YouTube), wikis (Wikipedia), blogs, and new sites (Digg, Reddit).
- D. Wiki – Web page(s) that can be edited collaboratively.

II. Purpose

- A. The purpose of this policy is to regulate the usage of Township social media pages to enhance effective and efficient communication services to Township residents. The objective of Township use of social media is to promote better communications, provide greater access to information, foster greater transparency, allow for increased accountability, encourage broader participation, and provide a vehicle for collaborative problem-solving on issues of concern or interest to Township residents.
- B. This policy intends to clearly define the permissions and restrictions that shall be enforced on various users of Township social media pages. These include Township staff, personnel designated to post on behalf of the Township, citizens, interested readers, and elected and appointed officials.
- C. This policy proposes to regulate the behavior of employees of the Township with regard to all social media usage; specifically, to provide guidelines for usage during work hours.
- D. This policy proposes to ensure that all Township use of social media is compliant with applicable federal, state, and local laws. These include, but are not limited to, Freedom of Information Act, Pennsylvania Right-to-Know Law, First Amendment, Pennsylvania Sunshine Act, and any applicable information security policies established by the Township.

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<b>Subject:</b> Social Media Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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III. Policy

A. The Township has determined that the use of social media can be most effective for disseminating Township communications, such as engagement opportunities; employment announcements; important communications from elected officials; updates from Township authorities, boards, and commissions; and communicating other news and events to subscribers of Township social media accounts.

B. Comment and Posting Policy

- i. While it is recognized that the Township's social media pages are designed primarily as an informative tool for residents and interested readers, responses to Township posts are welcome provided the content of the responses does not violate the provisions of Part III Section B. iii. and iv. of this policy.
- ii. Because the ability of Township staff to respond to comments on social media pages is limited, it is recommended that inquiries made regarding social media posts be delivered via email or by contacting a Township representative directly.
- iii. Comments and responses to Township social media posts shall directly relate to the content of the original posts. Comments and responses that do not directly relate to the content of the original posts shall be promptly deleted.
- iv. Additionally, the Township of Ferguson reserves the right to delete any content that contains:
  1. Vulgar language;
  2. Spam or unauthorized solicitations of any kind;
  3. Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, or sexual orientation;
  4. Promotion of particular services, products, or political organizations;
  5. Copyright or trademark infringement;
  6. Personally identifiable medical information;
  7. Any information that could potentially compromise the safety, security, or proceedings of public systems or any criminal or civil investigations;
  8. Sexual content or links to sexual content; and/or
  9. Content that violates the terms of use of the social medium in which it exists.

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- v. Where possible, social media pages shall clearly indicate they are maintained by the Township and shall have the Township contact information prominently displayed.
- vi. Where possible, social media pages should state that the opinions expressed by visitors to the page(s) do not reflect the opinions of the Township, its staff, or elected or appointed officials.
- vii. Social media pages shall clearly indicated that posted comments will be monitored and that the Township reserves the right to enforce the provisions of Section B. of this policy.
- viii. Social media pages shall clearly indicate that any content posted or submitted for posting is subject to public disclosure.

**C. Guidelines for posting to social media websites on behalf of the Township**

- i. All posts shall be approved by the Township Manager, Assistant Township Manager, or relevant Department Head.
  - 1. Exception: Approved communications issued via Constant Contact may be posted to social media pages without additional approval of the Township Manager, Assistant Township Manager, or relevant Department Head.
- ii. Social media posts and commentary should, where possible, direct the reader back to the Township's website for more detailed information on the topic.
- iii. Only Township staff designated by the Township Manager shall be permitted to post content on behalf of Ferguson Township.
- iv. Posts shall contain information that is of interests to residents including, but not limited to:
  - 1. Events and announcements;
  - 2. Job opportunities;
  - 3. Updates on ordinances, resolutions, and other action of the Board of Supervisors;
  - 4. Explanation and clarification on actions of the Board of Supervisors;
  - 5. Solicitations for resident input in the form of surveys and polls;
  - 6. Pictures of Township and regional amenities such as parks, neighborhoods, scenery or community events;
  - 7. Updates to the Township website including agendas and minutes, photos, and new functionality; and

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8. Appropriate newsworthy department announcements such as, but not limited to road closures, detour information, winter weather alerts, open houses, criminal investigations, safety tips and new development information.

D. Those designed to post to social media pages on behalf of the Township shall be considerate of the following:

- i. As a Township spokesperson, it is important to conduct yourself in a manner consistent with the high ethical and moral standards expected of a government employee;
- ii. Adhere to all Township policies and codes of conduct and observe conventionally accepted protocols;
- iii. When possible, opinion and commentary will be omitted from social media posts;
- iv. Identify themselves as a member of Township staff; and
- v. Not conduct political activities or personal business.

IV. Personal Use

A. Precautions and Prohibitions

- i. Employees of Ferguson Township are prohibited from accessing and updating personal social media pages during their scheduled work period. This restriction does not apply during scheduled break or lunch periods.
- ii. Township personnel shall not post, transmit, or otherwise disseminate information to which they have access as a result of their employment without written permission from the Township Manager or his designee.
- iii. Township personnel may not divulge information gained by reason of their authority; make any statements, speeches, appearances, and endorsements; or publish materials that could reasonably be considered to represent the views or positions of the Township without express authorization of the Township Manager or his designee.
- iv. Township personnel should be aware that they may be subject to civil litigation for:
  - 1. Publishing or posting false information that harms the reputation of another person, group, or organizations (defamation);

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2. Publishing or posting private facts and personal information about someone without their permission that has not been previously revealed to the public, is not of legitimate public concern, and would be offensive to a reasonable person;
  3. Using someone else's name, likeness, or other personal attributes without that person's permission for an exploitative purpose; or
  4. Publishing the creative work of another, trademarks, or certain confidential business information without the permission of the owner.
- v. Township personnel should be aware that privacy settings on social media sites are constantly in flux, and should never assume that personal information posted on such media is protected.
  - vi. Township personnel should expect that any information created, transmitted, downloaded, exchanges, or discussed in a public online forum may be accessed by the department at any time without prior notice.
  - vii. Reporting violations – Any employee becoming aware of or having knowledge of a posting or of any website or webpage in violation of the provisions of this policy shall notify his or her supervisor immediately.

V. Miscellaneous Provisions

A. Applicability of federal, state, and local laws

- i. Nothing contained in this policy is intended to, nor shall be construed as superseding any applicable federal, state, or local laws or rights and liberties including, but not limited to, those provided by the First Amendment, the Freedom of Information Act, the Pennsylvania Right-to-Know Law, the Pennsylvania Sunshine Act, and any applicable information security policies established by the Township.
- ii. All relevant records retention schedules apply to social media formats and social media content. Retention and disposition of social media information will be the same as information that exists in any other form of media, whether paper or electronic. For example, the retention period that shall apply to a social media posting about an employment announcement shall be the same as a paper employment announcement.

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- B. This policy is intended to supplement the Township's General Information Technology Policy. Nothing in this policy is intended to, nor shall be construed as superseding the provisions of the General Information Technology Policy, as may be amended.

VI. Exceptions

- A. No exceptions to any provisions expressed in this policy will be permitted without the written consent of the Township Manager unless specifically mentioned within this policy.

VII. Penalties

- A. Penalties associated with violations of this policy shall be at the sole discretion of the Township Manager.
- B. Penalties may include, but are not limited to, temporary or permanent removal of status as a designated Township spokesperson on social media pages, revocation of access to the Township's computer network, suspension, termination, or any other consequence deemed relevant by the Township Manager given the nature of the offense.

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<b>Subject:</b> Cell Phone Policy	<b>Date of Adoption:</b> November 6, 2017	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	33.0	33-16

**CELL PHONE POLICY**

A. Policy Statement

Cell phones are an important method of communication. Cell phones are provided to employees that have a need for frequent communication to carry out the functions of their job while out of the office. The need for a Township-issued or Township subsidized cell phone shall be at the discretion of the Township Manager. The cell phone is not considered a primary method of communication for business purposes while in the office, since the Township provides a telephone network at its primary business location. Rather, a cell phone is provided to increase efficiency and communication with and for employees that have job responsibilities outside of the primary business office. The cell phone number assigned to each employee is owned by the Township. The Township permits the use of this cell phone number for personal communication purposes within certain guidelines. The communication shall be of a professional nature and not defamatory, obscene, sexually explicit, illegal, offensive, threatening or otherwise inappropriate. The Township reserves the right, at its sole discretion, to limit, restrict or terminate any account or use of the cell phone number and to monitor its use. Improper use or abuse of the Township's cellular telephone number is grounds for discipline up to and including discharge. This policy is intended to supplement the Township's General Information Technology Policy. Nothing in this policy is intended or will be construed as superseding the provisions of the General Information Technology Policy, as may be amended.

B. Ownership and Expanded Cell Phone Options

The Township provides a selection of cell phones from its cellular phone service provider. This list changes in accordance with the vendor's product selections. Typically, the vendor provides a list of free phones with the service contract. The Township will provide a free phone to the employee, unless they wish to upgrade. If an employee desires to obtain a cell phone with expanded capabilities and features beyond the cell phone offered by the Township the cost of said cell phone shall be at the employees sole cost. If the employee purchases a cell phone with expanded capabilities at his or her sole cost, the Township shall reimburse the employee twenty dollars (\$20) per month for use of the device to conduct Township business. Additionally, cell phones with expanded capabilities purchased by an employee shall be regulated by the Township's Bring Your Own Device Policy.

The Township Manager may, at his or her sole discretion, allow for the purchase of a Township issued "smart phone", if, in his or her judgment, the use of a "smart phone" would serve the best interest of the Township. Township issued "smart phones" shall be generally

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reserved for Department Heads and supervisory staff, unless another use is deemed warranted by the Township Manager.

Further, the Township does not provide any expanded cell phone services such as internet access, data usage, text messaging, email, video, pictures etc. unless authorized by the Township Manager who has determined that such expanded services are in the interest of conducting the Township's business. Subject to the Township's right to monitor usage, employees may purchase the following expanded services through payroll deduction with the following limitations

- 100 text, picture, and/or video messages sent and received, includes Unlimited IN (In Network) Messaging per month

Any amount of text messages or additional data usage above this limit is considered a violation of this policy and shall be subject to the provisions set forth in Section F of this policy.

**C. Monitor and Control**

The Township retains the right to monitor all cell phone usage, text messages and other data transfer without notice to the user, sender or recipient of a message, or other data transfer on Township issued devices except as restricted by applicable law. For example, monitoring may be necessary to protect and ensure the systems security, or to ensure that employees are not abusing cell phone usage.

**D. No Expectation of Privacy**

The Township Manager or his designee may monitor the use of Township owned cell phones to ensure that they are being used for legitimate business and appropriate personal purposes only, and to protect the Township from liability. Cell phone transaction logs shall be monitored except as restricted by applicable law.

**E. Permanency of Communications**

Deleting text messages does not guarantee that they are erased from the cell phone system. Employees should not anticipate that privacy of text message communications is created by their efforts to delete incoming or outgoing messages. In addition, in the case of litigation, technology may exist to restore deleted text messaging. Employees should be prepared to defend in court under oath the content of anything communicated in a text message.

