



**PENNSYLVANIA HOUSE OF REPRESENTATIVES  
ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE**

**HEARING ON WETLANDS ISSUES  
AND LEGISLATION**

**TUESDAY, AUGUST 29, 1995  
CROSS CREEK RESORT  
TITUSVILLE, PENNSYLVANIA**

**TESTIMONY PRESENTED BY:**

**GREGORY P. QUATCHAK, P.E.  
VICE PRESIDENT  
CIVIL & ENVIRONMENTAL CONSULTANTS, INC.  
601 HOLIDAY DRIVE  
FOSTER PLAZA 3  
PITTSBURGH, PENNSYLVANIA 15220  
412-921-3402**

Civil & Environmental Consultants, Inc.

**Pittsburgh** 601 Holiday Drive Foster Plaza 3  
Pittsburgh, Pennsylvania 15220  
Phone (412) 921 - 3402  
Fax (412) 921 - 1815  
Toll Free (800) 365 - 2324

**Cincinnati** 4665 Cornell Road Suite 255  
Cincinnati, Ohio 45241  
Phone (513) 469 - 0200  
Fax (513) 469 - 0216  
Toll Free (800) 759 - 5614

**Cleveland** 9177 Dutton Drive  
Twinsburg, Ohio 44087  
Phone (216) 963 - 1063  
Fax (216) 963 - 1010  
Toll Free (800) 494 - 0252



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## **List of Attachments**

- NAIOP, Western Pennsylvania Chapter - Pennsylvania State Wetlands Protection Position Paper.
- Copies of Portions of Pennsylvania Code Title 25, Chapter 105.

NAIOP.A28



The Forum for Commercial Real Estate

**WESTERN PA CHAPTER**  
For more information:  
NAIOP Western Pennsylvania  
Foster Plaza 10 • 680 Andersen Drive  
Pittsburgh, PA 15220  
412.928.8303 • Fax 412.921.1356

**NAIOP**  
**THE NATIONAL ASSOCIATION OF**  
**INDUSTRIAL AND OFFICE PROPERTIES**  
**WESTERN PA CHAPTER**

**PA STATE WETLANDS PROTECTION POSITION PAPER**

**Larry Simpson, President**  
JSA Architects  
412.788.1971 X209

**Lou Oliva, President-Elect**  
Grubb & Ellis  
412.434.1043

**Jody Risinger, Secretary**  
The Rubenstein Co.  
412.920.3100

**Jim Starman, Treasurer**  
Lane Noland & Smith  
412.391.3366

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DeBartolo Corp.  
412.221.2058

**Jim Storer**  
Mositas Development  
412.923.2255

**Jack Norris**  
The Galbreath Company  
412.471.9500  
**Deborah Baron**  
PNC Realty Holding Corp.  
412.762.4186

**PUBLIC AFFAIRS**  
**Deborah Baron, Co-Chair**  
PNC Realty Holding Corp.  
412.762.4186  
**Jim Storer, Co-Chair**  
Mositas Development  
412.923.2255  
**Larry Simpson, Nat'l Public Affairs**  
JSA Architects  
412.788.1971 X209  
**Joe Barnes, State Alliance**  
Buchanan Ingersoll  
412.562.8926

**Wetlands Protection**  
**Conan McClellan, Sub Committee**  
Massaro Development Corp.  
412.963.2800  
**Industrial Site Redevelopment**  
**Barry Trilling, Sub Committee**  
DKW&M  
412.355.2981  
**Transportation Planning**  
**John Hoy, Sub Committee**  
The Rubenstein Company  
412.920.3100  
**Private-Public Partnerships**  
**Emily Bulka, Sub Committee**  
North Side I.D.C.  
412.322.3523  
**Economic Development**  
**Ron Tarquinio, Sub Committee**  
Tarquin Real Estate  
412.788.4405

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CEC  
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Burns & Scalo Enterprises  
412.257.2066

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**Carolyn Gornat, Co-Chair**  
Bursco Business Park  
412.257.2066

**SOCIAL**  
**Kelley Hoover, Chair**  
Bursco Business Park  
412.257.2066

The NAIOP national membership is comprised of 4,400 professionals who are investors, developers, landowners, lenders, asset managers, brokers, architects, contractors, engineers and attorneys of commercial and industrial properties. There are over 200 members in three chapters within the Commonwealth; Western Pennsylvania, Central Pennsylvania and Delaware Valley.

Our organization's mission is to provide the commercial and industrial real estate industry with a visionary, beneficial and responsive association. The focus of our organization is on the steadfast preservation of private property rights and developing the link between real estate and economic development. The Western Pennsylvania Chapter is active in transportation planning, economic development, private public partnerships, industrial site redevelopment, the formation of statewide alliance and the issue I am here to discuss with you today - wetlands protection.

The environmental importance of the Nation's valuable wetlands is widely understood, and the continuing decline of that resource is a legitimate concern. Clearly, government has a role in stemming the rate of wetlands loss and encouraging restoration of areas that have been degraded by pollution or careless development.

NAIOP recognizes that much of the exiting regulation concerning wetlands protection is governed by Federal law. NAIOP, as a member of the National Wetlands Coalition, is currently lobbying congress in support of HR bill 1330. The ultimate objective of this position statement is to urge enactment of new wetlands legislation and subsequent regulation for Pennsylvania which can be understood and interpreted clearly, fairly, and uniformly.

Additionally, NAIOP proposes that all state regulations and procedures be consistent and no more stringent than existing Federal legislation and regulation.

**Recommendations:****Immediate steps to be taken under current legislation:**

The interpretation of current Pennsylvania wetlands legislation and the implementation of current Pennsylvania regulations need to be brought into conformance with the Federal rules and regulations implemented by the U.S. Army Corp. of Engineers, U.S. Fish and Wildlife Service, United States Soil Conservation Service and the United States Environmental Protection Agency. As part of the effort to achieve this objective, the Commonwealth of Pennsylvania and its Department of Environmental Resources should immediately implement the following changes:

**1. Implement use of 1987 Corp. of Engineers' Wetlands Delineation Manual**

The Commonwealth of Pennsylvania and its Department of Environmental Resources should immediately use as its basis for jurisdictional decisions, the 1987 Corp. of Engineers' Wetlands Delineation Manual. All Federal agencies and most state agencies stopped using the 1989 Federal Manual for Identifying and Delineating Jurisdiction Wetlands in 1991. Therefore, the Pennsylvania Department of Environmental Resources should use the 1987 Corp. of Engineers Wetlands Delineation Manual in implementing its regulatory program.

