

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of Environmental Protection

(2) Agency Number:

Identification Number: 7-404

IRRC Number:

2717

(3) Short Title: Bluff Recession and Setback

(4) PA Code Cite: Title 25, Chapter 85

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate; 717-783-8727; RCSOB, 400 Market Street, Harrisburg, PA 17105; mtate@state.pa.us

Secondary Contact: Kelly Heffner; 717-783-8727; RCSOB, 400 Market Street, Harrisburg, PA 17105; kheffner@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105

Express Mail: Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301

Email: RegComments@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
- ☐ Certification by the Governor
- ☐ Certification by the Attorney General

RECEIVED

2009 JUN -2 PM 12:18

INDEPENDENT REGULATORY
REVIEW COMMISSION

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This regulation promotes proper planning in areas along Lake Erie that are prone to severe erosion and property damage. This regulation designates Bluff Recession Hazard Areas to protect the health and safety of coastal property owners by preventing the destruction of property and structures.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: October 22, 2008

B. The date or dates on which public meetings or hearings will be held: September 23, 2008

C. The expected date of promulgation of the proposed regulation as a final-form regulation: September 2009

D. The expected effective date of the final-form regulation: September 2009

E. The date by which compliance with the final-form regulation will be required: September 2009

F. The date by which required permits, licenses or other approvals must be obtained: 6 months after the effective date of the rulemaking.

(10) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Bluff Recession and Setback Act (32 P.S.5201-5315).

The Federal Coastal Zone Management Act of 1972 (CZMA), as amended, provides development guidelines and funding for a state Coastal Resources Management (CRM) Program.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The Bluff Recession and Setback Act (32 P.S.5201-5315) requires that the Environmental Quality Board (EQB) establish minimum bluff setback requirements and provide standards and procedures for ordinance development.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The compelling public need for this proposed rulemaking is based on the six basic purposes of the Bluff Recession and Setback Act (BRSA). Those purposes are:

- To encourage planning and development in bluff areas that is consistent with sound land use practices,
- To protect people and property in bluff areas from the dangers and damages associated with the inevitable recession of bluffs,
- To prevent and eliminate urban and rural blight which results from the damages of bluff recession,
- To minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities,
- To authorize a comprehensive and coordinated program to regulate development activities through the use of setback ordinances in Bluff Recession Hazard Areas to

Regulatory Analysis Form

preserve and restore the natural ecological systems, and to prevent continuing destruction of property and structures, and

- To encourage local administration and management of bluffs consistent with the duty of the Commonwealth as trustee of natural resources, and the constitutional right of the people to the preservation of the natural, scenic, aesthetic and historic values of the environment.

There will be longer usable life of structures and protection of property values for 20 residential coastal properties, two commercial entities, three public parks, one municipal historical site and one large vacant industrial site in the newly designated area in the City of Erie. The Erie County Department of Planning estimates that these properties have an approximate current total value (based on recent assessments) of \$5,162,284.

The Commonwealth will have fewer expenses for permit review and enforcement actions, an approximate savings of \$10,000 because there will be fewer debris clean-up enforcement actions as noted in Item 19.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

The study the Department relied on to support this regulation can be found at <http://www.dep.state.pa.us/river/czmp.htm>, once there go to Program Reference Documents and then to Bluff Recession Hazard Area Designations

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The City of Erie's costs to develop and implement a bluff setback ordinance the first year are approximately \$500. Future costs of administration, monitoring and training are approximately \$1000 annually.

Property owners in the newly designated area in the City of Erie will be required to comply with the new City ordinance which may impact the future development and use of individual parcels.

Regulatory Analysis Form

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Approximately 20 residential properties, two commercial entities, three public parks, two community access easements, one municipal historical site and one large vacant industrial site are located within the City of Erie.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because the regulations impact only new construction within the designated hazard area, there is estimated to be minimal cost of compliance to the regulated community since the new construction can be designed or located outside the designated hazard area. There is a significant savings to the regulated community associated with compliance. Compliance over the next 20 years within the City of Erie will provide longer usable life of structures and protection of property values for 20 residential coastal properties, two commercial entities, three public parks, one municipal historical site and one large vacant industrial site valued at approximately \$5,162,284.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The City of Erie is the only local government that will be affected monetarily by compliance. Costs to develop and implement a bluff setback ordinance the first year are approximately \$500. Future costs of administration, monitoring and training are approximately \$1000 annually. These are net costs after cost share funding from the CRM Program has been applied.

Federal funds are available through the CRM Program to help develop and implement this ordinance. Future monitoring, training and technical assistance will also be provided by the CRM Program. In addition, Technical Advisory Services (TAS) are provided by the Department to coastal property owners along the Lake Erie shoreline. The TAS is a free service implemented by the staff of the CRM Program and has been in existence for 25 years. The TAS provides technical advice to existing and prospective shoreline and bluff property owners on the causes and effects of shoreline erosion and of progressive bluff recession. This service is highly successful and is credited with saving millions of dollars in property values. The TAS also provides information regarding best management practices for the proper management of bluff

Regulatory Analysis Form

and shoreline properties along Lake Erie. Under a Direct Action Policy in the federal and state approved and jointly funded CRM Program, "...the Program shall provide technical assistance and advice concerning the design of structural and non structural methods of shore protection and bluff stabilization".

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

By keeping new development out of the Bluff Recession Hazard Area fewer structures will collapse into the waters of Lake Erie resulting in less "debris clean-up" enforcement actions. An estimate of cost savings for the Commonwealth of not having to process clean-up enforcement actions is \$5000 (\$2500 per enforcement case x 2 incidents over the next 20 years). This is a conservative estimate because if the areas where the 20 residential structures, the two commercial entities and the vacant industrial land, which has a high potential for development, are not restricted as to the location of new development or expansions of existing development, many of these sites will experience development in the Bluff Recession Hazard Area and may experience bluff failure and structural damage – requiring clean-up enforcement action by the Commonwealth if these structures collapse into Lake Erie.

Also, in these areas of potential development in the Bluff Recession Hazard Area by placing new development outside the Bluff Recession Hazard Area or not expanding current structures into the Bluff Recession Hazard Area there will be less of a demand for shoreline protection devices and fewer encroachment permit applications. This will result in less permit review time by DEP staff. It is estimated that as many as five applications will be submitted over the next 20 years if left unregulated. With an estimated average permit processing expense by the Commonwealth of \$1000 per application, that cost saving (benefit) to the Commonwealth is \$5000. A total savings benefit to the Commonwealth as a result of this proposed rulemaking is \$10,000.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	\$258,114	\$258,114	\$258,114	\$258,114	\$258,114
Local Government	0	0	0	0	0	0
State Government	0	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000

Regulatory Analysis Form

Total Savings	0	\$260,114	\$260,114	\$260,114	\$260,114	\$260,114
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	\$500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
State Government	\$1,500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Total Costs	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Environmental Program Management (#161-10382)	\$37,049,000	\$36,868,000	\$39,909,000	\$41,800,000
Environmental Program Operations (#160-10381)	\$87,897,000	\$89,847,000	\$98,582,000	\$102,149,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Restricting and limiting development in the Bluff Recession Hazard Areas will help maintain property values that have a direct connection to the local tax base.