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F. Consequences of Misuse/Abuse

Abuse and/or misuse of cell phones is grounds for disciplinary action up to and including termination.

G. Use of Cell Phones While Operating a Vehicle

This policy is designed to prevent motor vehicle crashes and resulting injuries to municipal employees and the public, and damage to municipal and public property that can be caused by distracted driving. Although cell phones are not the sole factor in causing distracted driving, studies show that cell phone use while driving significantly increases the risk of a motor vehicle crash. Given the pervasiveness of cell phones and that the Township may be liable for injuries caused by their employees while operating motor vehicles, guidelines and restrictions on the use of cell phones while operating a vehicle are necessary.

1. Brief Statement of Policy

While operating a Ferguson Township-owned vehicle, and/or while in the performance of Township business while driving any vehicle, employees shall not operate or use a cell phone. This policy shall apply whether or not hands-free communications equipment is used, and it shall apply to any form of communication of which the cell phone is capable, including but not limited to speech, text, and email. Operation of a vehicle is defined as including, but not limited to when the vehicle is in motion, stopped in traffic, or at a traffic signal or stop sign.

2. Application

This policy shall apply to both Township-owned/issued cell phones or cell phones owned by the employee. Employees shall not initiate calls, texts, emails, or any other form of electronic communication while operating Township vehicles or personal vehicles while engaged in Township business. Further, employees shall not receive or respond to incoming calls, texts, emails, or other electronic communications, and employees shall not read texts, emails, or other items or utilize their cell phones while driving in any way. For example, the act of reviewing the cell phone to identify the caller or sender of the communication while engaged in the operation of Township-owned vehicles or personal vehicles engaged in the performance of Township business is prohibited.

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3. Exceptions

- a. This prohibition shall not apply to the use of cell phones by law enforcement personnel in emergency response situations when reasonable considerations of officer and/or public safety require the use of private electronic communication devices. However, in all cases, the use of any electronic communications device shall not be permitted to interfere with the safe and lawful operation of the vehicle.
- b. Where employees require navigational assistance in the course of the performance of their duties, and the vehicle is not equipped with a GPS device, employees may use their cell phones for the limited purpose of navigation, provided programming of the GPS is completed while the vehicle is legally parked in a safe location. Cell phone use for any other purpose is prohibited.

4. Emergency Situations

If an emergency requires that an employee must initiate or receive a call, text, email, or other electronic communication on a cell phone, the employee must first drive to a safe location, stop the vehicle, and place it in "park," prior to activating the device, and remain there until the communication is completed. A safe location might include, but is not limited to rest areas, parking lots, or designated parking areas. Stopping along the side of or on the shoulder of a major highway should not be considered safe, nor should any actions which amount to violations of the Vehicle Code.

H. Waiver

Employees who are assigned a Township cell phone shall be required to sign an acknowledgement that states that the employee understands and will abide by this policy. This acknowledgement establishes the employees understanding that the communications covered by this policy are subject to review to determine compliance with this policy.

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**BRING YOUR OWN DEVICE**

**I. PURPOSE:**

- A. The intent of this policy is to provide standards and rules of behavior for **personally-owned smart phones, tablets, and other devices** by Ferguson Township employees (herein referred to as users) used to access Ferguson Township network resources, store and retrieve township data, and conduct township business.
- B. Expectation of Privacy: The township will respect the privacy of your personal device and will only request access to the device by technicians to implement security controls, as outlined in this policy, or to respond to legitimate Right-to-Know requests arising out of administrative, civil, or criminal proceedings. Additionally, the township shall not utilize the device's Global Positioning System (GPS) Technology to track the device's whereabouts remotely without the written permission of the device's owner. This policy is **only** applicable to personal devices that are used to conduct township business and/or store and retrieve township data.

This is different from the policy for township-provided equipment/services, where users do not have the right, nor the expectation of privacy while using township equipment/services. While access to personal devices is restricted, the township's policies and rules of behavior regarding the use and access of township e-mail and other systems and services remain in effect.

**II. SCOPE**

- A. Accessing work email via the township's website **does not** constitute use of a personal device for township business and, therefore, does not require the user to comply with additional security requirements other than the Overall Requirements identified in this policy.
- B. Synchronizing employee email, calendar, and contact lists to a device so that they may be accessed by Apple, Android, or other applications **does** constitute use of a personal device for township business and, therefore, does require the user to comply with additional security requirements identified in the Additional Requirements section of this policy, as well as the Overall Requirements.
- C. Storing permitted township documents and files on a device via Dropbox or other cloud service, removable storage, or the device's internal memory **does** constitute use of a personal device for township business and, therefore, does require the user to comply with additional security requirements identified in the Additional Requirements section of this policy, as well as the Overall Requirements.

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**III. POLICY:**

**A.** Overall requirements for all personal devices used in accordance with township business:

1. Users will not download or transfer Sensitive Data to their personal devices. Sensitive Data is defined as information that is protected from unwarranted disclosure. Types of information that constitute sensitive data include, but are not limited to personal information, protected health information as defined by the Health Insurance Portability and Accountability Act of 1996, customer record information, confidential personnel information, and information cited in Section 708 of the Pennsylvania Right-to-Know Law, which protects certain records from disclosure.
2. Users will password protect the device and follow the applicable password protection guidelines established under the Miscellaneous Provisions of the township's General Information Technology Policy.
3. Users agree to maintain the original device's operating system and keep the device current with security patches and updates, as released by the manufacturer. Users will not "jail break" the device (installing software that allows the user to bypass standard built-in security features and controls).
4. Users agree to delete any Sensitive Data that may be inadvertently downloaded and stored on the device through the process of viewing e-mail attachments. The township's Information Technology Systems Administrator can provide instructions on how to identify and properly remove these unintended file downloads. Follow the premise, "When in Doubt, Delete it Out."
5. Non-exempt personnel who wish to use their personally-owned smart phones, tablets, and other devices in conjunction with this policy agree that time spent utilizing said device in the performance of official duties outside normal operating hours of the township shall not be considered compensable time, except with written permission from the relevant Department Head or Township Manager.

**B.** Additional Requirements for all personal devices used to synchronize employee email, calendar, and contact list:

1. If the device is lost or stolen, the user will notify the Township Manager and the township's Information Technology provider within one hour, or as soon as practical after the user notices the device is missing.

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2. Users agree that other individuals will not be permitted to access applications used to conduct township business. Where possible, measures will be implemented to secure these applications from unauthorized use.
3. Users agree to change the device's password protection every six (6) months, at a minimum.
4. Users agree to maintain anti-virus protection on the device, where applicable. The township's Information Technology Systems Administrator can assist the user in the installation of anti-virus software.
5. Where possible, the employee's device may be remotely wiped if 1) the device is lost or stolen, 2) the employee terminates his or her employment, 3) the IT Systems Administrator detects a data or policy breach, a virus or similar threat to the security of the company's data and technology infrastructure.
6. Employees' access to company data is limited based on user profiles defined by the IT Systems Administrator and is automatically enforced.

**IV. MISCELLANEOUS PROVISIONS:**

- A. The township's IT Systems Administrator will take every precaution to prevent the user's personal data from being lost in the event it must access, wipe and/or remove data from a device. However, it is the users responsibility to backup relevant data and applications on a regular basis. In the event of an employee separating from township employment, the employee agrees to delete all township data from both his/her primary device and backup storage and provide written assurance of compliance.
- B. The user is expected to use his or her devices in an ethical manner and at all times adhere to the provisions of this policy.
- C. The user is personally liable for all costs associated with his or her device except for such expenses needed to perform the user's job functions and with written authorization from the relevant Department Head or Township Manager.
- D. The user assumes full liability for risk including, but not limited to, the partial or complete loss of company and personal data due to an operating system crash, errors, bugs, viruses, malware, and/or other software or hardware failures, or programming errors that render the device unusable.

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- E. The township reserves the right to take appropriate disciplinary action up to an including termination for noncompliance with this policy.
- F. The Township Manager shall have the overall authority to govern and enforce the provisions of this policy. Department Heads shall be responsible for ensuring individuals in their respective departments adhere to the provisions of this policy.
- G. This policy is intended to supplement the township's General Information Technology Policy. Nothing in this policy is intended or will be construed as superseding the provisions of the General Information Technology Policy, as may be amended.
- H. Use of personally-owned smart phones, tablets, and other devices while operating a vehicle:
  - 1. Employees are prohibited from using their personally-owned devices while operating a motor vehicle owned by the township.
  - 2. Employees are prohibited from using their personally-owned devices to conduct township business while operating any motor vehicle. Employees should stop their vehicle in a safe location so that they can safely use their personally-owned smart phone, tablet, or other device for township business.
  - 3. Using a personal or township-issued cell phone to place or receive calls while operating a vehicle is regulated by the township's cell phone policy, as may be amended.

**V. DEVICES, APPLICATIONS, AND SUPPORT:**

- A. Devices must be presented to the IT Systems Administrator for proper security provisioning and configuration of standard apps, such as browsers, office productivity software and security tools, before they can access the network.
- B. Connectivity issues are supported by the IT Systems Administrator; however, employees should contact the device's manufacturer or their carrier for operating system or hardware-related issues.
- C. Not all devices may be allowed or supported. Generally, devices supporting the most current versions of Apple iOS, Microsoft Windows, and Android operating systems will be permitted. Devices that do not support these operating systems must be approved by the Township Manager. The township's IT Systems Administrator will submit a

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recommendation to the Township Manager based on whether the proposed device can meet the requirements of this policy.

- D. Not all applications used for work purposes may be available remotely or supported on a mobile device.

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<b>Subject:</b> Drug Free Workplace	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b>	34.0	34-1

**DRUG FREE WORKPLACE POLICY**

1. In accordance with the Drug Free Workplace Act of 1988, the Township is mandated to establish a policy consistent with provisions of the Act regarding a drug free workplace for employees engaged in projects or activities funded by State or Federal Funds.
2. It is the policy of the Township of Ferguson to prohibit and deem unlawful the manufacture, distribution, digestion, possession or use of a controlled substance in the workplace as defined by Section 102 of the Controlled Substance Act (21 U.S.C. 802). Employees engaging in such unlawful acts shall face appropriate personnel action up to and including termination in accordance with Section 29 of the Personnel Policy.
3. All employees shall be provided a copy of this policy and the Drug Free Workplace Act of 1988. New employees will be required to acknowledge this policy and to abide by the terms of the policy.
4. Any employee who is convicted of any criminal drug related crime occurring in the workplace shall notify the Township Manager in writing of the violation no later than five (5) calendar days after such conviction.
5. The Township shall be required to notify the appropriate contracting State or Federal agency in writing within ten (10) calendar days after receiving notice from the employee of the violation, or conviction, of the drug related crime.
6. In lieu of or in addition to appropriate personnel actions, the Township Manager, or his designee, may require an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
7. The Township of Ferguson has in place an Employee Assistance Program that includes assistance to those employees with drug and alcohol problems. The program is available through the Center for Mental Health, located at 3939 South Atherton Street, employees may call (814) 867-0670.