**2. Recognize Nationwide Permit No. 26**

The Department of Environmental Resources needs to recognize the U.S. Army Corp. of Engineers Nationwide Permit No. 26, in its application of wetlands regulations. The Federal government and most state governments do recognize Nationwide Permit No. 26, while the Pennsylvania Department of Environmental Resources still does not grant water quality certification under the Clean Water Act for this nationwide permit.

**3. Establish a review and approval procedure for wetlands permit applications**

The Commonwealth of Pennsylvania and the Department of Environmental Resources need to implement a standard review and approval procedure for all wetlands permit applications. The water dependency and project sequencing evaluations required under the current regulations are not reviewed either uniformly or in a timely manner by the various state or federal agencies. Such a time frame for permit approval under a standardized procedure should not exceed a maximum of sixty (60) to ninety (90) days.

**NAIOP recommends the introduction of new wetlands legislation to enhance protection of high quality wetlands while encouraging development and job growth for our region.**

NAIOP supports the introduction of wetlands legislation to establish three (3) classifications of wetlands, institute fair and uniform permitting procedures and introduce the creation of wetlands mitigation banks, while balancing relevant economic factors, environmental values, social goals and private property interests.

**1. Establish three (3) classifications and definitions of wetlands based solely on their scientific values and functions.**

### Class I - Exceptional Wetlands

Exceptional Wetlands can be defined consistent with the regulations currently used by the Pennsylvania Department of Environmental Resources and determined by a scientific evaluation of values and functions. Exceptional Wetlands are wetlands which possess significant values and functions and cannot be mitigated except under stringent and specific conditions which are yet to be determined.

### Class II - Mitigatable Wetlands

These wetlands shall be defined by a scientific evaluation of values and functions but do not meet the definition of Exceptional Wetlands. All Class II wetlands shall carry with them the right to mitigate impacts. Such mitigation will require the replacement of Class II wetlands on a ratio of 1 to 1 and be based solely on the replacement of equal values and functions. Such mitigation may take place on or off site or, in the alternative, a fee can be paid to a Mitigation Bank, which amount shall be determined based on the scientific evaluation of equal values and functions.

### Class III - Insignificant Wetlands

Upon scientific evaluation, should the values and functions of the wetlands be determined to be insignificant in that they do not meet the criteria of Class II Mitigatable Wetlands, then the process to receive a permit shall fall under a general or nationwide permitting process. Due to the lack of significant values and functions of Class III wetlands, no mitigation shall be required.

## 2. **Institute fair and uniform permitting procedures**

New legislation and regulation should institute clear, fair and uniform procedures all which can be completed within a sixty (60) to ninety (90) day permitting time frame. The current requirement to demonstrate a project's water dependency must be eliminated and the project sequencing evaluations should be changed to meet the objectives of the wetlands classifications presented herein.

## 3. **Wetlands mitigation banking**

NAIOP supports the creation of "wetlands mitigation banks" to be implemented, overseen and maintained by the Western Pennsylvania Conservancy or other willing public or private land agencies. All Class II, Mitigatable Wetlands, which have the right of mitigation may pay a fee, in lieu of creating additional wetlands, to a wetlands mitigation bank in which the applicant will receive a credit and may proceed with his development without any further liability.

Considering only Exceptional Wetlands, it is presumed that no mitigation of impact can be permitted or implemented except under stringent and specific conditions which are yet to be determined.

All Class II Mitigatable Wetlands carry with it the right to mitigate impacts, and it is presumed that all mitigation impacts will be implemented based on equal replacement of values and functions.

All mitigation shall be based on the scientific evaluation of values and functions.

In addition, NAIOP urges the Pennsylvania State Legislature to adopt a provision under which classification of wetlands in the highest category, which can result in preclusion of all development activity or denial of economically viable uses, including denial of investment backed expectations, is considered a "taking" for which compensation must be provided. Furthermore, this taking or condemnation should also be considered as an "involuntary conversion" pursuant to Section 1033 of the Internal Revenue Code.

#### Summary

NAIOP believes that by the implementation of the above definitions and classifications of wetlands and of the above policy, which essentially duplicate the current Federal regulations, the interest of the environment and private property rights are clearly, fairly and uniformly served.

For more information, please contact:

Deborah A. Baron  
Governmental Affairs Co-Chair  
NAIOP, Western PA Chapter  
One PNC Plaza  
Fifth Avenue & Wood Street, 18th Floor  
Pittsburgh, PA 15265  
(412) 762-4186



Commonwealth of Pennsylvania  
**Pennsylvania Code**

**Title 25. Environmental Resources**

Department of Environmental Resources  
Chapter 105. Dam Safety and Waterway Management



Amended through 22 Pa.B. 5398 (October 31, 1992)

### CONSTRUCTION REQUIREMENTS AND PROCEDURES

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- 05.43. Time limits.
- 05.44. Implementation of work according to specifications.
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### OPERATION, MAINTENANCE AND INSPECTION

- 05.51. Operation and maintenance.
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- 05.61. Procedures for investigations.
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### GENERAL

#### 105.1. Definitions.

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

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

*Along*—Touching or contiguous; to be in contact with; to abut upon.  
*Appurtenant works*—Structures or materials incident to or annexed to dams or water obstructions which are built or maintained in connection with the dams or water obstructions and are essential to their proper functioning. For dams, the term includes, but is not limited to:

- (i) Structures such as spillways, either in the dam or separate therefrom.
- (ii) Low level outlet works.
- (iii) Conduits such as tunnels, pipelines or penstocks through the dam or its abutments.

*Archaeological site*—A known site of archaeological significance based on the Comprehensive State Plan for Conservation of Archaeological Resources. The Comprehensive State Plan is available from the Historic and Museum Commission, Bureau of Historic Preservation, Box 1026, Harrisburg, Pennsylvania 17108.

*Body of water*—A natural or artificial lake, pond, reservoir, swamp, marsh or wetland.

*Bridge*—A structure and its appurtenant works erected over the regulated waters of this Commonwealth.