Regulatory Analysis Form

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Nine municipal governments were asked to comment on the draft report identifying tentatively designated Bluff Recession Hazard Areas. They are: Springfield Township, Girard Township, Lake City Borough, Fairview Township, Millcreek Township, Erie City, Lawrence Park Township, Harborcreek Township and North East Township. The City of Erie was the only municipality to submit comments. The Department's Water Planning Office (WPO) made contact with the City of Erie to discuss their comments but no resolution resulted. Following the election of a new mayor in 2006, the WPO again made contact with the City of Erie to ask for the review of the bluff study. The WPO met with the City Zoning Officer on April 3, 2007, to discuss the recommended bluff setback distances in the study. The WPO accepted the City's request to consider modifying the minimum bluff setback distances proposed in the bluff study, reducing the minimum distance from 50 feet to 25 feet.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Relative to controlling new development and improvements to existing structures in designated Bluff Recession Hazard Areas (BRSA) along Lake Erie, there is another state level regulatory approach. The Uniform Construction Code (UCC) is the other set of State regulations, administered through the Department of Labor and Industry, which limits development in steep slope areas across the state. The UCC covers some of the same area as the BRSA. The compliance costs associated with the UCC are passed along directly to property owners. Under the BRSA, 50% of the costs of compliance and all technical assistance and training cost are absorbed by federal funds granted through the CRM Program. In addition the BRSA prevents development in areas that could develop into a steep slope in the future. However, the UCC covers only existing steep slopes greater than 1:3 (18 degrees). Further, the UCC was not designed specifically to address bluff recession along Lake Erie. It can be used as a supplemental regulation to complement and support development setbacks in hazardous areas prone to severe erosion and property damage.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no companion federal regulations to compare to Chapter 85, Bluff Recession and Setback and related proposed rulemaking.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Other Great Lake states (Minnesota, Wisconsin, Michigan, Ohio, and New York) have similar setback programs. This proposed rulemaking would not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Existing reporting from the Erie County Department of Planning to the CRM Program will not change. As with the other eight municipalities, the City of Erie will be required to submit annually a report of building permits issued in the Bluff Recession Hazard Area for the preceding calendar year. These reports include the building permit application, which are already required by the municipality, photographs of before and after the improvement, a property appraisal (if needed) and any variance or zoning hearing board action taken by the municipality. This proposal replaces the specific list of records and supporting documentation required in §85.55 (relating to records and audits) with the requirement that the records be maintained in accordance with generally accepted accounting practices.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not Applicable.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

2009 JUL -2 PM 12:48

INDEPENDENT REGULATORY
AGENCY COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL _____

☒ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-404

DATE OF ADOPTION JUNE 16, 2009

BY John Hanger

TITLE JOHN HANGER
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive of Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL JUN 25 2009

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(Strike inapplicable title)

☒ Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

BLUFF RECESSION AND SETBACK

25 Pa. Code, Chapter 85

**Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 85)
(Bluff Recession and Setback Regulation)**

Order

The Environmental Quality Board (Board) proposes to amend Chapter 85, Bluff Recession and Setback, to make minor editorial changes, clarify municipal response on designation, add the City of Erie to the list of municipalities having a Bluff Recession Hazard Area, clarify minimum setback distances, and delete requirements for specific supporting documentation.

This order was adopted by the Board at its meeting of June 16, 2009.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Andrew Zemba, Assistant Director, Water Planning Office, Rachel Carson State Office Building, 2nd Floor, 400 Market Street, P.O. Box 2063, Harrisburg, PA 17105-2063, (717-772-4785), or William S. Cumings, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464 (e-mail: wcumings@state.pa.us). Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or 800 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us.

C. Statutory Authority

These amendments are made under the authority of the Bluff Recession and Setback Act (32 P.S. §§ 5201 – 5215) and Section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20) which grant the Board the authority to develop and adopt rules and regulations to implement the provisions of the Bluff Recession and Setback Act.

D. Background of the Amendments

In response to a 2001 petition to the Board by Millcreek Township, Erie County, to clarify the designation of Bluff Recession Hazard Areas along Lake Erie, the Department conducted a study of Pennsylvania's entire Lake Erie shoreline to determine Bluff Recession Hazard Areas. Considering the results of this study and other related studies and data, and responses from the coastal municipalities along Lake Erie concerning tentative designations of Bluff Recession Hazard Areas, the Department recommended including the City of Erie as a municipality identified as having a Bluff Recession Hazard Area.

A majority of the shoreline of the City of Erie is along the southern edge of Presque Isle Bay, sheltered from open lake wave energies by the protective land feature of Presque Isle Peninsula. However, approximately 1.5 miles of the City's eastern shoreline are outside Presque Isle Bay and are exposed to

open lake wave energies. The bluffs adjacent to this section of shoreline are undercut by wave attack, have steep slopes, are periodically devoid of vegetation, and have experienced active bluff recession or have been heavily protected. If left unregulated with setbacks and improvement limitations, existing and future development in this area will be subject to property damage from bluff recession. Therefore, this portion of the City of Erie is designated as having a Bluff Recession Hazard Area and the City of Erie should be included as a regulated municipality in Chapter 85 (Bluff Recession and Setback Rules and Regulations).

The compelling public need for this proposed rulemaking is based on the six basic purposes stated in the Bluff Recession and Setback Act and Chapter 85. Those purposes are:

- To encourage planning and development in bluff areas that is consistent with sound land use practices;
- To protect people and property in bluff areas from the dangers and damages associated with the inevitable recession of bluffs;
- To prevent and eliminate urban and rural blight which results from the damages of bluff recession;
- To minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities;
- To authorize a comprehensive and coordinated program to regulate development activities through the use of setback ordinances in Bluff Recession Hazard Areas to preserve and restore the natural ecological systems, and to prevent continuing destruction of property and structures; and
- To encourage local administration and management of bluffs consistent with the duty of the Commonwealth as trustee of natural resources, and the constitutional right of the people to the preservation of the natural, scenic, aesthetic and historic values of the environment.

E. Summary of Changes to the Proposed Rulemaking

A brief description of the proposed amendments follows:

Subchapter A. General Provisions

Minor clarification changes to: Section 85.1. Definitions, under *Person[s]* bold **any**, and adding the word **Subsection** in front of the section number in subsections §85.26(d) and §85.35.

Subchapter B. Procedure for Designation of Areas with Bluff Recession Hazards.

Section 85.12(c) added with the following language, "In accordance with Section 4(c) of the Bluff Recession and Setback Act, 32 P.S. 5204(c), the geographic areas identified as Tentatively Identified Bluff Recession Hazard Areas in Sections I and II of the Department's 'Study to Tentatively Designate Bluff Recession Hazard Areas', dated November 2004, are designated as Bluff Recession Hazard Areas. The Department shall make the November 2004 Study available to the public." This change was made in response to comments made during the public comment period, and comments made at the Water Resource Advisory Committee meeting April 8, 2009.

Modify § 85.26 (c) to read, "Except as provided in Subsection (e), regardless of any other provision of law or ordinance to the contrary, the minimum Bluff setback distances in the named

municipalities that possess a Bluff Recession Hazard Area, as designated in Section 85.12, shall be in accordance with the following table.” This was a change that helps clarify that Section 85.12 was added.