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<b>Subject:</b> Drug & Alcohol Testing	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform Employees Required to Hold A CDL License	<b>Date of Revision:</b>	35.0	35-1

**DRUG & ALCOHOL TESTING**

**I. PURPOSE:**

- A. Ferguson Township has a commitment to provide a safe and healthful workplace for its employees and to ensure quality services to our residents. As such, Ferguson Township will make every reasonable attempt to establish a work environment that is free from the adverse effects of drug and alcohol abuse, both directly and indirectly.
- B. The purpose of this Policy is to promote a safe and healthful workplace; to assist those employees who are in need through either counseling or rehabilitation; and to discipline and/or discharge employees who violate the policy.
- C. This policy and parts or sections thereof, shall not apply to employees with CDL rated drivers licenses who are not required to have a CDL license to operate a municipal vehicle in the course of their employment with Ferguson Township.

**II. OBJECTIVES:**

- A. Assure that the workplace is free from the effects of drug and/or alcohol use and that employees are fit to perform their work duties and report for work regularly and on time.
- B. Establish effective means to detect and deal with drug and alcohol abuse while respecting the rights of the workers. The rights of workers include the right to privacy as defined by applicable law, to fair and equal treatment, and to those rights which may govern their employment.
- C. Comply with applicable state and federal law.

**III. SUBSTANCES INCLUDED IN THE TESTING POLICY:**

- A. The minimum testing program will include the following substances present in the body: alcohol, cocaine, phencyclidine (PCP), marijuana, opiates of any type, and amphetamines. The type and quantity of substances included in the testing program may be expanded or changed at any time as required by law or DOT regulation.

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**IV. DEPARTMENT OF TRANSPORTATION REGULATIONS CONCERNING TESTING OF DRIVERS:**

The Department of Transportation (DOT) has established mandatory drug and alcohol testing regulations that affect certain municipal drivers and driver applicants. Ferguson Township is committed to comply with these regulations. Accordingly, the following will apply to all employees required to have a CDL license designation and applicants for such positions.

**1. Employee Responsibilities/Prohibited Conduct**

**A. The following shall be considered "prohibited conduct" for purposes of this policy:**

- i. No driver shall report for duty or remain on duty while having an alcohol concentration of .04 or greater.
- ii. No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol.
- iii. No driver shall use alcohol while performing safety-sensitive functions.
- iv. No driver shall perform safety-sensitive functions within four (4) hours after using alcohol.
- v. No driver required to take a post-accident alcohol test shall use alcohol for eight (8) hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.
- vi. No driver shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.
- vii. No driver shall report for duty or remain on duty when the driver uses any controlled substance except when use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle.

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- B. If a driver engages in “prohibited conduct”, the driver is not qualified to drive a commercial motor vehicle and shall be immediately removed from service as time off without pay and referred to the Substance Abuse Professional. Ferguson Township may also take action against the driver up to and including termination.
- C. No driver shall be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol while performing safety sensitive functions.
- D. No Supervisor having actual knowledge that a driver has violated any provision of Part A above shall permit the driver to work.

2. Types of Testing

- A. Pre-duty
  - i. All applicants for driver positions, including presence of drugs prior to commencing employment, or performing safety sensitive functions if the person is already employed with Ferguson Township. An applicant testing positive for the presence of drugs, as regulated by this policy will not be considered for employment with Ferguson Township.
  - ii. Applicants for driver positions shall consent and authorize Ferguson Township to obtain information from the applicant’s employers, during the previous two years of employment, pertaining to the drivers alcohol tests showing concentration results of 0.04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two (2) years, which are maintained by the driver’s previous employers.

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iii. An applicant will not be considered for employment if Ferguson Township shall be notified that the applicant has tested positive in either alcohol concentration or controlled substances tests, or has refused to be tested within the preceding two years, or refuses to consent to authorize Ferguson Township to obtain the information.

**B. Random Testing**

i. Each year, Ferguson Township will use a random process to select at least 50% of its CDL drivers, who will be tested for the use of controlled substances as identified in III. SUBSTANCES INCLUDED IN THE TESTING POLICY, of this policy, as amended, or as required by law. Additionally, at least 25% of its CDL drivers will be randomly tested for alcohol use in the first year of this policy, and annually thereafter. Drivers selected on a random basis for testing will be required to supply a urine sample for controlled substance testing and submit to a legally accepted test for alcohol.

**C. Reasonable Suspicion testing**

i. Testing will be required by a Supervisor upon determination of reasonable suspicion of a driver. The conduct necessitating testing, if at all feasible, shall have been witnessed by at least two supervisors. However, if only one supervisor is available, only that supervisor need witness the conduct. Each Supervisor will receive training in the detection of probable drug and alcohol use by observing a driver's behavior.

**D. Mandatory Post-Accident Testing**

i. Drivers will provide urine specimens for drug testing as soon as possible after a commercial vehicle accident, but no later than thirty-two (32) hours after the accident.

ii. Drivers must be tested for alcohol as soon as possible after a commercial vehicle accident, but no later than eight (8) hours after the accident. A driver shall not consume alcohol until he has been tested, or after the eight (8) hour period.

**TOWNSHIP OF FERGUSON  
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<b>Subject:</b> Drug & Alcohol Testing	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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- iii. An accident is defined as involving the following with a commercial motor vehicle:
  - 1) A vehicle related fatality is involved;
  - 2) The driver receives a citation under state or local law for a moving violation, and:
    - a) Bodily injury that requires a person to be transported away from the scene for medical treatments, or
    - b) Damage to any vehicle that requires the vehicle to be towed away from the scene by a tow truck or another vehicle.
- iv. If, as a consequence of an accident, a driver is seriously injured and cannot provide a specimen at the time of the accident, he/she must provide the necessary authorization for obtaining hospital records and other documents that will indicate whether there were any controlled substances or alcohol in his/her system at the time of the accident.

**E. Return To Duty Testing**

- i. If Ferguson Township in its discretion, offers a driver re-employment after the driver has been referred to an alcohol and substance abuse professional and the driver has undergone all recommended treatment, the driver must successfully complete a test for alcohol and/or drugs prior to being returned to duty. The driver will pay for all costs related to the Return of Duty Testing.

**F. Follow-Up Testing**

- i. Any driver who has returned to duty after a positive alcohol or drug test will be subject to unannounced follow-up tests for a period not to exceed sixty (60) months. There will be at least 6 follow-up tests given during the first 12 months. The driver will pay for all costs related to the Follow-up Testing.

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G. Refusal To Test

- i. Refusal to submit to the types of drug and alcohol tests employed by Ferguson Township will be grounds for refusal to hire driver/applicants and to terminate employment of existing drivers. A refusal to test is defined to be conduct that would obstruct the proper administration of a test. Refusing to sign step 2 of the alcohol form is considered a refusal to test. A delay in providing a urine, breath, or saliva specimen could be considered a refusal. If a driver cannot provide a sufficient quantity of urine or breath, he/she will be evaluated by a physician of the Township's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either breath or urine), it will be considered a refusal to test. In that circumstance the driver has violated one of the prohibitions of the regulations.

3. Test Procedures

A. Drug Urinalysis

- i. Drug testing will be performed through urinalysis. Urinalysis will test for the presence of drugs and/or metabolites of the controlled substances outlined in this policy.
- ii. The urinalysis procedure starts with the collection of a urine specimen. Urine specimens will be submitted to a Substance Abuse and Mental Health Services Administration (SAMHSA) - certified laboratory for testing. As part of the collection process, the specimen provided will be split into two vials: a primary vial and a secondary vial. The SAMHSA - certified laboratory will perform initial screenings on all primary vials. In the event that the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory to the MRO as a positive.
- iii. All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) designated by Ferguson Township. Negative test results shall be reported by the MRO to Ferguson Township. Before reporting a positive test result to Ferguson Township, the MRO will attempt to contact the driver to discuss the test result. If the

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MRO is unable to contact the driver directly, the MRO will contact the program coordinator designated in advance by Ferguson Township, who shall, in turn, contact the driver and direct the driver to contact the MRO. Upon being so directed, the driver shall contact the MRO immediately or, if after the MRO's business hours and the MRO is unavailable, at the start of the MRO's next business day. In the MRO's sole discretion, a determination will be made as to whether a result is positive or negative. If, after failing to contact the MRO after 5 day, or if the driver cannot be contacted at all within 30 days, the MRO may verify the test as positive. After any positive verification the driver may petition the MRO to reopen the case for reconsideration.

- iv. Pursuant to DOT regulation, individual test result for driver/applicants and drivers will be released to Ferguson Township and will be kept strictly confidential unless consent for the release of the test results has been obtained or if disclosure is authorized or required by law. Any individual who has submitted to drug testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.
- v. An individual testing positive may make a request of the MRO to have the secondary vial tested. The secondary vial must be tested by a different SAMHSA - certified lab then tested the primary specimen. The individual making the request for a test of the second specimen must pre-pay all costs associated with the test. The request for testing of a secondary specimen is timely if it is made to the MRO within 72 hours of the individual being notified by the MRO of a positive test result.

**B. Alcohol Test**

- i. Ferguson Township will perform alcohol testing using a device that is on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and meets the DOT's testing requirements. This may be a breath testing device or a saliva-based testing device, and may be provided through a vendor or agent. The device will be operated by a technician who is certified and trained on the specific device he or she will be operating. The driver shall report

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to the alcohol testing site as notified by Ferguson Township. The driver shall follow all instructions given by the alcohol technician.

- ii. Any initial test indicating an alcohol concentration of .02 or greater will be confirmed on an evidential breath testing device (EBT) operated by a breath alcohol technician (BAT). The confirmation test will be performed no sooner than 15 minutes and no later than 30 minutes following the completion of the initial test. In the event the confirmation test indicates an alcohol concentration of .02 to .0399, the driver shall be removed from duty for 24 hours without pay. Drivers with tests indicating an alcohol concentration of .04 or greater are considered to have engaged in "prohibited conduct". All alcohol tests shall be performed just prior to, during, or just after duty.

V. EDUCATIONAL TRAINING/ASSISTANCE:

- 1. For All Drivers
  - A. Ferguson Township will establish a training program and provide educational materials which will address alcohol and controlled substances, and will review the requirements of this policy and the DOT regulations. Each driver will sign a statement certifying he/she has received the materials required by the DOT regulations.
- 2. For Supervisory Personnel:
  - A. Supervisory personnel who determine whether or not reasonable suspicion exists will complete at least 60 minutes of training on recognizing alcohol misuse, and 60 minutes of training on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- 3. Employee Assistance Program:
  - A. Ferguson Township has in place an Employee Assistance Program that includes assistance to those employees with drug and/or alcohol problems. To access the program, which is provided through Center for Mental Health, located at 3939 South Atherton Street, drivers may call (814) 867-0670.

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- B. At any time a driver has a question regarding this policy and/or the DOT regulations, he/she is encouraged to contact the program coordinator designated by the Township.

**VI. TEST RESULT PROCEDURES:**

1. Notification of Test Results:

- A. Ferguson Township shall notify its drivers and driver applicants of the results of tests conducted pursuant to the DOT regulations. Drivers who test positive will be advised specifically as to what drug or what amount of alcohol that was discovered.