*Commercially navigable waters of the Delaware River and its navigable tributaries*—Portions of the Delaware River from the Delaware border in the south to the railroad bridge at Morrisville in the north; the Schuylkill River below Fairmount Dam; Chester Creek below Ninth Street; Crum Creek below the Route 291 (Industrial Highway Bridge); Darby Creek below 84th Street; Neshaminy Creek below the Route 13 Bridge; Pennypack Creek below the Frankford Avenue Bridge and Ridley Creek below the Baltimore and Ohio Railroad Bridge Chester.

*Construct*—To erect, build, place or deposit including preliminary preparation of a site for construction.

*Course*—The path taken by a stream, floodway or body of water.

*Cross section*—The area from the top of the bank to the top of the opposite bank of a stream or body of water as cut by a vertical plane passed at a right angle to the course of the stream.

*Culvert*—A structure with appurtenant works which carries a stream under or through an embankment or fill.

*Current*—The rate or velocity of flow of water in a stream, floodway or body of water.

*Dam*—An artificial barrier, together with its appurtenant works constructed for the purpose of impounding or storing water or another fluid or semifluid, or a refuse bank, fill or structure for highway, railroad or other purposes which does or may impound water another fluid or semifluid.

*Design flood*—A specified discharge for which the hydraulic capacity of a structure is designed.

*Discharge of dredged material*—An addition, deposit, disposal or discharge of dredged material into the regulated waters of this Commonwealth including, but not limited to, the addition of dredged material to a specific disposal site located in the regulated waters of this Commonwealth and the runoff or overflow of dredged material from contained land or water disposal area. The term does not include plowing, cultivating, seeding and harvesting for the production of forage fiber and forest products.

*Discharge of fill material—*

(i) An addition, deposit, disposal or discharge of fill into the regulated waters of this Commonwealth, including, but not limited to, the following types of construction:

- (A) Fill that is necessary for the construction of a structure in a regulated water of this Commonwealth.
  - (B) A structure or impoundment requiring rock, sand, soil or other material for its construction.
  - (C) Site-development fills for recreational, industrial, commercial, residential and other uses.
  - (D) Causeways or roadfills.
  - (E) Dams and dikes.
  - (F) Artificial islands.
  - (G) Property protection or reclamation devices, such as riprap, groins, seawalls, breakwaters and revetments.
  - (H) Levees.
  - (I) Fill for structures such as sewage treatment facilities.
  - (J) Intake and outfall pipes associated with power plants and subaqueous utility lines.
  - (K) Artificial reefs.
- (ii) The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products.

*Dredge*—To remove sand, gravel, mud or other materials from the beds of regulated waters of this Commonwealth.

*Dredged material*—A material that is excavated or dredged from the regulated waters of this Commonwealth.

*Encroachment*—A structure or activity which changes, expands or diminishes the course, current or cross section of a watercourse, floodway or body of water.

*FEMA*—The Federal Emergency Management Agency.

*Fill*—Sand, gravel, earth or other material placed or deposited to form an embankment or raise the elevation of the land surface. The term includes material used to replace an area with aquatic life with dry land or to change the bottom elevation of a regulated water of this Commonwealth.

*Flood*—A general but temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers or other waters of this Commonwealth.

*Floodplain*—The lands adjoining a river or stream that have been or may be expected to be inundated by flood waters in a 100-year frequency flood.

*Floodway*—The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and

discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed, absent evidence to the contrary, that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

*Freeboard*—The vertical distance between the water surface elevation experienced during the design flood and the crest elevation of a dam, levee, floodwall or other embankment.

*Height of dam*—The vertical measurement expressed in feet measured from the downstream toe of the dam at its lowest point to the elevation of the top of the dam.

*High hazard dam*—A dam so located as to endanger populated areas downstream by its failure.

*Inundation area*—The land area subject to flood waters as the result of failure of a dam.

*Levee*—An earth embankment or ridge constructed along a watercourse or body of water to confine water within prescribed limits; the term is also known as a dike.

*Limited Power and Water Supply Act*—The act of June 14, 1919 (P. L. 700, No. 293) (32 P. S. §§ 621—625); and the act of June 1 1923 (P. L. 704, No. 294) (32 P. S. §§ 591—600).

*Maintenance dredging*—Dredging conducted as part of construction of a dam, water obstruction or encroachment, and periodic dredging conducted to accomplish one or more of the following purposes:

- (i) Maintain adequate depths for navigation.
- (ii) Assure proper passage of ice and flood flows.
- (iii) Preserve the safety, stability and proper operation of the dam water obstruction or encroachment.

*Mitigation—*

(i) An action undertaken to accomplish one or more of the following:

- (A) Avoid and minimize impacts by limiting the degree magnitude of the action and its implementation.
- (B) Rectify the impact by repairing, rehabilitating or restoring the impacted environment.
- (C) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.
- (ii) If the impact cannot be eliminated by following clauses (A) through (C), compensate for the impact by replacing the environment impacted by the project or by providing substitute resources environments.

Normal pool elevation—

(i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.

(ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control or dam crest which maintains the body of water at a specified height.

(iii) This term does not apply to wetlands.

100-year frequency flood—The flood magnitude expected to be equaled or exceeded on the average of once in 100 years; it may also be expressed as the flood having a 1.0% chance of being equaled or exceeded in a given year.

Operation—Elements of the use, control and functioning of a dam, water obstruction or encroachment during the lifetime of the dam, water obstruction or encroachment, including its removal, which may affect primarily the storage, release or flow of water; the structural safety of a dam, water obstruction or encroachment; or navigation, with due consideration of the other purposes of the act.

Ordinary low water mark—The water surface elevation at ordinary stages of low water, unaffected by drought and unchanged by artificial means.

Owner—A person who owns, controls, operates, maintains or manages a dam or reservoir, water obstruction or encroachment.

PMF—Probable maximum flood—The flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in an area. The PMF is derived from the probable maximum precipitation (PMP) as determined on the basis of data obtained from the National Oceanographic and Atmospheric Administration (NOAA).

Parcel—A portion of land formally set forth and described in a conveyance.

Person—A natural person, partnership, association, corporation, public utility, municipality, municipal authority, political subdivision of the Commonwealth, receiver or trustee and a department, board, commission or authority of the Commonwealth.

Political subdivision—A county, city, borough, incorporated town, township, school district, authority or other governmental unit or a combination thereof acting jointly.

