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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 21, 2008

Honorable John Hanger, Acting Chairperson  
Environmental Quality Board  
Rachel Carson State Office Building  
400 Market Street, 16th Floor  
Harrisburg, PA 17101

Re: Regulation #7-404 (IRRC #2717)  
Environmental Quality Board  
Bluff Recessiona and Setback

Dear Acting Chairperson Hanger:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee  
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee  
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee  
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

# Comments of the Independent Regulatory Review Commission



## Environmental Quality Board Regulation #7-404 (IRRC #2717)

### Bluff Recession and Setback

November 21, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the August 23, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

#### **Section 85.26. Designated municipalities and minimum bluff setback distances for identified categories of structures. – Statutory Authority; Reasonableness.**

The Bluff Recession and Setback Act (Act) defines a “bluff recession hazard area” as “[a]n area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby or future structures or utility facilities.” (32 P.S. § 5203). The Act requires the EQB to “identify and designate those areas and municipalities subject to bluff recession hazards” (32 P.S. § 5204(c)) and to establish by regulation “minimum bluff setback requirements for bluff recession hazard areas.” (32 P.S. § 3206). We note that although municipalities may contain within their borders “one or more areas subject to bluff recession hazards” (32 P.S. § 5203), EQB’s statutory mandate to promulgate regulations is limited to governing bluff recession hazard *areas*, not municipalities.

Commentators assert that while some portions of the City of Erie shoreline meet the definition of “bluff recession hazard area,” others do not. They further argue that by designating the entire City of Erie as a bluff recession hazard area, rather than distinguishing specific bluff recession hazard areas within its boundaries, the EQB has exceeded the scope of its statutory authority. The final-form regulation should either identify the specific bluff recession hazard areas within the City of Erie’s boundaries or further explain the EQB’s statutory authority for designating the entire municipality as a bluff recession hazard area.

# Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Debra L. Failor  
**Agency:** Environmental Quality Board  
**Phone:** 7-2814  
**Fax:** 705-4980  
**Date:** November 21, 2008  
**Pages:** 3

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REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-404 (IRRC #2717). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Debra L. Failor Date: 11/21/08