2. Record Keeping:

- A. All of the records relating to the administration and results of municipality's alcohol and drug testing program for its drivers will be maintained in accordance with DOT regulations.
- B. There shall be a Medical Review Officer who is a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders. Ferguson Township shall establish a contract with the MRO to review alcohol and drug testing results in accordance with DOT regulations. The Medical Review Officer shall be the sole custodian of individual test results. The Medical Review Officer shall retain the reports of individual test results in accordance with DOT regulations.
- C. Ferguson Township shall maintain an annual (calendar) year summary of the records related to the administration and results of the testing program for its drivers under the DOT regulations.

**VII. RESERVATION OF RIGHTS:**

1. Ferguson Township reserves the right to add to, change, or modify this policy at its sole discretion, and to terminate any employee at any time, except as those rights are restricted by law. Ferguson Township accepts no liability in the event of an alleged breach of any of the policies or procedures set forth in this policy.

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2. Ferguson Township encourages every employee and prospective employee to comply voluntarily with this policy not only for his or her own safety, but for the safety of others. Because of its importance, Ferguson Township will take all necessary steps to ensure implementation of compliance with this policy. Nothing in this policy shall be construed to limit the authority of the Municipality to impose discipline, including discharge, as it shall determine, so long as the minimums set forth in this policy are satisfied.

VIII. LIMITATIONS OF SEVERABILITY:

1. Each section, paragraph, part, term and/or provision of this Policy shall be considered severable. If for any reason, any section, paragraph, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such shall not affect the remaining portion, sections, paragraphs, parts, terms and/or provisions of this policy.

IV. THIS IS NOT A CONTRACTUAL ARRANGEMENT:

1. This policy and this document (or any accompanying document executed or delivered pursuant to or in connection with the policy) are not intended to confer any contractual or other rights or claims in favor of a Ferguson Township employee.

X. DEFINITIONS:

1. The following definitions are for some terms used in this policy. Other terms are as defined elsewhere within this policy or as defined within State and/or Federal Law.
  - A. Alcohol Concentration - the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test required by law.
  - B. Driver - an employee or applicant for employment who is required to have a Commercial Drivers License (CDL) to perform the duties of the job.
  - C. Safety Sensitive Function - any of the following:
    - i. waiting at the Township facility
    - ii. performing pre-trip inspections or servicing the commercial motor vehicle
    - iii. driving the commercial motor vehicle

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- iv. being on or in the commercial motor vehicle
- v. loading or unloading, supervising the loading or unloading, giving receipts for the load, or remaining in readiness to operate a commercial motor vehicle
- vi. performing duties and services at an accident scene
- vii. repairing, getting help, or staying with a disabled vehicle

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<b>Subject:</b> Sexual Harassment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	36.0	36-1

**SEXUAL HARASSMENT POLICY**

**Section 1 – Statement of Policy**

Federal and State law, specifically, Title VII of the Civil Rights Act, 42 U.S.C. §2000e *et seq.* and the Pennsylvania Human Relations Act, 43 P.S. §§951, *et seq.* prohibit employment discrimination on the basis of race, color, sex, age or national origin. Sexual harassment is included among the prohibitions.

Sexual harassment, according to Title VII consists of unwelcome sexual advances, request for sexual favors or other verbal or physical acts of a sexual or sex based nature where (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) an employment decision is based on an individual's acceptance or rejection of such conduct; or, (3) such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

It is also unlawful to retaliate or take reprisal in any way against anyone who has articulated any concern about sexual harassment or discrimination, whether that concern relates to harassment of or discrimination against the individual raising the concern or against another individual. Examples of conduct that would be considered sexual harassment or related retaliation are set forth in the Statement of Prohibited Conduct that follows. These examples are provided to illustrate the kind of conduct prescribed by this policy; the list is not exhaustive.

Sexual harassment is unlawful, and prohibited conduct exposes not only FERGUSON TOWNSHIP, but individuals involved in such conduct, to significant liability under the law. Employees at all times should treat other employees respectfully and with dignity in a manner so as not to offend the sensibilities of a co-worker. Accordingly, FERGUSON TOWNSHIP is committed to vigorously enforcing its sexual harassment policy at all levels.

**Section 2 – Statement of Prohibited Conduct**

FERGUSON TOWNSHIP considers the following conduct to represent some of the types of acts that violate the sexual harassment policy:

- a. Physical assaults of a sexual nature, such as:
  - (1) Rape, sexual battery, molestation or attempts to commit these assaults.
  - (2) Intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing

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against another employee's body or poking another employee's body.

b. Unwanted sexual advances, propositions or other sexual comments such as:

- (1) Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way, that such conduct in his or presence is unwelcome.
- (2) Preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- (3) Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.

c. Sexual or discriminatory displays of publications in the work place, such as:

- (1) Displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed, or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work at FERGUSON TOWNSHIP, and who has posed for the obvious purpose of displaying or drawing attention to private portions of his or her body.

- (2) Displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace, other than restrooms and similar semi-private lockers/changing rooms.

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d. Retaliation for sexual harassment complaints, such as:

- (1) Disciplining, changing work assignments or providing inaccurate work information to, or refusing to cooperate or discuss work related matters with any employee because that employee has complained about, or resisted harassment, discrimination or retaliation.
- (2) Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct.

e. Other acts:

- (1) The above is not to be construed as an all inclusive list of prohibited acts under this policy.
- (2) Sexual harassment is unlawful and hurts other employees. Any of the prohibited conduct described here is sexual harassment of any one at whom it is directed or who is otherwise subjected to it. Each incident of harassment, moreover contributes to a general atmosphere in which all persons who share the victim's sex suffer the consequences. Sexually oriented acts or sex based conduct have no legitimate business purpose; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such unlawful conduct.

**Section 3 – Penalties for Misconduct**

Any employee's commission of acts of sexual harassment or retaliation against a sexual harassment complaint will result in appropriate sanctions, up to and including dismissal, against the offending employee, depending upon the nature and severity of the misconduct.

A written record of each action taken pursuant to this policy will be placed in the offending employee's personnel file. The record will reflect the conduct, or alleged conduct, and the warning given, or other discipline imposed.

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**Section 4 – Procedures for Making, Investigating and resolving Sexual Harassment and Retaliation Complaints**

(a) Complaints.

Complaints of acts of sexual harassment and retaliation that are in violation of the sexual harassment policy will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated. A complaint need not be limited to someone who was the target of harassment or retaliation. Anyone who has observed sexual harassment or retaliation should report it to their immediate supervisor. In the event that it would be inappropriate to report such concerns to one's immediate supervisors, the report may be made to the Township Manager. In the event that a female employee would prefer to report a concern about sexual discrimination or harassment to a female, Diane Conrad is designated as the proper person to receive such communications.

Only those who have an immediate need to know, including the person to whom a report was made, the alleged target of harassment or retaliation, the alleged harasser or retaliator, and any witness will or may find out the identity of the complainant. All parties contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint or who has provided evidence in connection with a complaint, is a separate actionable offense and subject to discipline under this policy.

(b) Cooperation.

An effective sexual harassment policy requires the support and example of personnel in positions of authority. FERGUSON TOWNSHIP'S agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with FERGUSON TOWNSHIP sponsored investigations of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other FERGUSON TOWNSHIP employees, and/or retaliate against sexual harassment complaints or witnesses may be immediately sanctioned by suspension or dismissal.

**Section 5 – Other Types of Harassment**

As stated in the beginning of this policy, the law prohibits harassment based upon a number of protected characteristics (race, color, creed, national origin, religion or disability). FERGUSON TOWNSHIP will not tolerate harassment based upon any protected characteristic. Employees of FERGUSON TOWNSHIP can expect that other types of harassment will be handled in a manner similar to this policy.

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<b>Subject:</b> Violence In the Workplace	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
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**POLICY ON VIOLENCE IN THE WORKPLACE**

It is the policy of Ferguson Township that no Township employee should have to work under circumstances that may cause the employee to reasonably fear that he/she could be subject to violence. The Township has zero tolerance for acts of workplace violence or the threat to use violence in the workplace.

Employees who threaten to use violence in the workplace are subject to severe disciplinary action including discharge. Activities which a reasonable person would believe might be a prelude to violence are also subject to immediate and significant discipline. Such activities as name calling, taunting, the use of ethnic slurs, and similarly volatile activities are prohibited, and employees who engage in them place their employment at risk.

If the employee observes, or believes to be the subject of workplace violence, or the threat of workplace violence, they are to immediately report the observations and concerns to their immediate supervisor, or to any Department Head unless it would be obvious that their immediate supervisor is not the appropriate person to whom to make this report. Supervisors are, through this policy, made aware that when violence, or the threat of imminent violence is reported to them, it is their duty to react immediately so that the matter is promptly and appropriately investigated and resolved. In such instances, the supervisor shall contact the Department Head and the Township Manager.

This policy also applies to engaging in violent acts, or threatening violent acts, during non-working hours and/or offsite from Township facilities. If there is a relationship between work and the violence or threatened violence then that activity is covered by this policy. Furthermore, persons who develop an off-duty record of violence or threatening violence place their continued employment at risk, where a reasonable person would conclude that the off-duty conduct demonstrates the person to be untrustworthy in terms of controlling violent tendencies. The Township will undertake all reasonable steps, including cooperation with the District Attorney's office, to insure that someone who has reported violence or the threat of violence will suffer no adverse consequences from doing so unless the report is made fictitiously see Whistleblower policy.

Our employees are also entitled to work without having to face violence or threats of violence from the public. If any member of the public threatens an employee, or acts violently toward an employee, this matter should be reported immediately as described above, and a prompt investigation will be undertaken which will, in turn, be followed by appropriate action.

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**FRAUD POLICY**

Ferguson Township (hereinafter referred to as "Township") is committed to protecting its revenue, property, information and other assets from any attempt, by members of the public, contractors, sub contractors, agents, intermediaries or Township employees, to gain by deceit, financial or other benefits.

Our goal is to establish and maintain an environment of fairness, ethics and honesty for employees, our residents, our customers, our vendors and anyone else with whom the Township has a relationship. To maintain such an environment requires the active assistance of every employee and Department Head everyday.

The purpose of this document is to communicate Township policy regarding the deterrence and investigation of suspected misconduct and dishonesty by employees, elected officials, appointees, volunteers and others, and to provide specific instructions regarding appropriate action in case of suspected violations.

**DEFINITIONS**

Fraud and other similar irregularities include, but are not limited to:

- Forgery or alteration of checks, drafts, promissory notes and securities.
- Any misappropriation of funds, securities, supplies or any other asset.
- Any irregularity in the handling or reporting of money transactions.
- Misappropriation of furniture, fixtures and equipment.
- Seeking or accepting anything of material value from vendors, consultants or contractors doing business with the Township.
- Unauthorized use or misuse of Township property, equipment, vehicles, materials or records.
- Any computer related activity involving the alteration, destruction, forgery or manipulation of data for fraudulent purposes or misappropriation of Township owned software.