Public service corporation or public utility—A corporation, association or other corporate body having the powers and privileges of corporations not possessed by individuals or partnerships which entity renders a public utility service. The term does not include a municipality municipal authority.

Public service line—The term includes, but is not limited to, electric transmission lines, gas pipelines, telephone lines, water lines, railroad trackage and other facilities owned or operated by public service corporations.

Public utility service—The rendering of one or more of the following services for the public:

(i) Gas, electricity or steam production, generation, transmission or distribution.

(ii) Water diversion, pumping, impoundment or distribution.

(iii) Railroad transportation of passengers or property.

(iv) Operation of a canal, turnpike, tunnel, bridge, wharf or similar structure.

(v) Transportation of natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration or other fluids or substances by pipeline or conduit.

(vi) Telephone or telegraph communications.

(vii) Sewage collection, treatment or disposal.

Regulated waters of this Commonwealth—Watercourses, streams, bodies of water and their floodways wholly or partly within or forming part of the boundary of this Commonwealth.

Replacement—The construction of a new wetland or restoration of previously destroyed wetland, or both.

Reservoir—A natural or artificial basin, which contains or was designed to contain the water or other fluid or semifluid impounded by a dam.

Safety—Security from the risk or threat of significant loss or injury to life, health, property and the environment.

Small projects—Water obstructions or encroachments located in stream or floodplain which will have an insignificant impact on safety and protection of life, health, property and the environment.

Spillway—A device which safely conveys the design flood of a dam without endangering its safety or integrity.

Storage capacity—The volume as expressed in acre-feet of impounded water to the maximum storage level, that is, the top of the dam.

Stormwater management facilities—Manmade measures designed and constructed to convey stormwater runoff away from structures, improved land uses, or to control, detain or manage stormwater runoff to avoid or reduce downstream damages. The term includes, but is not limited to, transportation and related facility drainage systems and manmade stormwater detention basins. The term does not include replacement wetlands or major dams and reservoirs constructed for water supply, recreation, river basin flood control or other regional basin-wide purposes.

*stream*—A watercourse.

*stream crossings*—A pipeline, aerial cable or similar structure which is bed in, along, under, across or over the regulated waters of this Commonwealth.

*stream enclosure*—A bridge, culvert or other structure in excess of feet in length upstream to downstream which encloses a regulated area of this Commonwealth.

*submerged lands of this Commonwealth*—Waters and permanently or periodically inundated lands owned by the Commonwealth, including lands in the beds of navigable lakes and rivers and beds of streams and public highways which are owned and held in trust by the Commonwealth.

*S.G.S.*—United States Geological Survey.

*watercourse*—A channel or conveyance of surface water having a bed and banks, whether natural or artificial, with perennial or intermittent flow.

*water obstruction*—

(i) A dike, bridge, culvert, wall, wingwall, fill, pier, wharf, bankment, abutment or other structure located in, along or across a stream projecting into a watercourse, floodway or body of water.

(ii) In the case of ponds, lakes and reservoirs, a water obstruction considered to be in or along the body of water if, at normal pool elevation, the water obstruction is either in the water or adjacent to and abutting the water's edge.

*Water Obstructions Act*—The act of June 25, 1913 (P. L. 555, No. 32) P. S. §§ 681—691, repealed by section 27 of the act of October 23, 1979 (P. L. 204, No. 70) (32 P. S. § 693.27).

*Wetland functions*—Include, but are not limited to, the following:

- i) Serving natural biological functions, including food chain production; general habitat; and nesting, spawning, rearing and breeding sites for aquatic or land species.

- ii) Providing areas for study of the environment or as sanctuaries and refuges.

- iii) Maintaining natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, natural water circulation processes, current patterns or other environmental characteristics.

- iv) Shielding other areas from wave action, erosion or storm damage.

v) Serving as a storage area for storm and flood waters.

vi) Providing a groundwater discharge area that maintains minimum baseflows.

(vii) Serving as a prime natural recharge area where surface water and groundwater are directly interconnected.

(viii) Preventing pollution.

(ix) Providing recreation.

*Wetlands*—Areas that are inundated or saturated by surface water or groundwater at a 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 and similar areas.

*Wild trout streams*—A stream classified as supporting naturally reproducing trout populations by the Fish Commission. For a list of wild trout streams, the Fish Commission can be contacted at: Fish Commission, Bureau of Fisheries, Division of Fisheries Management, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616.

#### Authority

The provisions of this § 105.1 amended under the act of November 26, 1978 (P. L. 1375, No. 325) (32 P. S. §§ 693.1—693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. §§ 691.1—691.100); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101—679.601).

#### Source

The provisions of this § 105.1 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended October 6, 1978, effective October 7, 1978, 8 Pa.B. 2723; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended February 18, 1983, effective February 19, 1983, 13 Pa.B. 781; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (139040), (117637) to (117640) and (141411).

#### Cross References

This section cited in 25 Pa. Code § 105.13 (relating to permit applications—information and fees); 25 Pa. Code § 105.20a (relating to wetland replacement criteria); 25 Pa. Code § 105.53 (relating to inspections by owners and inspection reports); and 25 Pa. Code Chapter 105 Appendix A (relating to fish enhancement structure; BDWM-GP-1).

### § 105.2. Purposes.

The purposes of this chapter are to:

(1) Provide for the comprehensive regulation and supervision of dams, reservoirs, water obstructions and encroachments in the Commonwealth in order to protect the health, safety, welfare and property of the people.

(2) Assure proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs, including preventive measures necessary to provide an adequate margin of safety.

(3) Assure proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments, in order to prevent unreasonable interference with water flow and to protect navigation.

(4) Protect the natural resources, environmental rights and values secured by Pa. Const. art. I, § 27 and conserve and protect the water quality, natural regime and carrying capacity of watercourses.

#### Source

The provisions of this § 105.2 adopted September 10, 1971, effective September 11, 1971, Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 27, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding it appears at serial page (47975).

### 105.3. Scope.

(a) The following structures or activities are regulated under the act and section 302 of the Flood Plain Management Act (32 P. S. § 679.302):

(1) Dams on a natural or artificial watercourse, other than those licensed under the Federal Power Act (16 U.S.C.A. §§ 791a—825s), where one or more of the following occur:

- (i) The contributory drainage area exceeds 100 acres.
- (ii) The greatest depth of water measured by upstream toe of the dam at maximum storage elevation exceeds 15 feet.
- (iii) The impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(2) Dams used for the storage of water not located on a watercourse and which have no contributory drainage where the greatest depth of water measured at upstream toe of the dam at maximum storage elevation exceeds 15 feet and the impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(3) Dams used for the storage of fluids or semifluids other than water, the escape of which may result in air, water or land pollution or danger to persons or property.