Subchapter D. Municipal Bluff Setback Ordinance and Regulations

Removed from the final rulemaking are the new requirements proposed in §85.37(7) (i) and (ii) for every deed or plat within the bluff recession hazard area to include an appropriate bluff recession hazard area notice. It was decided that this notification task could be accomplished through the technical assistance element of the program and did not require regulatory change. The change was made as a result of a comment received during the public comment period, and comments made at the Water Resource Advisory Committee meeting April 8, 2009.

F. Summary of Comments and Responses on the Proposed Rulemaking

Twelve sets of comments were received, addressing the following areas:

Vegetation management requirements

In the preamble to the rulemaking, the Department sought comments on the possible inclusion of a section on Proper Vegetation Management. Two comments were submitted, and both opposed a regulatory approach to vegetation management. The final rulemaking does not contain requirements for vegetation management. Through the Coastal Resources Management program, the Department will continue the current practice of working with partners to provide outreach and workshops regarding management of vegetation.

Specific location of Bluff Recession Hazard Areas (BRHAs)

Several comments questioned whether the proposed regulatory language clearly identified the location of BRHAs. Another questioned whether the City of Erie Bayfront was included in the areas identified as BRHAs. The Department has considered the commentators’ recommendations and has amended the rulemaking to clarify that the 2004 study identifies the specific locations of BRHAs. The changes also include a requirement for the Department to make the study publicly available. The changes to the regulations were the addition of Section 85.12(c), and a modification of Section 85.26(c), as follows:

85.12 (c) IN ACCORDANCE WITH SECTION 4(c) OF THE ACT, 32 P.S. 5204(c), THE GEOGRAPHIC AREAS IDENTIFIED AS "TENTATIVELY IDENTIFIED BLUFF RECESSION HAZARD AREAS" IN SECTIONS I AND II OF THE DEPARTMENT'S "STUDY TO TENTATIVELY DESIGNATE BLUFF RECESSION HAZARD AREAS", DATED NOVEMBER 2004, ARE DESIGNATED AS BLUFF RECESSION HAZARD AREAS. THE DEPARTMENT SHALL MAKE THE NOVEMBER 2004 STUDY AVAILABLE TO THE PUBLIC.

85.26 (c) [Designated municipalities and setback distances in feet.] EXCEPT AS PROVIDED IN SUBSECTION (e), regardless of any other provision of law or ordinance to the contrary, the minimum BLUFF setback distances in the named municipalities THAT POSSESS A BLUFF RECESSION HAZARD AREA, AS DESIGNATED IN SECTION 85.12, shall be in accordance with the following table:

Also, the City of Erie Bayfront was not included in the areas tentatively designated as BRHAs.

Methodology for tentatively designating BRHAs

Several comments questioned the methodology, science and data utilized to tentatively identify BRHAs. Several comments suggested that specific sites in the City of Erie and Millcreek Township be designated as outside of BRHAs. Others questioned whether the data from the 2004 study was utilized.

The Department utilized the following sources of data to conduct its study in order to make recommendations to tentatively designate Bluff Recession Hazard Areas (BRHAs): a report contracted through a third party; high altitude aerial photography; low altitude oblique-angle color prints; and control point measurement data. Some of the photography dated back to 1938. Based on the analysis of this data, the Department recommends no changes to the proposed regulations regarding the tentative designations. The methodology was also discussed in-depth at several advisory committees that supported the regulatory package. Regarding the question of whether data from the 2004 study was employed, the changes to Sections 85.12 and 85.26 help clarify that the study formed the basis for the designations.

Support for the rulemaking

Two comments expressed support for the rulemaking.

Minimum setback distance

One comment supported reducing the minimum possible setback distance from 50 to 25 feet, and suggested that the setback distances established for North East Township be reduced. The regulations establish a setback of 25 feet only for the City of Erie. Based on the analysis of data and employment of a methodology in the 2004 Study, the setback distances for North East Township are not changed. Setback distances for each municipality are listed in Section 85.26.

Setback Distances

One comment questioned the data utilized to calculate setback distances. Another comment suggested variable setback distances in a municipality. Two sources of data were employed to determine setback distances: Photogrammetric analysis of high altitude aerial photography and control point monitoring. Some of the high altitude aerial photography dated as far back as 1938. The control point measurement data involves on-site measurement of bluff recession from fixed monuments in the ground. Based on the analysis of this data, no changes to the setback distances in the proposed rulemaking were made.

Deed notices

One comment suggested removing the proposed language in Section 85.37 requiring that deeds and plats include appropriate notice of BRHAs. Based upon further research, the intent of this language can be better addressed by developing a voluntary training program that would bring together realtors, municipalities, etc. The language in the proposed rulemaking has been deleted.

Timeframe for future updates

One comment asked for a timeframe to be established regarding future updates, so that the entities required to comply have ample time to incorporate changes to their zoning and other local codes.

Section 85.12 of the regulations requires that studies will be conducted when necessary to identify bluff recession hazard areas. The Department's Coastal Resources program performs on-going monitoring and

evaluation of bluff recession that helps identify when studies are necessary. Regarding the allotment of ample time for entities to make changes to local codes, Section 6(a) of the Bluff Recession and Setback Act provides that “[w]ithin 6 months following designation by the [EQB] of an area and municipality subject to bluff recession hazards, each designated municipality shall adopt or amend, and shall implement, such ordinances and regulations as are necessary to regulate construction and development activities in areas subject to bluff recession hazards” Section 4 of the Act also requires that the Department notify the chief executive officer of each municipality prior to submitting the report, and the municipality comments, to EQB. Based on these requirements, the Department does not recommend any changes to the proposed rulemaking regarding timeframes.

EQB Scope of Authority

The Independent Regulatory Review Commission (IRRC) questioned why specific BRHAs were not identified. This comment is related to previous comments that the rulemaking package did not clearly indicate the location of BRHAs. The Department has considered the commentator’s recommendations, and proposes that the previously mentioned amendments to Section 85.12 and Section 85.26 will address this concern.

G. Benefits, Costs and Compliance

Benefits

The benefit of this proposed rulemaking is the protection of the health and safety of coastal property owners, the prevention of the destruction of property and structures in designated Bluff Recession Hazard Areas, and the prevention of the introduction of debris and hazardous materials into the coastal environment. Federal funds will be available through the Coastal Resources Management (CRM) Program to help develop and implement any necessary ordinance. Future monitoring, training and technical assistance will also be provided by the CRM Program.

Also of interest to the public is the availability of Technical Advisory Services (TAS) provided by the Department to coastal property owners along the Lake Erie shoreline. The TAS is a free service implemented by the staff of the CRM Program and has been in existence for 25 years. The TAS provides technical advice to existing and prospective shoreline and bluff property owners on the causes and effects of shoreline erosion and of progressive bluff recession. This service is highly successful and is credited with saving millions of dollars in property values. The TAS also provides information regarding best management practices for the proper management of bluff and shoreline properties along Lake Erie. Under a Direct Action Policy in the federal and state approved and jointly funded CRM Program, “...the Program shall provide technical assistance and advice concerning the design of structural and non structural methods of shore protection and bluff stabilization”.

Compliance Costs

Because the regulations impact only new construction within the designated hazard area, there is estimated to be minimal cost to the regulated community since any new construction can be designed or located outside the designated hazard area. Furthermore, costs associated with the adoption of zoning ordinances by affected municipal governments are also anticipated to be minimal.