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- Any claim for reimbursement of expenses (including mileage and travel reimbursements) that are not made for the exclusive benefit of the Township.
- Requesting or receiving compensation or other benefits for hours not worked.
- Any similar act of dishonesty.

**GENERAL POLICY AND RESPONSIBILITIES**

1. It is the Township's intent to fully investigate any suspected acts of fraud, misappropriation or other similar irregularity. An objective and impartial investigation will be conducted regardless of the position, title, length of service or relationship with the Township of any party who might be or becomes involved in or becomes / is the subject of such investigation.
2. Each Department Head is responsible for instituting and maintaining a system of internal control to provide reasonable assurance for the prevention and detection of fraud, misappropriations and other irregularities. Department Heads should be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.
3. Depending on the severity of the situation, the Township Manager or Township Solicitor or their designee have the primary responsibility for investigation of all activity as defined in this policy. Throughout the investigation the Chair of the Board of Supervisors, Township Manager and applicable Department Head should be informed of pertinent investigation findings.
4. Depending on the severity of the situation, the Township will contact the law enforcement agency having appropriate jurisdiction.
5. Upon conclusion of the investigation, the results will be reported to the Chair of the Board of Supervisors, Township Manager and applicable Department Head.
6. The Township will pursue every reasonable effort, including court ordered restitution, to obtain recovery of the Township losses from the offender, or other appropriate source(s).

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PROCEDURES

1. All Employees

It is the responsibility of any employee who has knowledge of an occurrence of irregular conduct, or has reason to suspect that a fraud has occurred, to immediately notify his/her Department Head. If the employee has reason to believe that the Department Head may be involved, the employee shall immediately notify the Township Manager; in the case of the Township Manager, the employee shall notify the Chair of the Board of Supervisors. In order to permit the Township to secure information relevant to the alleged violation and to conduct a fair and complete investigation the employee shall not discuss the matter with anyone other than his/her Department Head, the Township Manager, the Chair of the Board of Supervisors, the Township Solicitor and the investigating agency assigned to investigate. Employees who knowingly make false allegations will be subject to discipline up to and including dismissal.

2. Department Heads

Upon notification from an employee of suspected fraud, or if the Department Head has reason to suspect that a fraud has occurred, he/she shall immediately notify the Township Manager. The Department Head shall not attempt to investigate the suspected fraud or to discuss the matter with anyone other than the Township Manager, the Chair of the Board of Supervisors, Township Solicitor and the investigating agency.

3. Township Manager

Upon notification from an employee or Department Head of suspected fraud, or if the Township Manager has reason to suspect that a fraud has occurred, the Township Manager shall :

- Conduct an internal investigation; or
- Refer the matter to the Township Solicitor for an investigation, or
- Request the appropriate investigating agency

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For major violations, the Township Manager shall not attempt to investigate the suspected fraud or to discuss the matter with anyone other than the Chair of the Board of Supervisors, Township Solicitor, and the investigating agency assigned to investigate.

4. Township Solicitor

Upon notification or discovery of a suspected major fraud, the Township Solicitor will promptly investigate the fraud. In all circumstances where there appears to be reasonable grounds for suspecting that a fraud has taken place, the Township Solicitor will contact the investigating agency having jurisdiction.

5. Contacts/Protocols

For major cases of fraud, after an initial review and determination that the suspected fraud warrants additional investigation, the Township shall coordinate the investigation with the appropriate law enforcement officials.

6. Security of Evidence

Once a suspected major fraud is reported, the Township Manager or Township Solicitor shall take immediate action to prevent the theft, alteration, or destruction of relevant records. Such actions include, but are not necessarily limited to, removing the records and placing them in a secure location, limiting access to the location where the records currently exist, and preventing the individual suspected of committing the fraud from having access to the records. The records must be adequately secured until the Township Solicitor or investigating agency obtains the records to begin the audit investigation.

7. Confidentiality

All participants in a fraud investigation shall keep the details and results of the investigation confidential. However, the Township Solicitor may disclose particulars of the investigation with potential witnesses if such disclosure would further the investigation.

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8. Personnel Actions

If a suspicion of fraud is substantiated by the investigation, disciplinary action shall be taken by the appropriate level of management, in conformance with the Township Personnel Policies and/or Police Department Standard Operating Policy.

*Options include:*

- Disciplinary action (up to and including immediate termination of employment).
- Restitution for all losses, including investigation and legal expenses, to the full extent of the law.
- Forwarding information to the appropriate authorities for criminal prosecution.
- Institution of civil action to recover losses.
- The Township may take corrective or disciplinary action without awaiting the resolution of criminal or civil proceedings arising from the fraudulent conduct.

Unless exceptional circumstances exist, a person under investigation for fraud shall be given notice in writing of the essential particulars of the allegations following the conclusion of the audit investigation and prior to final disciplinary action being taken. Where notice is given, the person against whom allegations are being made may submit a written explanation to the Township Solicitor no later than seven calendar days after the notice is received.

9. Whistle-Blower Protection (refer to Whistleblower Policy)

No employer or person acting on behalf of the Township shall:

- dismiss or threaten to dismiss an employee; or
- discipline, suspend, threaten to discipline or suspend an employee; or
- impose any penalty upon an employee; or

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Fraud Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	38.0	38-6

- intimidate or coerce an employee because the employee has acted in accordance with the requirements of the policy. The violation of this section will result in discipline up to and including dismissal.

10. Media Issues

Any staff person or elected official contacted by the media with respect to an audit investigation shall refer the media to the Township Manager, the Township Solicitor or the investigating agency. No other person shall discuss the alleged fraud or audit investigation with the media during the pendency of an investigation in order to protect the integrity of the investigation.

11. Documentation

At the conclusion of the investigation, the Township Solicitor will document the results in a confidential memorandum report to the Chair of the Board of Supervisors, Township Manager and applicable Department Head. If the report concludes that the allegations are founded, the report will be forwarded to the police agency having jurisdiction depending on the severity of the situation.

The Township Solicitor in consultation with the Township Auditor will also be required to make recommendations to the Township Manager which will assist in the prevention of future similar occurrences.

12. Reporting to External Auditors

The Township Solicitor will report to the external auditors of the Township all information relating to the investigations.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Whistleblower Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	39.0	39-1

**WHISTLEBLOWER POLICY**

**General**

The Ferguson Township Code of Ethics and Conduct (“Code”) (reference Township Code of Ordinances Chapter 1 Part 8) requires Township Supervisors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of the Township, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.

**Reporting Responsibility**

It is the responsibility of all directors, officers and employees to comply with the Code and to report violations or suspected violations in accordance with this Whistleblower Policy.

**No Retaliation**

No director, officer or employee who in good faith reports a violation of the Code shall suffer harassment, retaliation or adverse employment consequence. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment. This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within the Township organization prior to seeking resolution outside the organization.

**Reporting Violations**

The Code addresses the Township’s open door policy and suggests that employees share their questions, concerns, suggestions or complaints with someone who can address them properly. In most cases, an employee’s supervisor is in the best position to address an area of concern. However, if the employee is not comfortable speaking with his/her supervisor or they are not satisfied with their supervisor’s response, they are encouraged to speak with the Township Manager or anyone in management whom they are comfortable in approaching. Department Heads and supervisors are required to report suspected violations of the Code of Conduct to the Township Manager, who has specific and exclusive responsibility to investigate all reported violations. For suspected fraud, or when you are not satisfied or uncomfortable with following the Township’s open door policy, individuals should contact the Township Manager directly.

**Compliance Officer**

The Township Manager is responsible for investigating and resolving all reported complaints and allegations concerning violations of the Code and, at his discretion, shall advise the Chairman of the Board of Supervisors. The Township Manager has direct access to the Chairman of the Board

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Whistleblower Policy	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	39.0	39-2

of Supervisors and is required to report to the Board of Supervisors at least annually on compliance. If the Township Manager is the source of a complaint then the employee should report the complaint or allegation to their Department Head who will advise the Chairman of the Board of Supervisors to take appropriate action.

**Acting in Good Faith**

Anyone filing a complaint concerning a violation or suspected violation of the Code must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation of the Code. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

**Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

**Handling of Reported Violations**

The Township Manager will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Rule & Regulation Changes	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	40.0	40-1

**RECOMMENDATIONS FOR CHANGES IN RULES AND REGULATIONS**

1. An employee wishing to initiate a change in the rules and regulations as set forth in this manual may submit to the Township Manager a written recommendation stating the basis for proposal as well as the proposed change. The modification of the rules and regulations is at the discretion of the Township Manager and Board of Supervisors. The Township Manager shall notify the employee of his/her decision on the request.
2. An endorsement from the immediate supervisor is preferred but not necessary.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Sexual Harassment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	36.0	36-1

**SEXUAL HARASSMENT POLICY**

**Section 1 – Statement of Policy**

Federal and State law, specifically, Title VII of the Civil Rights Act, 42 U.S.C. §2000e *et seq.* and the Pennsylvania Human Relations Act, 43 P.S. §§951, *et seq.* prohibit employment discrimination on the basis of race, color, sex, age or national origin. Sexual harassment is included among the prohibitions.

Sexual harassment, according to Title VII consists of unwelcome sexual advances, request for sexual favors or other verbal or physical acts of a sexual or sex based nature where (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) an employment decision is based on an individual's acceptance or rejection of such conduct; or, (3) such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

It is also unlawful to retaliate or take reprisal in any way against anyone who has articulated any concern about sexual harassment or discrimination, whether that concern relates to harassment of or discrimination against the individual raising the concern or against another individual. Examples of conduct that would be considered sexual harassment or related retaliation are set forth in the Statement of Prohibited Conduct that follows. These examples are provided to illustrate the kind of conduct prescribed by this policy; the list is not exhaustive.

Sexual harassment is unlawful, and prohibited conduct exposes not only FERGUSON TOWNSHIP, but individuals involved in such conduct, to significant liability under the law. Employees at all times should treat other employees respectfully and with dignity in a manner so as not to offend the sensibilities of a co-worker. Accordingly, FERGUSON TOWNSHIP is committed to vigorously enforcing its sexual harassment policy at all levels.

**Section 2 – Statement of Prohibited Conduct**

FERGUSON TOWNSHIP considers the following conduct to represent some of the types of acts that violate the sexual harassment policy:

- a. Physical assaults of a sexual nature, such as:
  - (1) Rape, sexual battery, molestation or attempts to commit  
These assaults
  - (2) Intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee body or poking another employee body

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Sexual Harassment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	36.0	36-2

b. Unwanted sexual advances, propositions or other sexual comments such as:

- (1) Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way, that such conduct in his or presence is unwelcome.
- (2) Preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- (3) Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.

c. Sexual or discriminatory displays of publications in the work place, such as:

- (1) Displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed, or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work at FERGUSON TOWNSHIP, and who has posed for the obvious purpose of displaying or drawing attention to private portions of his or her body.