(4) Water obstructions and encroachments other than dams located on, along or across, or projecting into a watercourse, floodway or body of water, whether temporary or permanent.

(5) Flood control projects constructed, owned or maintained by a governmental unit.

b) For the purposes of this chapter, the Department's jurisdiction in and along Lake Erie will be defined by the high water elevation of 572.8 feet International Great Lakes Datum (IGLD) and low water elevation of

568.6 IGLD. Dams, water obstructions and encroachments constructed between elevation 572.8 IGLD and elevation 568.6 IGLD require a permit under section 6 of the act (32 P. S. § 693.6). Dams, water obstructions and encroachments constructed lakeward of elevation 568.6 IGLD require both a permit under section 6 of the act and a Submerged Lands License Agreement under section 15 of the act (32 P. S. § 693.15).

(c) The environmental assessment conducted under this chapter applicable to dams, water obstructions and encroachments for which permit or approval is required under this chapter.

#### Authority

The provisions of this § 105.3 amended under the act of November 26, 1978 (P. L. 1171 No. 325) (32 P. S. §§ 693.1—693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1917 (P. L. 177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101—679.601).

#### Source

The provisions of this § 105.3 adopted September 10, 1971, effective September 11, 1971, Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended October 6, 1978, effective October 7, 1978, 8 Pa.B. 2723; amended November 2, 1980, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (141412) and (117643).

#### Notes of Decisions

Fill site must be sufficiently close to wetlands so as to be "along" them in order to injure jurisdiction in action under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27). *Game Commission v. Department of Environmental Resources*, 509 A.2d 877, (Pa. Commw. 1986).

#### Cross References

This section cited in 25 Pa. Code § 105.71 (relating to scope); 25 Pa. Code § 105.72 (relating to scope); 25 Pa. Code § 105.181 (relating to scope); 25 Pa. Code § 105.251 (relating to scope); 25 Pa. Code § 105.321 (relating to scope); 25 Pa. Code § 105.391 (relating to scope); and 25 Pa. Code § 105.391 (relating to scope).

### § 105.4. Delegations to local agencies.

(a) Under section 17 of the act (32 P. S. § 693.17) and subject to section, the Department may by written agreement delegate to a conservation district or other county agency one or more of its regulatory functions including enforcement and the power to permit, inspect and monitor specified categories of water obstructions and encroachments

No delegation may be made of the authority to issue permits for a structure or encroachment constructed, owned or maintained by the Commonwealth, a political subdivision or a public utility. Delegations may be made of the powers to inspect and monitor the activities, if the permit retains final authority to approve or disapprove permits, and current authority to inspect, monitor and enforce the act.

To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this chapter and to exercise the powers and duties otherwise vested in the Department to implement the act with respect to the categories of water obstructions and encroachments covered by the delegation.

- A delegation agreement shall:
- (1) Specify the powers and duties to be performed by the delegated entity.
  - (2) Specify the categories of water obstructions and encroachment activities to be covered by the delegated agency.
  - (3) Provide for the commitment by the delegated agency of sufficient trained staff and resources to perform the powers and duties to be delegated.
  - (4) Require the delegated agency to maintain records of activities performed under the delegation.
  - (5) Provide for monitoring and supervision by the Department of performance by the delegated agency of the functions delegated under the agreement.

A permit for a water obstruction or encroachment issued by a delegated agency is subject to review by the Department, unless the right of review is waived by the Department. A permit issued by a delegated agency shall become effective 30 days following the receipt of notice by the Department of issuance, unless the permit is disapproved by the Department or an appeal is filed with the Department under section 17 of this act (32 P. S. § 693.17).

When the Department delegates one or more of its regulatory functions to a local agency, the Department will retain the concurrent authority to inspect and monitor categories of water obstructions and encroachments and to enforce the act and this chapter.

#### Authority

The provisions of this § 105.4 amended under the act of November 26, 1978 (P. L. 1375, 25) (32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

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#### Source

The provisions of this § 105.4 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 49. Immediately preceding text appears at serial pages (117643) to (117644).

#### Cross References

This section cited in 25 Pa. Code § 105.446 (relating to procedure for issuance).

### PERMIT APPLICATIONS

#### § 105.11. Permit requirements.

(a) A person may not construct, operate, maintain, modify, enlarge, abandon a dam, water obstruction or encroachment without first obtaining a written permit from the Department.

(b) An existing dam, water obstruction or encroachment constructed under a license or permit issued in compliance with the act of June 1907 (P. L. 496, No. 322) (53 P. S. § 16834 note and 55 P. S. §§ 33 and 332.2) or the Water Obstructions Act, shall be deemed to comply with the construction and operating permit requirements of this section. These projects shall, after September 27, 1980, comply with the operating permit requirements, monitoring and other requirements of this chapter.

(c) The owner of an existing dam, water obstruction or encroachment who does not hold a permit issued under the act of June 8, 1907 (P. L. 496, No. 322) or the Water Obstructions Act shall apply for and receive a permit to operate and maintain the facility under the act on or before January 1, 1981. For purposes of this subsection, a limited power permit issued under the Limited Power and Water Supply Act will be deemed to have been issued under the Water Obstructions Act. These projects shall comply with the operating, maintenance, monitoring and other requirements established under the act.

(d) A permit issued by the Department after July 1, 1979 for construction and operation of a water obstruction or encroachment shall incorporate authorization for normal repairs and maintenance of permitted structures conducted within the original specifications for the water obstruction or encroachment. A repair or maintenance involving modification of the water obstruction or encroachment from its original specifications and a repair or reconstruction involving a substantial portion of the structure shall require the prior written permit of the Department under subsection (a).

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#### 105.14. Review of applications.

(a) An application will be reviewed to determine the proposed project's effect on health, safety and the environment, in accordance with prevailing practices in the engineering profession and in accordance with current environmental principles.

(b) In reviewing a permit application under this chapter for construction or substantial modification of a dam or reservoir, water obstruction encroachment, the Department will use the following factors to make a determination of impact:

(1) Potential threats to life or property created by the dam, water obstruction or encroachment.