Compliance Assistance Plan

Federal funding is available through the Coastal Resources Management Program to assist municipalities with the development and implementation of ordinances that are compliant with this rulemaking. In addition, training and technical assistance will be provided by the Coastal Resources Management Program to affected municipalities and property owners along the Lake Erie shoreline.

Paperwork Requirements

These regulatory revisions should have no significant paperwork impact on the Commonwealth, its political subdivisions, or the private sector.

H. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This rulemaking promotes a multi-media pollution prevention approach for the proposed regulated area of the City of Erie. The construction setbacks in Chapter 85 for new construction and improvements to existing structures within the Bluff Recession Hazard Areas will promote safe and sensible practices by placing new construction outside and away from Bluff Recession Hazard Areas, making all new construction moveable and minimizing improvements to existing structures in Bluff Recession Hazard Areas. The proposed minimum setbacks for new construction in the proposed BRHA of the City of Erie are (from the bluff crest) 25 feet for residential, 25 feet for commercial and 25 feet for industrial. Regulating new construction to keep it out of and away from the Bluff Recession Hazard Area will in effect prevent pollution of Lake Erie waters by avoiding collapse of structures into the waters of Lake Erie caused by erosion and progressive bluff recession.

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 13, 2008, the Department submitted a copy of this proposed rulemaking, published at 38 *Pa.B.* 4617, and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act, on (blank) , these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form regulations.

K. Findings of the Board The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pennsylvania Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 38 *Pa.B.* 4617 on August 23, 2008.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 *Pennsylvania Code*, Chapter 85 are amended to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

BY:

JOHN HANGER
Chairperson
Environmental Quality Board

ANNEX A

CHAPTER 85. BLUFF RECESSION AND SETBACK Subchapter A. GENERAL PROVISIONS

§ 85.1. Definitions.

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

Act—The Bluff Recession and Setback Act, the Act of May 13, 1980 (No. 1980-48) (32 P. S. § § 5201—5215).

* * * * *

EOB-Environmental Quality Board

* * * * *

Person[s]—An individual, partnership, public or private association or corporation, firm, trust estate, municipality, governmental unit, public utility or other legal entity **whatsoever** which is recognized by law as the subject of rights and duties. **Whenever** used in [a] **ANY** section prescribing or imposing a penalty, the term “**person**” shall include the members of a partnership, **the officers, members, servants and agents of an association, officers, agents and servants of** a corporation, but shall exclude any department, board, bureau or agency of the Commonwealth.

Plat—A map, drawing or print accurately drawn to scale showing the proposed or existing [the Commonwealth] **location of all structures**.

* * * * *

§ 85.2. Scope.

This chapter is adopted in accordance with the duties **relating to bluff recession** placed on the Department by the Act, and they shall apply to all municipalities designated as having bluff recession hazard areas and to all persons constructing, installing or engaging in substantial improvement to any structure or utility facility within bluff recession hazard areas.

* * * * *

Subchapter B. PROCEDURE FOR DESIGNATION OF AREAS WITH BLUFF RECESSION HAZARDS

§ 85.11. General requirements.

The Department is authorized by section 4 of the act (32 P. S. § 5204) to identify areas in this Commonwealth [which have] that contain bluff recession hazard areas. Prior to formal designation by the [Environmental Quality Board] EQB, the tentatively identified municipality will be invited to submit comments to the Department concerning the designation.

* * * * *

§ 85.12. Identification of bluff recession hazards.

(a) Under section 4 of the act (32 P. S. § 5204), studies will be conducted when necessary to identify bluff recession hazard areas in this Commonwealth. Studies prepared for these purposes shall do all of the following:

(1) Identify the geographic location of the potential hazard area; county, township, and so forth.

(2) Define and evaluate the bluff recession hazard in relation to geophysical processes such as recession and erosion related phenomena and examine the causative factors.

(3) Review and evaluate existing and potential damage to property and structures caused by progressive bluff recession.

(4) Develop a recession rate based on historical evidence.

(5) Develop conclusions and recommendations based on the findings of the studies.

(b) To prevent the unnecessary expenditure of public funds, the Department will inventory, identify, and evaluate previous studies that may have already been completed. If the studies meet the requirements of this chapter, such studies may be utilized for purposes of section 4 of the act (32 P. S. § 5204).

(c) IN ACCORDANCE WITH SECTION 4(c) OF THE ACT, 32 P.S. 5204(c), THE GEOGRAPHIC AREAS IDENTIFIED AS "TENTATIVELY IDENTIFIED BLUFF RECESSION HAZARD AREAS" IN SECTIONS I AND II OF THE DEPARTMENT'S "STUDY TO TENTATIVELY DESIGNATE BLUFF RECESSION HAZARD AREAS", DATED NOVEMBER 2004, ARE DESIGNATED AS BLUFF RECESSION HAZARD AREAS. THE DEPARTMENT SHALL MAKE THE NOVEMBER 2004 STUDY AVAILABLE TO THE PUBLIC.

* * * * *

§ 85.13. Department notification to municipalities.

Following completion of the study, the Department will, by certified letter, notify the governing body of the municipality that it has been tentatively designated as possessing a bluff recession hazard area. The letter shall contain **[all of]** the following information:

- (1) The geographic location of the hazard area.
- (2) A summary of the findings of the study by the Department.
- (3) The historic recession rate and the process used to calculate this rate.
- (4) The minimum bluff setback distances that will be required by the Department.
- (5) A request for comments from the municipality concerning the tentative designation and setback distances.
- (6) Specification of **[the] a 60 day** time limit[s] for comment.
- (7) Notice that **[a] one or more** public hearings will be held concerning the designation of bluff recession hazard areas by the **[Environmental Quality Board] EQB** prior to formal designation.

§ 85.14. Municipal response on designation.

(a) Each municipality tentatively identified by the Department as possessing a bluff recession hazard area will be invited to submit written comments concerning the tentative designation to the Department within 60 days of receiving the notification letter of the Department.

(b) In the event a municipality disagrees with the letter of the Department tentatively designating it as possessing a bluff recession hazard area and the required setback distances, the appropriate representatives of the Department will contact and offer to meet with representatives of the municipality to review, discuss, and attempt to resolve the differences. This meeting will be scheduled within 30 days from the date the letter is received from the municipality.

(c) In the event a municipality does not comment within the time prescribed in §85.13(6) (relating to Department notification to municipalities), it will be presumed that the municipality is in agreement with the designation and the required setback distance.

§ 85.15. Department notification to the [Environmental Quality Board] EQB.

(a) [When the Department receives comments from a tentatively designated municipality, it] Following the close of the municipal comment period on the tentative designation, the Department will prepare and transmit to the **[Environmental Quality Board] EQB** [a request for] a proposed rulemaking [requesting] proposing formal designation of the bluff recession hazard area of the municipality and the establishment of bluff setback distances in the bluff recession hazard area. The **[request] proposed rulemaking** will contain **[at a minimum, all of]** the following:

- (1) The findings of the Department concerning the location and determination of the bluff recession hazard area in the municipality.
- (2) The nature of the existing and potential damage to property and structures.
- (3) **[All c]** Comments received from the affected municipality.
- (4) A recommendation, incorporating consideration of the comments received from the municipality, that the area be designated as a bluff recession hazard area and subject to Subchapter D (relating to municipal bluff setback ordinance and regulations).