- (2) Displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace, other than restrooms and similar semi-private lockers/changing rooms.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Sexual Harassment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	36.0	36-3

d. Retaliation for sexual harassment complaints, such as:

- (1) Disciplining, changing work assignments of providing inaccurate work information to, or refusing to cooperate or discuss work related matters with any employee because that employee has complained about, or resisted harassment, discrimination or retaliation.
- (2) Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct.

e. Other acts:

- (1) The above is not to be construed as an all inclusive list of prohibited acts under this policy.
- (2) Sexual harassment is unlawful and hurts other employees. Any of the prohibited conduct described here is sexual harassment of any one at whom it is directed or who is otherwise subjected to it. Each incident of harassment, moreover contributes to a general atmosphere in which all persons who share the victim's sex suffer the consequences. Sexually oriented acts or sex based conduct have no legitimate business purpose; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such unlawful conduct.

**Section 3 – Penalties for Misconduct**

Any employee's commission of acts of sexual harassment or retaliation against a sexual harassment complaint will result in appropriate sanctions, up to and including dismissal, against the offending employee, depending upon the nature and severity of the misconduct.

A written record of each action taken pursuant to this policy will be placed in the offending employee's personnel file. The record will reflect the conduct, or alleged conduct, and the warning given, or other discipline imposed.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Sexual Harassment	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b>	36.0	36-4

**Section 4 – Procedures for Making, Investigating and resolving Sexual Harassment and Retaliation Complaints**

(a) Complaints.

Complaints of acts of sexual harassment and retaliation that are in violation of the sexual harassment policy will be accepted in writing or orally, and anonymous complaints will be taken seriously and investigated. A complaint need not be limited to someone who was the target of harassment or retaliation. Anyone who has observed sexual harassment or retaliation should report it to their immediate supervisor. In the event that it would be inappropriate to report such concerns to one's immediate supervisors, the report may be made to the Township Manager. In the event that a female employee would prefer to report a concern about sexual discrimination or harassment to a female, ~~Diane Conrad~~ Angela Kalke is designated as the proper person to receive such communications.

Only those who have an immediate need to know, including the person to whom a report was made, the alleged target of harassment or retaliation, the alleged harasser or retaliator, and any witness will or may find out the identity of the complainant. All parties contacted in the course of an investigation will be advised that all parties involved in a charge are entitled to respect and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint or who has provided evidence in connection with a complaint, is a separate actionable offense and subject to discipline under this policy.

(b) Cooperation.

An effective sexual harassment policy requires the support and example of personnel in positions of authority. FERGUSON TOWNSHIP'S agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with FERGUSON TOWNSHIP sponsored investigations of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other FERGUSON TOWNSHIP employees, and/or retaliate against sexual harassment complaints or witnesses may be immediately sanctioned by suspension or dismissal.

**Section 5 – Other Types of Harassment**

As stated in the beginning of this policy, the law prohibits harassment based upon a number of protected characteristics (race, color, creed, national origin, religion or disability). FERGUSON TOWNSHIP will not tolerate harassment based upon any protected characteristic. Employees of FERGUSON TOWNSHIP can expect that other types of harassment will be handled in a manner similar to this policy.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Regular Pay Periods	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b> <u>December 10, 2018</u>	6.0	6-1

**REGULAR PAY PERIODS**

1. Employees shall be paid bi-weekly every other Friday which results in 26 pays per year. twice (2) monthly. Scheduled pay days are the 15<sup>th</sup> day and the last day of each calendar month. Pay checks will normally be distributed by 12:00 noon on the scheduled pay day.
2. If a scheduled pay day falls on a holiday or weekend, pay checks will be distributed on the last Township business day before the holiday or weekend.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Vacation	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b> <u>December 10, 2018</u>	12.0	12-1

**VACATION**

1. Annual vacation shall accrue according to this schedule:
  - 0 to 12 months of continuous service - 6 Work days earned at the rate of one-half day per month
  - 13<sup>th</sup> month through the 108<sup>th</sup> month of continuous service - 10 Work days
  - 109<sup>th</sup> month through the 168<sup>th</sup> month of continuous service -15 Work days
  - 169<sup>th</sup> month through the 288<sup>th</sup> month of continuous service - 20 Work days
  - 289<sup>th</sup> month of continuous service or more -1 additional day per every 12 months of service up to a maximum of 22 work days
2. Probationary time counts toward the accrual of service for this benefit.
3. Vacation time may be accumulated up to a maximum of twenty (20) days per vacation year and carried forward to the next vacation year. The vacation year for each employee shall be the twelve (12) month period following the anniversary date of employment of the employee.
4. Only regular, full time employees qualify for vacation. Vacation shall be scheduled annually during the months of January, February, and March by seniority. Vacation is authorized by the Department Head, based on the work requirements of the Department. Requests at any other time are on a first come-first approved basis, but subject to the schedule which is approved at the end of March which has first priority. Vacation may be taken in minimum one half (1/2) hour increments. Time taken in less than one half (1/2) hour increments will be rounded up ~~to the next whole hour.~~ Wages will not be paid annually in lieu of vacation.
5. Upon terminating employment, an employee may receive pay for all unused vacation up to twenty (20) days. The vacation account must be exhausted at the time an employee receives his/her final pay check at termination.
6. Service as a regular part time, part time, or temporary employee does not accumulate toward the service requirement for regular full time employment.
7. An absence from work without pay for any reason except workers compensation leave time, FMLA or military leave will constitute time which is not applicable toward service time for vacation accrual.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Personal Days	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> Non-Uniform	<b>Date of Revision:</b> <u>December 10, 2018</u>	13.0	13-1

**PERSONAL DAYS**

1. Each regular full time employee shall be entitled to seven (7) personal days of absence with pay, per calendar year, after completion of the probationary period.
2. During the probationary period, regular full time employees shall receive one (1) personal day after each two (2) months of continuous employment. This entitlement must be used within the twelve (12) month calendar year. No regular full time employee is entitled to more than seven (7) personal days per calendar year. This benefit is not cumulative and will not be paid if not used.
3. Personal days must be scheduled prior to use and may not be taken in less than one half (1/2) hour increments. Use requires the prior approval of the employees immediate supervisor.

**TOWNSHIP OF FERGUSON  
PERSONNEL RULES & REGULATIONS**

<b>Subject:</b> Employment of Relatives	<b>Date of Adoption:</b> April 20, 2015	<b>Section</b>	<b>Page No.</b>
<b>Employees Affected:</b> All Employees	<b>Date of Revision:</b> <u>December 10, 2108</u>	21.0	21-1

**EMPLOYMENT OF RELATIVES**

1. No person will be hired or transferred with the result that he/she will supervise, work with or under the direct supervision of his/her spouse, son, daughter, parent, parent-in-law, stepson, stepdaughter, brother, sister, brother-in-law, sister-in-law, first cousin, uncle, aunt, niece, nephew, or grandchildren.

# CENTRE REGION COUNCIL OF GOVERNMENTS

2643 Gateway Drive, Suite 3

State College, PA 16801

Phone: (814) 231-3077 Fax: (814) 231-3083 Website: www.crcog.net

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## **EXECUTIVE COMMITTEE**

COG Building - Forum Room | 2643 Gateway Drive

December 11, 2018 | 12:15 PM

### AGENDA

1. CALL TO ORDER

Chair Danelle Del Corso will convene the meeting.

2. CITIZEN COMMENTS

Members of the public are invited to comment on any items not already on the agenda (five minutes per person time limit, please). Comments relating to specific items on the agenda should be deferred until that point in the meeting.

3. APPROVAL OF MINUTES

A copy of the minutes of the November 20, 2018 Executive Committee meeting is *enclosed*.

4. EXECUTIVE DIRECTOR'S REPORT

Mr. Steff will update the Executive Committee on current COG activities.

5. OTHER BUSINESS

A. Matter of Record - The next meeting of the Executive Committee is Tuesday, January 22, 2019 and the General Forum is scheduled for Monday, January 28, 2019. Possible agenda items include: election of COG officers, selection of 2019 meeting dates, appointments to the Code Board of Appeals, confirmation of appointments for the Alpha Fire Company and the endorsement of the Millbrook Marsh Nature Center Lease.

6. RECESS TO AN EXECUTIVE SESSION TO DISCUSS A PERSONNEL MATTER

One of the duties of the Executive Committee is to evaluate the Executive Director's work performance during 2018. Ms. Del Corso will adjourn the meeting to an Executive Session at this point for the committee to discuss the 2018 performance review with the Executive Director.

7. ADJOURNMENT

# CENTRE REGION COUNCIL OF GOVERNMENTS

Centre Region Parks and Recreation  
2643 Gateway Drive, Suite #1  
State College, PA 16801  
Phone: (814) 231-3071 Fax: (814) 235-7832

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## **JOINT MEETING OF THE PARKS CAPITAL COMMITTEE AND THE CENTRE REGION PARKS AND RECREATION AUTHORITY**

COG General Forum Room  
Thursday, December 13, 2018  
12:15pm

### AGENDA

1. CALL TO ORDER  
Chair Bruce Lord will convene the meeting.
2. CITIZEN COMMENTS  
Members of the public are invited to comment on any items not already on the agenda (five minutes per person time limit, please). Comments relating to specific items on the agenda should be deferred to that point in the meeting.
3. APPROVAL OF MINUTES  
A copy of the minutes from the July 12, 2018 joint meeting of the COG Parks Capital Committee and Centre Region Parks and Recreation Authority is **enclosed** (attachment #1).
4. ACTION SPORTS PARK DISCUSSION (Pam Salokangas)  
This is an informational agenda item and does not require action.

During the June 14 joint meeting of the Parks Capital Committee and Centre Region Parks and Recreation Authority, there was a lengthy discussion about the Action Sports Park's next steps. The two groups previously requested continuing the discussion, and Agency staff offered several points to guide the conversation.

Discussed were these three points:

- The Committee and Authority should consider whether the General Forum should be asked whether it desires that the concept of an Action Sports Park be further investigated. Staff believes it is important that the idea of exploring the Action Sports Park be endorsed by the General Forum so that it has broad based regional support at the municipal level. The General Forum's endorsement would signal that the on-going investigation is an effort that elected officials want to undertake.
- If the Committee and Authority decide to offer a recommendation to the General Forum then should it include a proposal for how the concept of Action Sports Park should be further explored? Study options include:

- ✓ Discuss and focus on the concept during Joint meetings of the Parks Capital Committee and Authority
  - ✓ Ask the Authority to prepare a recommendation
  - ✓ Form a new regionally-based committee
- The Committee and Authority should consider whether to endorse the expenditure of \$5,000 in the 2019 Program Plan for services to prepare preliminary sketch plans and cost estimates.

There was robust discussion regarding this project and per the minutes from the July 2018 meeting, a motion was made for the Parks Capital Committee and the Authority to offer a recommendation to the General Forum for the next steps in the design of the Action Sports Park. Since July, the Authority has not had the opportunity to discuss the Action Sports Park any further; the funding proposed in the 2019 Budget for consultant/design needs was passed when the budget was approved on November 26 by the General Forum.