(2) Potential threats to safe navigation created by the dam, water obstruction or encroachment.

(3) The effect of the dam, water obstruction or encroachment on the property or riparian rights of owners above, below or adjacent to the project.

(4) The effect of the dam, water obstruction or encroachment on regimen and ecology of the watercourse or other body of water, water quality, stream flow, fish and wildlife, aquatic habitat, instream and downstream uses and other significant environmental factors.

(5) The impacts of the dam, water obstruction or encroachment on nearby natural areas, wildlife sanctuaries, public water supplies, other geographical or physical features including cultural, archaeological and historical landmarks, National wildlife refuges, National natural landmarks, National, State or local parks or recreation areas or National, State or local historical sites.

(6) Compliance by the dam, water obstruction or encroachment with applicable laws administered by the Department, the Fish Commission and river basin commissions created by interstate compact.

(7) The extent to which a project is water dependent and thereby requires access or proximity to or siting within water to fulfill the basic purposes of the project. The dependency shall be based on the demonstrated unavailability of any alternative location, route or design and the use of location, route or design to avoid or minimize the adverse impact of the dam, water obstruction or encroachment upon the environment and protect the public natural resources of the Commonwealth.

(8) Present conditions and the effects of reasonably foreseeable future development within the affected watershed above and below the dam, water obstruction or encroachment:

(i) A dam, water obstruction or encroachment shall be designed, constructed and operated to assure adequacy and compliance with this chapter, taking into account reasonably foreseeable developments within the watershed.

(ii) In assessing the impact of future development upon a dam, water obstruction or encroachment, the Department may require an applicant to submit data regarding estimated development potential and municipal, county and regional planning related to the affected watershed.

(9) Consistency with State and local floodplain and stormwater management programs, the State Water Plan and the Coastal Zone Management Plan.

(10) Consistency with the designations of wild, scenic and recreational streams under the Wild and Scenic Rivers Act of 1968 (33 U.S.C.A. §§ 1271-1287) or the Pennsylvania Scenic Rivers Act (P.S. §§ 820.21-820.29), including identified I-A candidates.

(11) Consistency with State anti-degradation requirements contained in Chapters 93, 95 and 102 (relating to water quality standards; water treatment requirements; and erosion control) and the Clean Water Act (33 U.S.C.A. §§ 1251-1376).

(12) Secondary impacts associated with but not the direct result of the construction or substantial modification of the dam or reservoir water obstruction or encroachment in the area of the project and areas adjacent thereto and future impacts associated with dams, water obstructions or encroachments, the construction of which would result in the need for additional dams, water obstructions or encroachments to fulfill the project purpose.

(13) For dams, water obstructions or encroachments in, across or projecting into a wetland, as defined in § 105.1 (relating to definitions), the Department will also consider the impact on wetlands values and functions in making a determination of adverse impact.

(14) The cumulative impact of this project and other potential existing projects. In evaluating the cumulative impact, the Department will consider whether numerous piecemeal changes may result in major impairment of the wetland resources. The Department will evaluate a particular wetland site for which an application is made with the recognition that it is part of a complete and interrelated wetland area.

(c) In reviewing a permit application under § 105.11(c) (relating to permit requirements) and section 6(c) of the act (32 P.S. § 693.6(c)) relating to the operation and maintenance of an existing dam, water obstruction encroachment, the Department will use the following factors:



Potential threats to life, property or safe navigation created by continuing operation or maintenance of the project.

Adverse impact on stream flow, water quality or the environment might be reduced or mitigated by reasonable changes in the operation of the project.

Compliance of the operation and maintenance of the project with applicable laws administered by the Department, the Fish Commission river basin commissions created by interstate compact.

The Department may review a permit application for the operation and maintenance of existing projects without regard to the design criteria and construction requirements in Subchapters B—J. If the Department finds that an existing dam, water obstruction or encroachment is unsafe or adversely affects property or the environment, it may consider the criteria and requirements reasonably necessary to correct conditions.

#### Authority

Revisions of this § 105.14 amended under the act of November 26, 1978 (P. L. 1375, 32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. §§ 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (77, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of April 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

#### Source

Revisions of this § 105.14 adopted September 10, 1971, effective September 11, 1971; Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text at serial pages (117649) to (117651).

#### Notes of Decisions

The Department was not an "available" alternative supplemental cooling water source within the meaning of 25 Pa. Code § 105.14(b)(7) where there was substantial evidence to support the fact that such use of the reservoir was technically not feasible, there were legal alternatives to such use and it would be unfair to give all unallocated water to one alternative user. *Del-Aware Unlimited, Inc. v. Department of Environmental Resources*, 134 Pa. D. & C. 348, 355 (Pa. Commw. 1986).

#### Cross References

Section cited in 25 Pa. Code § 105.15 (relating to environmental assessment); 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing reservoirs); and 25 Pa. Code § 105.442 (relating to authorization for general

### § 105.15. Environmental assessment.

(a) A person may not construct, operate, maintain, modify, enlarge or abandon the following categories of structures or activities until an environmental assessment has been approved in writing by the Department. The environmental assessment shall be on a form provided by the Department and shall include the following information:

(1) For dams, water obstructions or encroachments permitted under this chapter, the Department will base its evaluation on the information required by § 105.13 (relating to permit applications—information and fees) and the factors included in § 105.14(b) (relating to review of applications) and this section.

(2) For dams, water obstructions or encroachments located in, along or projecting into a wetland for which a permit is not otherwise required under this chapter, the Department will base its evaluation on the information required by § 105.13(d) and the factors included in § 105.14(b) and this section.

(3) For dams located in, along or projecting into an exceptional value water as defined in Chapter 93 (relating to water quality standards) for which a permit is not otherwise required under this chapter, the Department will base its evaluation on the information required by the factors included in § 95.1 (relating to general requirements) and §§ 105.13(d) and 105.14(b) and the following information submitted by the applicant:

(i) The surface area of the impoundment.

(ii) The height of the dam.

(iii) The mean depth and maximum depth of the stream at the location of the dam.

(iv) A description of the release structure.

(v) The rate of a conservation release.

(vi) The design of bypass structures.

(vii) The use of the dam.

(viii) The material used for construction of the dam.