[(b) In the event a municipality disagrees with the letter of the Department tentatively designating it as possessing a bluff recession area and the required setback distances and has not submitted comments acceptable to the Department, the appropriate representatives of the Department will contact and offer to meet with representatives of the municipality to review, discuss, and attempt to resolve the differences. This meeting will be held within 30 days from the date of the letter received from the municipality.]

(c) In the event a municipality fails to comment within the time prescribed in § 85.13(6) (relating to Department notification to municipalities), the Department will assume the municipality is in agreement and will note that municipality provided no comment concerning the designation and the required setback distance within the allotted time.]

[(d)b] Following transmittal of the [request] proposed rulemaking by the Department to the [Environmental Quality Board] EQB, the [Environmental Quality Board] EQB will give public notice and hold one or more public hearings on the [request] proposed rulemaking to formally designate areas within municipalities as bluff recession hazard areas.

[(e)c] Following public hearings, the Department will consider the comments received [at the public hearing] and make appropriate revisions to the [request] proposed rulemaking. [and resubmit it] The Department will then submit the proposed rulemaking to the [Environmental Quality Board] EQB for final action. Following [an affirmative action by the Environmental Quality Board] adoption by the EQB and publication of the formal designation, the Department will notify the municipality that it must within 6 months comply with the act and this chapter.

Subchapter C. BLUFF RECESSION HAZARD AREAS SETBACK REQUIREMENTS

* * * * *

§ 85.22. Methods of determining minimum bluff setback distances.

(a) The Department will develop minimum bluff setback distances for each municipality tentatively designated as having a bluff recession hazard area by applying the following formula:

$$\begin{array}{rcl} \text{Rate of} & \text{Appropriate} & \text{Minimum} \\ \text{Bluff} & \times \text{Life Span} & = \text{Bluff Setback} \\ \text{Recession} & \text{of Structure} & \text{Distance} \end{array}$$

[(b) When the Department receives the completed application, it will review the application based on the criteria for a variance pursuant to § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality) within 45 days, and send a certified letter to the applicant approving or disapproving the variance. A copy of this letter will be sent to the municipality for its permanent record. If the Department does not take action regarding the application within 45 days, the application will be deemed approved.]

(1) The rate of bluff recession is the average annual rate of recession for all the municipality's bluffs as calculated by the Department.

(2) The appropriate life span of a structure is 50 years for residential homes, 75 years for commercial structures, and 100 years for light and heavy industrial structures.

(b [c]) In no case shall the minimum bluff setback distance be less than **[50] 25** feet. When use of the formula identified in subsection (a) would produce a minimum bluff setback distance of less than **[50] 25** feet, the formula shall not apply and **[50] 25** feet shall be the minimum bluff setback distance.

§ 85.23. Modification of minimum bluff setback distances.

A minimum bluff setback distance for a municipality may be modified upon presentation of formal studies acceptable to the Department documenting annual recession rates at variance with the recession rate data of the Department. Upon Department review and acceptance of the data as accurate and compatible with the objectives of the act, a new minimum bluff setback distance will be calculated. The Department will request the **[Environmental Quality Board] EQB** to amend the designation in accordance with this subchapter concerning the minimum bluff setback distances.

* * * * *

§ 85.25. Variances granted by the Department.

(a) During the period between **[Environmental Quality Board] EQB** designation of a bluff recession hazard area and the approval of the Department of a bluff setback ordinance and regulations of a municipality, the Department may grant variances to the bluff setback requirements for all construction in a designated bluff recession hazard area. A property owner shall file an application with the Department for a variance to allow construction on his property.

(b) When the Department receives the completed application for a variance, it will review the application based on the criteria for a variance pursuant to § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality) within

45 days, and send a certified letter to the applicant approving or disapproving the variance. A copy of this letter will be sent to the municipality for its permanent record. If the Department does not take action regarding the application within 45 days of receipt of this application, the application will be deemed approved.

§ 85.26. Designated municipalities and minimum bluff setback distances for identified categories of structures.

(a) Under § 85.15 (relating to Department notification to the [Quality Board] **EQB**), the municipalities identified in subsection (c) have been designated as possessing a bluff recession hazard area.

(b) The municipalities designated in subsection (c) are required to adopt and implement a bluff setback ordinance and regulations which incorporate the bluff setback distances listed in subsection (c).

(c) **[Designated municipalities and setback distances in feet.] EXCEPT AS PROVIDED IN SUBSECTION (e), regardless of any other provision of law or ordinance to the contrary, the minimum BLUFF setback distances in the named municipalities THAT POSSESS A BLUFF RECESSION HAZARD AREA, AS DESIGNATED IN SECTION 85.12, shall be in accordance with the following table:**

<i>Municipality <u>(by geographic location)</u></i>	<i>Residential</i>	<i>Commercial</i>	<i>Light and Heavy Industrial</i>
Springfield Township Erie County	100'	150'	200'
Girard Township Erie County	60'	90'	120'
Lake City Borough Erie County	60'	90'	120'
<u>Fairview Township Erie County</u>	<u>50'</u>	<u>75'</u>	<u>100'</u>
Millcreek Township Erie County	50'	75'	100'
<u>[Fairview Township Erie County]</u>	<u>[50']</u>	<u>[75']</u>	<u>[100']</u>
<u>Erie City Erie County</u>	<u>25'</u>	<u>25'</u>	<u>25'</u>
Lawrence Park Township Erie County	50'	75'	100'
Harborcreek Township Erie County	50'	75'	100'
North East Township	50'	75'	100'

(d) The setback distances listed in [85.26] SUBSECTION (c) are minimum distances. The actual distance of the area subject to bluff recession may be greater in certain areas. Nothing in this chapter shall be construed to guarantee that bluff recession will not occur beyond the specified setback distances during the usable life span of a structure originally installed or constructed in accordance with the setback requirements at the time of installation or construction. Because of variations in the bluff recession rates, municipalities may adopt more restrictive ordinances in accordance with § 85.35.

(e) If the setback distance for the placement of structures regulated under another law or ordinance, such as the Uniform Construction Code or zoning regulation, is greater than that specified in subsection (c), then the greater setback distance shall apply within the bluff recession hazard area.

Subchapter D. MUNICIPAL BLUFF SETBACK ORDINANCE AND REGULATIONS

* * * * *

§ 85.32. Time limit for municipal adoption of bluff setback ordinance and regulations.

Each municipality, following **publication of the** formal [Quality Board] **EQB** designation of a bluff recession hazard area, shall within 6 months of receiving notification amend or adopt and implement a bluff setback ordinance and regulations which are consistent with the requirements of § 85.37 (relating to contents of ordinance and regulations submitted by municipality).

* * * * *

§ 85.35. Municipal adoption of more restrictive ordinance.

No provision of the act shall be construed as in any way limiting the power of any municipality to adopt more restrictive ordinances, codes, or regulations governing construction and development in bluff recession hazard areas that are established under [§ 85.22—85.[24] **26] SUBCHAPTER (C)** (relating to bluff recession hazard areas setback requirements).

* * * * *

§ 85.37. Contents of ordinance and regulations submitted by municipality.

The ordinance and regulations submitted by a municipality to the Department shall include at a minimum the following components:

- (1) A setback ordinance and regulations shall meet the minimum requirements and contain a minimum setback distance for each class of structure under this chapter.