In the meantime, the developer from the Pine Hall Town Center Development (Old Gatesburg Road and Blue Course Drive) was approached by community members who remain interested in the Action Sports Project. In November, one of the developers, Derek Anderson of Residential Housing Development, met with Eric Scott from The Bicycle Shop/Ferguson Township Planning Commission, Jim Steff, COG Executive Director, and Pam Salokangas, CRPR Director, as there seems to be some interest in creating a public-private partnership to develop the Action Sports Park within the Pine Hall Town Center Development. At the conclusion of that meeting, Ms. Salokangas sent the Action Sports Park report to both Derek and Mr. Scott for their review. Additionally, Mr. Steff forwarded the Centre Region Bike Plan to consider additional trail connections through this property and to other bike trails already in place. Mr. Scott was also going to contact some professionals in the field for some design discussions, but nothing has been scheduled to date.

The Tony Hawk Foundation has an open grant round for skatepark grants which can be used toward construction of a new (concrete) skatepark and the Authority should consider applying. The grant does have some restrictions, but those restrictions would not pose a barrier to the application other than we may not have a preliminary design (required) before the January deadline. There is a second grant round in June, 2019 if the January deadline is too soon.

At this time, it is the recommendation of Ms. Salokangas to continue to explore this public-private partnership to see if it can be a viable option for developing the Action Sports Park in the near future. If the partnership does not prove a viable option, the Authority will begin to discuss the Action Sports Park Report in 2019 in order to investigate other options for the park, and to be able when the time is right to make recommendations to the General Forum.

5. PARKS AND RECREATION REGIONAL COMPREHENSIVE STUDY UPDATE (Bruce Lord)

This is an informational agenda item and does not require action.

Since the last Parks Capital Committee meeting in July, the Steering Committee finalized the Request for Proposals (RFP), advertised the RFP, and received three proposals. The Committee interviewed all three consultants and selected the team of Recreation and Park Solutions and Yost Strodoski Mears, with DCNR's approval.

During the interview process, it was decided to include a randomized community survey, and the Penn State Department of Parks, Recreation, and Tourism Management (RPTM) would partner with our consultants to complete this portion of the project. Additional funds for the survey (not to exceed \$15,000) were requested through the 2019 Budget Process within the CRPR Operating Budget, and approved at the November 26 General Forum meeting.

At the November Steering Committee meeting, COG completed the consultant contract, and held the Kick-Off Meeting of the project, which includes a one-year timeline, concluding at General Forum in November, 2019.

Currently, the Steering Committee is reviewing public survey questions, and all Committee members provided a Key Person Interview list so that the consultants could begin planning whom to interview and how many interviews they can conduct over the next few months.

Additionally, the consultants will participate in a parks tour on December 10, weather permitting; depending on the number of facilities visited and weather, there may be a need for a second tour. Tentatively, the State College Area High School's South Building's cafeteria has been selected for the first public meeting and the tentative date is January 30 with a snow/weather make-up the following week on February 6. Tentative start time is 7:00 PM. These details will be finalized at the December 4 Steering Committee Meeting. The CRPR Agency will assist with advertising the public meeting once all details are finalized.

6. WHITEHALL ROAD REGIONAL PARK UPDATE (Pam Salokangas)

This agenda item is for discussion purposes.

During the June 14, 2018 joint meeting Ms. Salokangas provided an update of activities relating to the planning and development of Whitehall Road Regional Park. At the meeting it was confirmed that the municipal portion of the project budget is capped at \$4.8 million. Since that meeting the CRPR team that is working on the Whitehall Road Regional Park project have met multiple times with Stahl Shaeffer Engineering (project engineer) and Fernsler Hutchinson (project architect) to discuss road access, parking lots, fields, park uses and utilities.

The CRPR and the engineers/architect also have been evaluating the concept of developing a combined pavilion/restroom/concessions building as an option to constructing two independent shelters at the park. Given the successful experience at Oak Hall Regional Park with a combined concessions/restrooms, it is believed that a similar facility should be built at Whitehall Road Regional Park. There have been

several iterations of the footprint of the combined building as well as the cost estimate as building components have been added, removed or revised.

The Agency staff provided some conceptual drawings of the pavilion/restroom/concessions building at the June 21 Authority meeting. There was a robust conversation about ways to reduce the building cost, currently earmarked for \$1.1m without furniture and fixtures, and Agency staff requested additional feedback from Authority members within one week from that meeting. The Authority's feedback was presented to the architect for further refinement; this refinement resulted in a smaller building and a budget of approximately \$700,000-\$800,000.

During the months of September and October, the focus for the park centered around the sewer pump station easement that was required before the developer could proceed. In September, a grant of easement was presented at the COG General Forum meeting; there were many public comments, and the Forum members did not approve the easement as most felt that more information was needed. During the month of October, the UAJA Executive Director, the SCBWA Executive Director, Ms. Robyn Froehlich, Mr. John Sepp, and the COG Solicitor provide additional information on the easement, the pump station design, UAJA operational information, etc. All of that data was presented along with the grant of easement at the October General Forum meeting, and the grant of easement was unanimously approved. This action allowed the developer to begin work on-site.

To date, there are several other updates regarding Whitehall Road Regional Park's progress:

- November 8: Kick-Off Meeting with Stahl Sheaffer Engineering to discuss general topics and to review calendar.
- November 8: Meeting with the State College Borough Water Authority's Sourcewater Protection Committee and SCBWA Staff.
- November 16: General Kick-Off Meeting with engineering and architect team along with CRPR Staff and Authority Chair for the development of the Land Development Plan. Escrow submittal to Ferguson Township was provided the week of November 26; there will be approximately 3-4 months of preparation before submitting to Ferguson Township Planning Commission.
- November: PA DCNR awards a \$300,000 matching grant to the All-Ability and Universally-Accessible Playground at Whitehall Road Regional Park.
- Excavation work at The Cottages development has started, including a portion of the Musser's Gap connector trail being relocated through the Whitehall Road Regional Park's woods.

A question was posed to DCNR regarding the pump station's grant of easement and how it affects the original DCNR acquisition funding used to purchase the park's two parcels. DCNR made a request to the Agency for some background information and documentation. Ms. Salokangas provided all of that information to DCNR during the first part of November. At this time, DCNR is reviewing that information to determine how the grant of easement may or may not affect the acquisition grant.

At the November 26 General Forum, Ms. Salokangas suggested to the General Forum members how they would like to proceed with some Master Plan changes. These changes include:

- 1) two shelters being merged into one;
- 2) open-air shelters being changed to one single year-round pavilion, attached to the restrooms/concession building;
- 3) the swapping of the locations for a soccer field and the tennis courts/indoor tennis building; and
- 4) the addition of a storage building for park equipment and supplies.

At the October General Forum meeting action on these four items was not requested. Instead, the General Forum agreed to think about these items and come to the January General Forum meeting prepared to talk about them in more detail and provide guidance on how to proceed.

The major policy question before the General Forum is whether these items represent an amendment to the Master Site Plan for Whitehall Road Regional Park. If they do then according to the Articles of Agreement for the Planning, Development and Operation of Regional Parks, Section 4.4, a unanimous vote of the General Forum will be required.

It should be noted that even with the recently awarded DCNR grant the estimated cost of the project exceeds the budgeted amount. It is proposed to manage this disparity by:

- 1) continuing to seek additional grant funding;
- 2) seeing private donations; and
- 3) by structuring the Request for Bids with a number of optional items that can be accepted or rejected given the availability of funds.

Once the Land Development Plan is approved, the Authority has five (5) years to build the project; as funding becomes available for the items in the plan, they can be constructed within that timeframe.

7. MILLBROOK MARSH NATURE CENTER LEASE (Pam Salokangas and Melissa Kauffman)  
This is an informational agenda item and does not require action.

Through the 2018 budget process, it was suggested by several Parks Capital Committee members and other elected officials that the Millbrook Marsh Nature Center (MMNC) lease be reviewed and updated before they could consider contributing funding for the Spring Creek Education Building Phase II expansion.

Therefore, during the spring and summer months, COG staff met with the Authority members, Parks Capital Committee members, and the MMNC Advisory Committee members to discuss the current lease in order to prepare lease changes for Penn State. COG Staff met with Penn State in mid-July to present these suggested changes. Penn State took those suggestions into consideration and provided a revised lease draft in September, 2019. After initial review with the MMNC Facility and Finance Committee, the MMNC Advisory Committee, and Clearwater Conservancy, who owns the easement on the 50-acre MMNC parcel that is part of the lease, we created a list of items for further review.

This list was provided to the Authority's solicitor for discussion and consideration so that a revised lease could be provided to Penn State for further review.

It is important to note that the COG Staff considered all input from the various committees; however, there are only two types of leases available from Penn State—a grounds lease (aka tenant lease) or a commercial lease. The MMNC lease has always been a grounds lease. In order to achieve a payment from Penn State for Fair Market Value for site improvements made by the municipalities, an inquiry made by some Parks Capital Committee members, the lease would need to switch to a commercial lease. In order to do that, Agency staff would have needed to complete an appraisal of the Fair Market Value of the property, and a commercial lease payment would have been created based on that value. That lease payment is essentially placed into an escrow account, and those funds are used to pay out any Fair Market Value for site improvements if a lease is terminated.

Because MMNC currently pays \$1/year to Penn State for the property lease, the Agency could not afford to change the lease type and pay thousands of dollars of monthly rent. Penn State is very pleased with the facility's operation and management to date and reiterated that they had no concerns with the property being used as a nature center.

While the grounds lease does not solve the return on investment that the elected officials feel is necessary for the investment of the Spring Creek Education Building, the rest of the lease did allow for additional time based on the completion of the Spring Creek Education Building. Once the Phase II expansion is complete, the new 40-year term of the lease would begin. Because funding from the municipalities to support the Phase II expansion has been delayed, along with several grant application denials due to funding levels, the estimated date for the completion of Phase II must be adjusted.

The Agency staff are waiting for the updated lease draft from the Authority's solicitor so that it can be provided to Penn State for further consideration.

8. PARKS CAPITAL COMMITTEE 2019 SCHEDULE (Bruce Lord and Kathy Matason)

This agenda item is for discussion purposes.

There have been several meeting cancellations in 2019 since most of the work the Agency is doing at this time falls under the Authority's purview. Concerns were shared with Chairman Lord and Chairwoman Matason, so both met mid-summer to discuss the meeting schedule based on tasks that are charged to the Parks Capital Committee.

Because projects that do fall under the guidance of the Parks Capital Committee are delayed, there have been no meetings since July. That was a concern for both Chairpersons, so Chairman Lord would like to suggest a meeting schedule for 2019 that will allow the committee to continue meeting in an abbreviated fashion and on a pre-determined schedule so that Committee members can remain briefed on projects. This discussion should include the need to schedule additional meeting(s) when necessary.

Typically the annual meeting schedule is set in January, which serves as the re-organizational meeting for its members. It is suggested that the Committee members discuss a proposed schedule and process to

hold additional meetings now, and bring that information to the January re-organizational meeting to be implemented.

9. OTHER BUSINESS

- A. Matter of Record -The next Joint Meeting of the Parks Capital Committee and the CRPR Authority is set for January 10 at 12:15 PM, which will serve as the annual re-organizational meeting.