(b) For structures or activities where water quality certification is required under section 401 of The Clean Water Act (33 U.S.C.A. § 1341), an applicant requesting water quality certification under section 401 shall prepare and submit to the Department for review, an environmental assessment containing the information required by subsection (a) for every dam, water obstruction or encroachment located in, along, across or projecting into the regulated water of this Commonwealth.

Based on the results of the environmental assessment required for subsection (a), the Department may require the applicant to undertake further studies and submit additional information, analyses and reports as found necessary by the Department.

The environmental assessment has been conducted by the Department for all general permits, categories of structures and activities listed in 105.12(a)(1)-(10) and (12)-(15) (relating to waiver of permit requirements). The environmental assessment has also been conducted for structures or activities listed in § 105.12(b) or for which water quality certification has been granted for a Nationwide permit regulating the nature or activity and the environmental assessment requirements have been deemed satisfied.

Authority

Provisions of this § 105.15 amended under the act of November 26, 1978 (P. L. 1375, 25) (32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

Source

Provisions of this § 105.15 adopted September 10, 1971, effective September 11, 1971; Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117651) to (117652).

Cross References

See section cited in 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

105.16. Environmental, social and economic balancing.

If the Department determines that there may be an impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the adverse environmental impact. If, after consideration of mitigation measures, the Department finds that the adverse environmental impact will occur, the Department will evaluate the public benefits of the project and determine whether the public benefits outweigh the environmental impacts.

An application for a permit for a structure or activity which the Department determines will have an adverse impact on the environment or

public natural resources will not be approved by the Department unless the applicant demonstrates and the Department finds that the public benefits of the proposed project outweigh the harm to the environment and public natural resources. Public benefits include, but are not limited to:

- (1) Correction and prevention of pollution.
- (2) Protection of public health and safety.
- (3) Reduction of flood damages.
- (4) Development of energy resources.
- (5) Creation or preservation of significant employment.
- (6) Provision of public utility services.
- (7) Other essential social and economic development which benefits a substantial portion of the public.

(c) An application for a permit will not be approved by the Department in the following areas unless the applicant demonstrates and the Department finds that the project will not have an adverse impact upon the public natural resources:

- (1) A project located in or within 100 feet of a watercourse or body of water that has been designated as a National or State wild or scenic river in accordance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271-1287) or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21-820.29).
- (2) A project located in or within 100 feet of a Federal wilderness area designated in accordance with the Wilderness Act (16 U.S.C.A. §§ 1131-1136) or the Federal Eastern Wilderness Act of 1975 (16 U.S.C.A. § 1132).

(3) A project located within an area which serves as a habitat of a threatened or endangered species protected by the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 4601k-1, 668dd-715i, 715a, 1362, 1371, 1372, 1402 and 1531-1543) or for a species which has been designated as a threatened or endangered species under the Wild Resource Conservation Act (32 P. S. §§ 5301-5314), 34 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).

(4) A project located in waters designated as exceptional value in Chapter 93 (relating to water quality standards).

(d) In reviewing permit applications, it will be the policy of the Department to encourage activities that protect the natural condition of the watercourses or other body of water.

(e) This section does not apply to dams, water obstructions or encroachments located in, along, across or projecting into wetlands. These structures or activities will be evaluated under §§ 105.17 and 105.18a-105.20.



ge is prohibited); § 277.202 (relating to areas where construction/demolition waste fillfills are prohibited); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 281.202 (relating to areas where general composting facilities are prohibited); and 25 Pa. Code § 283.202 (relating to areas where resource recovery facilities other processing facilities are prohibited).

### 105.18. [Reserved].

#### Source

he provisions of this § 105.18 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved February 18, 1983, February 19, 1983, 13 Pa.B. 781. Immediately preceding text appears at serial pages (59026) to (59027).

### 105.18a. Permitting of structures and activities in wetlands.

(a) *Exceptional value wetlands.* Except as provided for in subsection (c), the Department will not grant a permit under this chapter for a dam, or obstruction or encroachment located in, along, across or projecting into an exceptional value wetland, or otherwise affecting an exceptional value wetland, unless the applicant affirmatively demonstrates in writing that the Department issues a written finding that the following requirements are met:

- (1) The dam, water obstruction or encroachment will not have an adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15 (relating to review of applications; and environmental assessment).
- (2) The project is water-dependent. A project is water-dependent when the project requires access or proximity to or siting within the wetland to fulfill the basic purposes of the project.
- (3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less effect on the wetland, and not have other significant adverse effects on the environment. An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the project shall be considered as a practicable alternative.
- (4) The project will not cause or contribute to a violation of an applicable State water quality standard.
- (5) The project will not cause or contribute to pollution of groundwater or surface water resources or diminution of resources sufficient to interfere with their uses.

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(6) The cumulative effect of this project and other projects will not result in the impairment of the Commonwealth's exceptional value wetland resources.

(7) The applicant shall replace affected wetlands in accordance with § 105.20a (relating to wetland replacement criteria).

(b) *Other wetlands.* Except as provided for in subsection (c), the Department will not grant a permit under this chapter for a dam, water obstruction or encroachment in, along, across or projecting into the wetland which is not an exceptional value wetland, or otherwise affecting the wetland, unless the applicant affirmatively demonstrates in writing and the Department issues a written finding that the following requirements are met:

- (1) The project will not have a significant adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15. The determination of whether an adverse impact is significant include: an evaluation of the following factors:
  - (i) The areal extent of the wetland impacts.
  - (ii) The wetland's values and functions.
  - (iii) Whether the affected wetlands values and functions are unique to the area or region.
  - (iv) Comments from other State and Federal environmental agencies concerning the scope and effect of the impact.
- (2) Adverse environmental impacts on the wetland will be avoided or reduced to the maximum extent possible.
- (3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less adverse impact on the wetland, and that would not have other significant adverse impacts on the environment. An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the proposed project shall be considered as a practical alternative.
- (i) It shall be a rebuttable presumption that there is a practicable alternative, not involving a wetland, to a nonwater-dependent project, and that the alternative would have less adverse impact on the wetland.
- (ii) To rebut the presumption, an applicant for a permit under this chapter shall demonstrate with reliable and convincing evidence and documentation and the Department will issue a written finding that the following statements are true:

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(A) The basic project purpose cannot be accomplished utilizing one or more other sites that would avoid, or result in less, adverse impact on the wetland.