- (2) The municipality shall provide a mechanism for permitting all proposed construction, installation, or substantial improvement of structures, or utility facilities such as water, sewage, electric, gas and telephone facilities in designated bluff recession hazard areas. This bluff setback permitting process may be incorporated into any existing permitting process administered by a municipal building code or zoning officer. At the request of the municipality, the Department will provide assistance to the municipality in developing this procedure.
- (3) A municipality shall provide a procedure, as a part of the ordinance and regulations, that enables monitoring of substantial improvements to structures bisected by or within the bluff setback distance. The procedure must ascertain the market value of the **[property] structure** prior to the first improvement and document subsequent improvements to the structure to ensure that they do not exceed 50% of the market value for a consecutive 5-year period. At the request of the municipality, the Department will provide assistance to the municipality in developing this procedure.
- (4) The municipality shall provide a variance to its bluff setback ordinance and regulations only in the following cases:
- (i) When a parcel established prior to a bluff recession hazard area **[designated] designation** does not have adequate depth considering the minimum bluff setback requirements to provide for any reasonable use of the land, a variance may be applied for. The variance shall be authorized when the following standards and criteria are met:
 - (A) The structure and all associated structures and **[utilities] utility** facilities shall be located on the property as far landward of the bluff line as allowed by other municipal ordinances.
 - (B) The structure shall be designed and constructed to be movable. Construction activities shall meet the minimum erosion and sediment control practices established by Chapter 102 (relating to erosion and sediment control) and reflect guidance contained in municipal stormwater ordinances or county watershed stormwater management plans. **[All construction materials, including foundations, shall be removed and disposed of in accordance with Chapter 75 (Reserved) as part of the moving operation.] As part of the moving operation, all construction materials, including foundations, shall be removed and disposed of in accordance with the requirements of the Solid Waste Management Act (35 P.S. § 6018.101 et seq) and the regulations promulgated thereto.** Access to and from the structure shall be of sufficient width and acceptable grade to allow for moving of the structure.

(ii) When a proposed structure or utility facility requires access to the body of water and there is no feasible alternative for obtaining such access, a variance may be applied for. The variance shall be authorized only when the following standards and criteria are met:

(A) The variance may be granted only for bluff recession control devices designed to reduce bluff recession; water withdrawal lines or discharge lines; power cables; natural gas or oil pipelines; or communication cables; or other public service lines which require access through the bluff recession hazard area to the body of water.

(B) To achieve adequate protection of the bluff, the construction activity shall occur in a manner that minimizes potential short term and long term disruption of the bluff recession hazard area, shall be in conformance with Chapter 102 and shall reflect guidance contained in municipal stormwater ordinances or county watershed stormwater management plans.

(C) To help ensure that increased turbidity levels on the Lake are not caused, all construction activities shall comply with the erosion and sedimentation control practices established by Chapter 102.

(D) The area of the construction site shall be reestablished to ensure that subsequent erosion will not damage the structure or harm the environment or adjacent properties.

(5) The municipality shall provide a procedure to amend municipal setback ordinances. The Department will, at the request of the affected municipality, provide assistance in incorporating revisions to this chapter into the municipal ordinance and regulations.

(6) The municipality shall provide an administrative procedure for maintaining records of all correspondence, applications for permits, and issuance and denial of such permits. The Department will assist if requested. On February 28 of each year, a copy of the records from the preceding calendar year shall be submitted to the Department for its review and permanent record. This procedure shall require that all necessary records include the name and address of the applicant and the location and description for the following activities:

(i) Construction, installation or engagement in any substantial improvement to structures affected by the minimum bluff setback distance including the information collected as a result of the monitoring procedure established in paragraph (3).

(ii) Improvement projects for an existing structure located within the minimum bluff setback distance.

(iii) Variances granted by the municipality in bluff recession hazard areas.

(7) [The municipality has alerted and shall continue to alert permit applicants, when permits are granted, that the bluff setback requirements are [at best] a minimum distance and, because of variations in local bluff recession rates, cannot guarantee that a structure located in a bluff recession hazard area will not be endangered by bluff recession within its useful life span.] When an applicant

submits an application for a permit for any construction or development activities in areas subject to bluff recession hazards, the municipality shall alert the applicant of the minimum bluff setback prescribed in § 85.26(c).

[(i) Every deed for the transfer of property within designated bluff recession hazard areas shall include appropriate notice that it is within a bluff recession hazard area.]

[(ii) After the effective date of this subsection, every plat approved for subdivision or land development under a municipal ordinance for areas within the bluff recession hazard area shall include appropriate notice by the municipal zoning administrator.]

Subchapter E. DEPARTMENT OVERSIGHT OF MUNICIPAL COMPLIANCE

§ 85.41. [General requirements.] Reserved

[As required by section 7 of the act (32 P. S. § 5207) the Department will adopt procedures and regulations for the review and approval of municipal ordinance and regulations.]

§ 85.42. Department review and approval of a municipality setback ordinance and regulations.

(a) The Department will, within 90 days of receiving a written request to approve a bluff setback ordinance and regulations of a municipality, review the proposal pursuant to the requirements contained in § 85.37 (relating to contents of ordinance and regulation submitted by municipality).

(b) The Department will, upon ascertaining that the proposed bluff setback ordinance and regulations meet the minimum requirements set forth in § 85.37 (relating to contents of ordinance and regulations submitted by municipality), notify the municipality **[by certified letter]** of the approval of the ordinance and regulations.

(c) Should the Department fail to respond within the allotted 90 day time limit, the ordinance and regulations shall be deemed to be approved, and the municipality shall use such ordinance and regulations to enforce the provisions of the act.

(d) Should the Department, during the review of the proposed ordinance and regulations, find that the ordinance and regulations do not meet the minimum requirements of this chapter, the Department will disapprove the ordinance and regulations and will notify the municipality. The letter will contain the reasons for disapproval and suggestions for correcting the problem. Upon receipt of this letter, the municipality shall have 30 days to correct the problem and resubmit the proposed ordinance and regulations. If the

municipality disagrees with the findings of the Department, the municipality may appeal the decision of the Department under the procedures in § 85.61 of this chapter.

* * * * *

Subchapter F. GRANTS AND REIMBURSEMENTS TO MUNICIPALITIES

* * * * *

§ 85.52. Limitation of grants and reimbursements.

Grants shall be available from the Department to municipalities to reimburse them for allowable costs incurred in complying with the requirements of the act. Grants shall be limited to:

(1) Seventy-five percent of the costs incurred for the development and implementation of a bluff setback ordinance and regulations required by this chapter as well as **[75%] seventy-five percent** for the costs incurred by a municipality in revising a setback ordinance and regulations established prior to the act to comply with this chapter.

(2) Fifty percent of the allowable costs for the ongoing administration of an ordinance incurred by a municipality. Allowable costs for administration of bluff setback ordinance shall not include those costs **[which] that** are offset by reasonable permit fees imposed by the municipality.

* * * * *

§ 85.55. Records and audits.