10. ADJOURNMENT

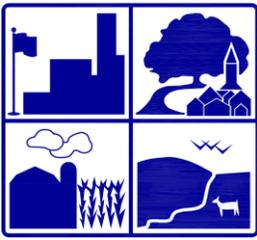
**Enclosures:**

Attachment #1 - July 12, 2018 Meeting Summary



**Manager's Report  
January 7, 2019**

1. Staff completed the submission of a grant application to the Alternative Fuel Incentive Grant Program to offset the incremental cost difference between an all-electric vehicle and a similar gasoline-powered model. Award announcements are anticipated in early spring.
2. I attended a meeting along with staff from Planning & Zoning to discuss the Pine Grove Mills Farmer's Market. Staff plans to continue to work with the Farmer's Market Steering Committee to help serve as a conduit to other stakeholder groups and assist in navigating any regulatory barriers to their operation.
3. Mr. Buckland, Mr. Miller, and I attended a meeting with staff and board members of the Chamber of Business and Industry of Centre County to discuss how to better approach economic development projects in the future in a manner that meets the needs of the business community but also respects the need for transparency and accountability that the Township must demonstrate.
4. I attended the closing of the conservation easement placed on the Harpster Farm located in Pennsylvania Furnace. The total acreage preserved was approximately 60.1 acres. The Township's financial consideration for the easement was \$9,015.00.



# TOWNSHIP OF FERGUSON

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## Planning & Zoning Director's Report Monday, January 7, 2019

### **PLANNING COMMISSION**

The Ferguson Township Planning Commission will reconvene for their Organizational and Regular Meeting on January 14, 2019.

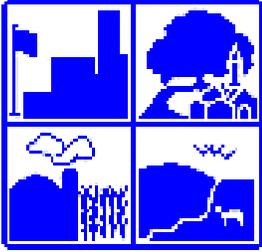
### **LAND DEVELOPMENT PLANS AND OTHER PROJECTS**

- An Active Plan List is attached for the Board of Supervisors consideration (1/2/19).

### **PERMIT ACTIVITY REPORT ■ FERGUSON TOWNSHIP - DECEMBER 2018**

<u>Issue Date</u>	<u>Application No.</u>	<u>Permit</u>	<u>Description of Work</u>	<u>Fee</u>
12/6/2018	14598	TEMP SIGN	CROSSINGS @ STATE COLLEGE	\$15.00
12/20/2018	14838	NEW HOME	NEW HOME WITH ATTACHED GARAGE	\$150.00
12/4/2018	14923	DCKS & GRG	INSTALL PAVER PATIO WITH RETAINING WALL	\$50.00
12/4/2018	14924	COMMERCIAL	NEW TENANT SPACE FOR CORE MORTGAGES SERVICES	\$50.00
12/6/2018	14926	SGN PERMIT	CORE MORTGAGE	\$25.00
12/4/2018	14970	ADD & REN	VARIOUS INTERIOR RENOVATIONS	\$50.00
12/4/2018	14984	LG ACC STR	CONSTRUCT PRE-SCHOOL BUILDING	\$50.00
12/10/2018	14994	ADD & REN	MULTIPLE RENOVATIONS TO GROUND FLOOR	\$50.00
12/19/2018	15050	ADD & REN	TWO STORY ADDITION TO HOME	\$50.00
12/17/2018	15053	ADD & REN	ADD ROOF OVER EXISTING PATIO	\$50.00
12/17/2018	15054	COMMERCIAL	OPERATE AS IS-NO CHANGE	\$50.00
12/18/2018	15070	ADD & REN	FINISH BASEMENT	\$50.00
12/18/2018	15075	COMMERCIAL	NEW TENANT FOR RETAIL SPACE	\$50.00
12/19/2018	15077	DCKS & GRG	REPLACE 18 2nd & 3rd FLOOR DECKS	\$50.00
12/19/2018	15078	DCKS & GRG	REPLACING 18 2ND & 3RD FLOOR DECKS	\$50.00
12/21/2018	15089	NEW HOME	NEW HOME WITH ATTACHED GARAGE	\$150.00
12/21/2018	15095	ADD & REN	CONVERT GARAGE INTO BED & BATH	\$50.00
12/21/2018	15096	ADD & REN	FINISHING BASEMENT	\$50.00
<b>TOTAL</b>				<b>\$1,040.00</b>

FERGUSON TOWNSHIP PLANNING AND ZONING DEPARTMENT				
Dec-18				
Permits	Month 2018	Month 2017	YTD 2018	YTD 2017
New Single Family Dwellings	2	0	15	30
New Multi Family Dwellings	0	0	0	0
New Buildings/Shed	1	0	28	33
Additions	5	3	55	89
Finish Basement	2	1	23	21
Alterations	3	2	12	10
<b>Subtotal</b>	<b>13</b>	<b>6</b>	<b>133</b>	<b>183</b>
Use Permits	Month 2018	Month 2017	YTD 2018	YTD 2017
New Tenant/Use	3	0	16	12
Home Occupation	0	0	4	4
<b>Subtotal</b>	<b>3</b>	<b>0</b>	<b>20</b>	<b>16</b>
Zoning	Month 2018	Month 2017	YTD 2018	YTD 2017
Land Development	0	1	6	3
Minor Alterations	0	1	4	1
<b>Subtotal</b>	<b>0</b>	<b>2</b>	<b>10</b>	<b>4</b>
Miscellaneous	Month 2018	Month 2017	YTD 2018	YTD 2017
Miscellaneous	0	2	27	36
<b>Subtotal</b>	<b>0</b>	<b>2</b>	<b>27</b>	<b>36</b>
Rental Housing	Month 2018	Month 2017	YTD 2018	YTD 2017
Rental Housing	6	6	105	81
<b>Subtotal</b>	<b>6</b>	<b>6</b>	<b>105</b>	<b>81</b>
Signage	Month 2018	Month 2017	YTD 2018	YTD 2017
Signs	1	0	28	19
Temp Signs	1	0	8	9
<b>Subtotal</b>	<b>2</b>	<b>0</b>	<b>36</b>	<b>28</b>
<b>Grand Total</b>	<b>24</b>	<b>16</b>	<b>331</b>	<b>348</b>



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# TOWNSHIP OF FERGUSON

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TO: Ferguson Township Board of Supervisors

FROM: Lindsay K. Schoch, Community Planner  
Raymond J. Stolinas, AICP, Planning & Zoning Director

DATE: January 2, 2019

SUBJECT: Active Plans in the Township

In an effort to keep the Planning Commission and Board of Supervisors up-to-date on current developments, staff is providing a list of Active Plans and other Projects in the Township.

Currently, the Township has two (2) Active Plans and one (1) Proposed Concept Plan.

**Harner Farm Proposed Concept Plan:** The Planning Commission held a preapplication conference with Aspen Whitehall Partners, LLC, Aspen Route 26 Partners, LLC, Penn Terra Engineers, and representatives from Sheetz on Tuesday, December 4, 2018. The proposal is for approximately 27 acres encompassing the southeastern portion of the Harner Farm. The developer is proposing a 6,077 square foot Sheetz convenience store, a multi-use building with retail on the first floor and apartments on the second floor, and a 36 lot residential subdivision. The Planning Commission had the opportunity to make comments and ask questions, but did not have major concerns about the project as it is proposed in the Concept Plan. ***A Traffic Scoping Meeting was held on December 19, 2018 at which time the Township Engineer, Consulting Traffic Engineer and Community Planner met with PennDOT, PennTerra, Wooster Engineers, and Aspen Route 26 Partners to discuss the scoping application. Once the application is amended to show the changes as a result of the meeting, it will be resubmitted, then circulated for signatures by all parties. The scoping application must be approved and signed prior to the Traffic Impact Study being conducted.***

**King Wealth Strategies Land Development Plan:** This Plan, submitted on June 26, 2018 by Penn Terra Engineering, Inc. on behalf of the owners/applicants, Laura and Thomas King, is proposing a conversion of the existing residential rental property located at 222 Blue Course Drive to their financial planning business office. Tax Parcel 24-12-12 contains .369 acres and is zoned General Commercial and lies within the Corridor Overlay. The existing building is 2,800 square feet with 1,400 on both the first floor and the basement. Prior to the submission of the plan, five (5) variances were approved by the Zoning Hearing Board. They are as follows: Reduction of the required parking spaces by 2 spaces; Reduction of the 50' front parking setback by 34'; Reduction of the 15' flexible buffer yard by 7.5'; Reduction of the 75' required minimum distance between driveway entrances by 15'; and Reduction of the 18' required parking stall length by 2'. The Planning Commission made its initial review and comment on the Plan at its July 9, 2018 meeting. The applicant is requesting a variance and two appeals. The Variance (granted) for relief from Section 27-206, Yard Requirements and the Appeals (***withdrawn***) for the interpretation of Section 27-206 and Chapter 26, Stormwater. ***The Plan was resubmitted to staff for review along with a request for consideration of a modification from Chapter 22, Subdivision and Land Development. The request for modification is relief from Chapter 22, Part 5, Section 22-510.2.C Grading, which states: "in all cases, the bottom of the excavations or fills shall be a minimum of five feet from the property line of developed lots. Plan Expiration: April 2, 2019.***

**Pine Hall Traditional Town Development General Master Plan:** On February 21, 2018 Residential Housing Development, LLC submitted a General Master Plan for the Pine Hall TTD. A Master Plan currently exists for Pine Hall, but Residential Housing Development, LLC has a different vision, therefore is proposing a new General Master Plan. The Plan was at a stay until decisions were made from both the Zoning Hearing Board concerning the validity challenge and the Court of Common Pleas concerning the procedural challenge—both decisions have been denied and since, appealed by Circleville Partners. Staff submitted initial plan comments to the developer on Friday, March 30, 2018. The Board of Supervisors reviewed the Plan and made initial comments at its April 16, 2018 meeting and the Planning Commission reviewed and made initial comments at its April 23, 2018 meeting. Staff met with the Pine Hall Development Team to discuss initial comments. A Joint Public Work Session with the Board of Supervisors and Planning Commission was held on June 5, 2018. The Pine Hall Design Team submitted a summary of the meeting to staff. Trans Associates submitted the Traffic Impact Study to staff on Monday, July 30, 2018 for review. The General Master Plan was formally submitted to staff for review on August 1, 2018, which started the 90-day review period for the Board of Supervisors to consider approval of the Plan. The Planning Commission reviewed the proposed plan on Monday, August 27, 2018 and had minimal comments and some public comment. Staff has prepared a schedule to move the Plan forward. The traffic study is under review, terms and conditions and agreements are being prepared in preparation for a Public Hearing. Circleville Partners appealed the decision of the Zoning Hearing Board (to the Court of Common Pleas) and the Court of Common Pleas decision (to the Commonwealth Court). Plan review comments were submitted to the developer on September 19, 2018. Staff had a meeting with the Design Team on October 2, 2018 to discuss the various agreements, terms and conditions, and other items. On October 30, 2018, the plan was resubmitted to staff, reviewed, and comment letter was sent to the developer and their team on November 14, 2018. The traffic impact study is still in discussions and the developer's transportation engineer is reviewing township comments. Plan Expiration is January 24, 2019. ***Traffic Impact Study is still undergoing review and staff is working on the agreements that go along with the plan.***