(B) A reduction in the size, scope, configuration or density of the project as proposed and alternative designs to that of the project as proposed that would avoid, or result in fewer or less severe, adverse impacts on a wetland will not accomplish the basic purpose of the project.

(4) The project will not cause or contribute to a violation of an applicable State water quality standard.

(5) The project will not cause or contribute to pollution of groundwater or surface water resources or diminution of the resources sufficient to interfere with their uses.

(6) The cumulative effect of this project and other projects will not result in a major impairment of this Commonwealth's wetland resources.

(7) The applicant will replace the affected wetlands to compensate for unavoidable impacts, in accordance with § 105.20a.

(c) The Department will not grant a permit under this chapter for a dam, water obstruction or encroachment which has a significant adverse impact on a wetland unless the applicant affirmatively demonstrates and the Department finds in writing that a project is necessary to abate a substantial threat to the public health or safety and that the requirements of subsection (b)(2)-(7) are met.

#### Source

The provisions of this § 105.18a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

#### Cross References

This section cited in 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing).

### 105.19. Complete applications.

(a) An application for a permit is not complete until the necessary information and requirements under the act and this chapter, including proof of financial responsibility, have been satisfied by the applicant.

(b) When the Department determines that an application is incomplete contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall then have 60 days to complete the application or the Department will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application is considered withdrawn. When an

application is considered withdrawn, the Department will close the application file and take no further action to review the file, unless the applicant requests the file to be reopened after submitting the previously identified information to complete the application and a new fee. Fee: will not be refunded after an application is withdrawn.

#### Authority

The provisions of this § 105.19 amended under the act of November 26, 1978 (P. L. 1375, No. 325) (32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (37 P. S. §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (37 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1920 (P. L. 177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

#### Source

The provisions of this § 105.19 adopted September 26, 1980, effective September 27 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (126083) to (126084).

#### Cross References

This section cited in 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing).

### § 105.20. Proof of financial responsibility.

(a) Prior to the approval of a permit under this chapter for construction or modification of a dam, water obstruction or encroachment which may present a substantial potential risk to life or property, the Department will require proof of financial responsibility or security for continued operation and maintenance during the lifetime of the facility. Dams, water obstructions or encroachments which may be subject to the proof of financial responsibility include, but are not limited to, Category 1 dams, Hazard Potential Classification, as defined in § 105.91 (relating to classification of dams and reservoirs) stream enclosures, bridges, levees, fills and floodwalls.

(b) As proof of responsibility or security, the Department may require one or more of the following:

(1) A certificate of public convenience from the Pennsylvania Public Utility Commission if the owner of the proposed facility is subject to regulation under 66 Pa.C.S. (relating to the Public Utility Code).

(2) Ownership or management of the facility by an agency of the Federal, State, county or municipal government or of an interstate compact

(3) A bond or other legal device of a form acceptable to the Department, payable to the Commonwealth, which guarantees proper construction, repair, operation and maintenance, inspection and monitoring, and removal if necessary of the facility. The amount of bond or legal device shall be sufficient to cover the costs of entry, repair,

rection, operation, maintenance, inspection, monitoring or removal of the facility by the Commonwealth in the event of failure of the owner to comply with orders of the Department, terms and conditions of the permit, this chapter and the act and section 302 of the Floodplain Management Act (32 P. S. § 679.302).

Authority

The provisions of this § 105.20 amended under the act of November 26, 1978 (P. L. 1375, 325) (32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

Source

The provisions of this § 105.20 adopted September 26, 1980, effective September 27, 1980 (10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (1266083) to (1266084).

Cross References

This section cited in 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing); 25 Pa. Code § 105.21 (relating to criteria for permit issuance and denial); 25 Pa. Code § 105.25 (relating to transfer of permits); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

105.20a. Wetland replacement criteria.

Wetlands replacement shall meet the following general criteria:

(1) Area ratio. The wetland shall be replaced at a minimum area ratio of replacement acres to affected acres of 1:1. The Department may require the area ratio to exceed 1:1 based on a determination of the area affected and the functions and values which will be destroyed or adversely affected by the project. For structures or activities constructed without a permit, and for which mitigation, as defined in § 105.1 relating to definitions, cannot be achieved, the wetland shall be replaced at a minimum area ratio of 2:1 (replacement acres: affected acres). The Department may require the area ratio to exceed 2:1 based on a determination of the area affected and the functions and values which were destroyed or adversely affected by the project.

(2) Function and value replacement. Functions and values that are physically and biologically the same as those that are lost shall be replaced at a minimum ratio of 1:1. The Department may require the functions and values ratio to exceed 1:1 based on the area affected and the functions and values which will be destroyed as adversely affected by the project and the replacement ratio. For structures or activities constructed without a permit, and for which mitigation, as defined in § 105.1, cannot be achieved, the wetland shall be replaced at

a minimum area ratio of 2:1. The Department may require the area ratio to exceed 2:1 based on a determination of the area affected and the functions and values which were destroyed or adversely affected by the project.

(3) Siting criteria. Replacement shall be located adjacent to the impacted wetland unless an alternative replacement site is approved by the Department. Alternative replacement sites will generally not be approved unless the replacement site is located within the same watershed as the wetland being replaced or within the designated boundaries of the coastal zone management area where the loss occurs. (b) In addition to the general criteria in subsection (a), the Department will use its guidelines entitled "Design Criteria for Wetlands Replacement" in making decisions under this section. These guidelines provide for design, flexibility and utilization of best available technology in environmental engineering. These guidelines are available from the Division of Rivers and Wetlands Conservation, Post Office Box 8761, Harrisburg, Pennsylvania 17105-8761.

Authority

The provisions of this § 105.20a issued under the act of November 26, 1978 (P. L. 1375, No. 325) (32 P. S. §§ 693.1-693.27); the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. §§ 691.1-691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of the act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the act of October 4, 1978 (P. L. 851, No. 166) (32 P. S. §§ 679.101-679.601).

Source

The provisions of this § 105.20a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

Cross References

This section cited in 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); and 25 Pa. Code § 105.21 (relating to criteria for permit issuance and denial).

PERMIT ISSUANCE, TRANSFER AND REVOCATION

§ 105.21. Criteria for permit issuance and denial.

(a) In addition to the other requirements of this chapter, a permit application will not be approved unless the applicant demonstrates that the following conditions are met:

- (1) The application is complete and accurate.