(a) Municipalities shall maintain books, records, documents, correspondence and other evidence pertaining to the costs and expenses incurred under § 85.52 (relating to limitation of grants and reimbursements) to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which funding has been provided under the grant. Such records shall be maintained in accordance with generally accepted accounting principles. **[A detailed explanation of the accounting procedures and types of records are contained in the "Manual of Accounting and Related Financial Procedures for Pennsylvania Municipalities," published and distributed by the Department of Community Affairs, Forum Building, Harrisburg, Pennsylvania 17120.]**

(b) A municipality shall maintain accounting records and supporting documentation which identify all revenue and costs from the effective date to expiration date of the grant. **[As a minimum, the following books of account shall be used:] The**

accounting records shall be maintained in accordance with generally accepted accounting practices.

- [(1) Cash receipts journal.**
- (2) Cash disbursement journal.**
- (3) Payroll journal.**
- (4) General journal.**

(c) In the event a municipality records transactions by the accrual method of accounting, additional records shall be required.

(d) The following documentation should be retained in file:

- (1) Copies of revenue documents.**
- (2) Original vendor invoices.**
- (3) Payroll records.**
- (4) Cancelled checks.**
- (5) Worksheets used to prepare grant reports and other related grant information. All records should be retained for a period of three years from the grant expiration date or until all pending matters are resolved.]**

Subchapter G. APPEALS

§ 85.61. Appeals.

(a) A person or municipality aggrieved by an action of the Department shall have the right within 30 days of the receipt of the notice of such action to appeal such action to the Environmental Hearing Board, under 2 Pa.C.S. § § 501—508 and 701—704.

(b) An appeal of an action under the act shall not act as a supersedeas. A supersedeas may be granted by the Environmental Hearing Board upon a showing by the petitioner:

- (1) [~~that~~] That irreparable harm to the petitioner or other interested parties will result if supersedeas is denied.**
- (2) That there is a likelihood of the success of the petitioner on the merits.**
- (3) That the grant of a supersedeas will not result in irreparable harm to the Commonwealth.**

COMMENT/RESPONSE DOCUMENT

BLUFF RECESSION AND SETBACK

CHAPTER 85

DEPARTMENT OF ENVIRONMENTAL PROTECTION

WATER PLANNING OFFICE

LIST OF COMMENTATORS

1. Manufacturer and Business Association
Erie, PA 16508
2. Thomas M. Sider
North East, PA 16428
3. Erie Regional Chamber and Growth Partnership
Erie, PA 16507
4. North East Township Supervisors
North East, PA 16428
5. MacDonald, Illig, Jones and Britton LLP (Steven C. Beckman)
Erie, PA 16507
6. MacDonald, Illig, Jones and Britton LLP (Russell S. Warner)
Erie, PA 1650
7. Erie-Western PA Port Authority
Erie, PA 16507
8. City of Erie
Erie, PA 16501
9. Senator Jane M. Earl (on behalf of her following constituents: Steve Gorman and Paul Nelson, owners of Waldameer Park, Inc.; and SB3, LLC)
Erie, PA 16501
10. Millcreek Township Board of Supervisors
Erie, PA 16507
11. SB3, LLC
Erie, PA 16511
12. Independent Regulatory Review Commission
Harrisburg, PA 17101

A. Preamble

Vegetation Management Requirements

Comment: "Vegetation management requirements should not be added to the bluff recession and setback regulations." (5)

Comment: "I would like to express my concern with the possible inclusion of vegetation management requirements of coastal property owners. As an Environmental Scientist, I understand and appreciate the need for such a requirement. However, the legislation should outline whose responsibility it will be to create, administer and educate the property owners of such a requirement. While we may have the staff capacity to administer the setback requirements of the legislation, enforcement of vegetation management plans and property owner education is beyond the capability of our existing staff." (8)

Response: The Department will not include requirements for vegetation management in the rulemaking. Through the Coastal Resources Management program, the Department will continue the current practice of working with partners to provide outreach and workshops regarding management of vegetation.

B. Chapter 85

Specific Location of Bluff Recession Hazard Areas (BRHAs)

"In 1980 when the EQB first implemented the Bluff Recession and Setback Act, it failed to adequately designate specific areas as having bluff recession hazards. Rather, the EQB simply blanketed all properties along the Lake Erie shoreline (excluding those within the City of Erie) as subject to the new regulations. This caused confusion among municipalities and planning commissions throughout the region and ultimately led to a 2001 DEP study of the entire Lake Erie shoreline to define areas where a bluff recession hazard area existed." (1)

"EQB has failed to designate specific geographic areas within each municipality along Lake Erie as 'bluff recession hazard areas'." (5)

"Also long overdue is the assignment of specific parcels along the entire length of the Lake Erie shoreline to either the bluff recession hazard area or the exempt area." (9)

"The proposed rulemaking does not expressly define or provide for specific definition of bluff recession hazard areas in Millcreek Township. We understand that the Department and the Board may assume that the rulemaking implicitly adopts the Department's 2004 study - but there is no provision to that effect. The Township's concern in submitting its petition was that municipalities should not be placed in a position of having to make determinations whether land is or is not within a bluff recession hazard area. The Board must make and adopt these determinations."(10)

"The proposed rulemaking does not designate specific geographic areas within the City

of Erie as bluff recession hazard areas. Failure of the proposed rulemaking to designate specific areas within the City of Erie is contrary to the requirements of the Act and regulation and results in a blanket designation that is not supported by actual data. In fact; under the current regulation as amended by the proposed rulemaking, all of the City of Erie, including the area inside Presque Isle Bay, would be covered by the setback requirements.” (11)

Response: Section I of the Department’s study utilized topographic maps that depicted the geographic locations of tentatively designated Bluff Recession Hazard Areas (BRHAs). Section II of the study depicted the BRHA locations on aerial photography, which allowed for more detailed representation.

The Department has considered the commentators’ recommendations and has amended the rulemaking to clarify that the 2004 study identifies the specific locations of BRHAs. The changes also include a requirement for the Department to make the study publicly available. The changes to the regulations were the addition of Section 85.12(c), and a modification of Section 85.26(c), as follows:

85.12 (c) IN ACCORDANCE WITH SECTION 4(c) OF THE ACT, 32 P.S. 5204(c), THE GEOGRAPHIC AREAS IDENTIFIED AS "TENTATIVELY IDENTIFIED BLUFF RECESSION HAZARD AREAS" IN SECTIONS I AND II OF THE DEPARTMENT'S "STUDY TO TENTATIVELY DESIGNATE BLUFF RECESSION HAZARD AREAS", DATED NOVEMBER 2004, ARE DESIGNATED AS BLUFF RECESSION HAZARD AREAS. THE DEPARTMENT SHALL MAKE THE NOVEMBER 2004 STUDY AVAILABLE TO THE PUBLIC.

85.26 (c) [Designated municipalities and setback distances in feet.] EXCEPT AS PROVIDED IN SUBSECTION (e), regardless of any other provision of law or ordinance to the contrary, the minimum BLUFF setback distances in the named municipalities THAT POSSESS A BLUFF RECESSION HAZARD AREA, AS DESIGNATED IN SECTION 85.12, shall be in accordance with the following table:

Methodology for Tentatively Designating BRHAs

“Now, rather than act on the scientific data resulting from the study, the EQB is proposing to expand the already too broad regulation to include all shoreline properties in the City of Erie.”

“While we recognize the efforts of the EQB to ensure the safety of our environment and the citizens of the Commonwealth from the erosion that occurs as a result of Lake Erie; we feel that simply broadening the regulation without any regard to the DEP study (which clearly identified properties that should be and should not be subject to the regulation) ignores private property owners rights. In addition, it is a poor public policy decision that will not only limit businesses from expanding, but will also limit those who are interested in locating their operations along the

Erie shoreline.”

“Rather, we would encourage you to consider implementing a regulation that utilizes the scientific data compiled from DEP's 2001 study to exempt appropriate properties from the proposed bluff recession setbacks. Such a proposal would allow the EQB to maintain the environmental integrity of the Lake Erie shoreline and at the same time permit the necessary exemptions that are conducive to economic growth.” (1)

“As the unified voice of the Erie regional business community, the Erie Regional Chamber and Growth Partnership opposes the proposed Bluff Recession and Setback Regulations. We believe the Department of Environmental Protection (DEP) has made blanket designations of all of Erie County, contrary to the results of their own study.”

“The arbitrary designations of all of Erie County and Erie City as Bluff Recession Hazard Areas will place serious limitations on the development of lakefront property, further hindering the economic vitality and development of the Erie region.”

“It is our position and recommendation that the addition of the City of Erie to this regulation be removed. We also strongly recommend that the setback designations be derived solely from the formula and specific calculations stated by the DEP, not the arbitrary numbers proposed in this regulation. We believe the current zoning and building codes are more than sufficient to ensure safe and reasonable development along the lakefront.” (3)

“The EQB should designate all of the Waldameer Park property as outside the bluff recession hazard area, not just a portion of Waldameer's property.” (5)

“Waldameer requests that EQB designate all of the Waldameer property as outside of the bluff recession hazard area.” (6)

“Therefore, I urge the Environmental Quality Board to accept the recommendations of Attorneys Beckman and Warner on behalf of Waldameer Park, Inc. to exempt the Park's property from the bluff recession hazard area. I also encourage the Board to take under serious consideration the concerns of the City of Erie, the Erie-Western Pennsylvania Port Authority, the municipalities and the other testimony from area citizens. If I can be of further assistance, please do not hesitate to contact me. Thank you for your attention to this matter.” (9)

“In the interest of enabling productive current use and future development on the former IP site, and due to the lack of scientific evidence indicating that the property would meet the definition of a bluff recession hazard area (i.e., “an area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby existing or future structures or utility facilities”), I urge the EQB to continue to exempt transects 87E through 113E from the setback requirement proposed for the City of Erie.” (Testimony/9)

“While the Township submitted its petition to secure the delineation called for under the Act, it is aware from inspections and reviewing information pertinent to Waldameer Park that the park's property does not abut Lake Erie or the bay of Lake Erie, but instead is approximately 500

feet distant from a body of water. The land does not involve a precipitous bank or any wave action from Lake Erie or its bay which might prompt erosion or recession. For these reasons, the Township cannot disagree with comments offered on behalf of Waldameer Park that the Department's 2004 study should be adopted with the revision that the remainder of the Park's land from Transect 167M to 172M be excluded from a defined bluff recession hazard area.” (10)

“The proposed rulemaking purports to add the City of Erie as a municipality containing bluff recession, hazard areas but DEP has failed to produce any objective data justifying the addition of the City of Erie. The proposed rulemaking would require the creation of bluff setback restrictions on the SB3 LLC property where there is no objective data to demonstrate that bluff recession hazards actually exist on this property. DEP's own data in the 2004 Report predicts that there will be no bluff recession along the SB3 LLC property by the year 2050. In the absence of any evidence that there is a bluff recession hazard risk along this property, it is arbitrary and capricious for the EQB to designate the SB3 LLC property as containing a bluff recession hazard area.” (11)

Response: The Department has considered these comments, but recommends no changes to the rulemaking package. The Department analyzed various data from its study (some of which dated from 1938) to make the recommended designations, and disagrees that the tentative designations were made on an arbitrary basis, as will be further discussed in this response. The methodology was also discussed in-depth at several advisory committees that supported the regulatory package. Blanket designations were not recommended for municipalities, as illustrated in Sections I and II of the study; exceptions include areas where the Department determined information from its study did not support designation as a BRHA. Regarding the question of whether data from the 2004 study was employed, the changes to Sections 85.12 and 85.26 help clarify that the study formed the basis for the designations.

As part of the study, the Department considered the following:

1. Geographic location of potential hazard areas,
2. evaluation of the bluff recession hazard in relation to geophysical processes such as recession and erosion-related phenomena and examination of the causative factors,
3. review of existing and potential damage, and
4. review of historical recession rate.

The Department also evaluated historical and other data to determine which areas of the bluffs showed sufficient indications of recession or potential recession to warrant designation as a bluff recession hazard area creating “a substantial threat to the safety or stability of nearby or future structures or utility facilities.”

The Department utilized the following sources of data to conduct its study in order to make recommendations to tentatively designate Bluff Recession Hazard Areas (BRHAs): a report contracted through Wetland and Coastal Resources; high altitude aerial photography; low altitude oblique-angle color prints; and control point measurement data.

Support for Rulemaking

“The Erie Western Port Authority commends the Department of Environmental Protection for protecting its natural environment and one of the Commonwealth’s most precious resources – the Lake Erie Shoreline.”

We believe the majority of the changes to the act are well thought out and reasonable. The inclusion of the City of Erie’s shoreline brings continuity to the Department’s approach to protecting the ‘Lakefront Bluffs’.” (7)

“Overall, I am pleased with the conditions set forth in the proposed legislation for the City of Erie and trust that we will be able to continue to work in cooperation with the Department of Environmental Protection on issues affecting our beautiful lake and the rights of our citizens.” (8)

Response: The Department thanks the commentators for the support of the regulatory changes.

Minimum Setback Distance

“The Proposed Rulemaking referenced above is, in my opinion, a much, much fairer approach to the problem of bluff recession. It allows local authorities the flexibility to treat a very low stable bluff differently from a very high bluff while maintaining a minimum of 25 feet of setback. I strongly support adoption of the Proposed Rule-making allowing local authorities to provide for bluff setback of as little as 25 feet. The Proposed Rule would allow me and others in similar circumstances, the ability to improve and expand our properties and provide additional living space impossible to do under the current regulations.” (2)

Response: The Department thanks the commentator for the support of the regulatory changes, but, it should be noted, that, based on the study methodology described previously, the Department does not intend to change the minimum setback distances for Northeast Township, as listed in Chapter 85. The regulations establish a setback of 25 feet only for the City of Erie. Setback distances for each municipality are listed in Section 85.26.

Setback Distances

“We feel having one setback dimension for the coast line of North East Township is arbitrary and we would (propose) the following rate setbacks in the future after 85.22 is amended. With the method of determining minimum bluff setback distances as a formula of the rate $(.5) \times 50 \text{ years} = 25 \text{ feet}$, we feel 25 feet would be an appropriate distance for our cottage area. We would then increase the setback to be equal to the vertical height of the bluff above 25 feet up to 50 feet. We would keep in place our current setback of 50 feet as a maximum setback for any bluff over 50 feet high. In some of our extreme recession areas our building code official would make the setback determination by using the chart established by DEP, Lake Erie Control Point Recession Rates, 2006-2007.” (4)

“The Setbacks listed in the Proposed Regulations are Arbitrary and Should Be Revised

to Reflect the Actual Scientific Data” (5)

Response: The Department disagrees that the setback distances recommended were determined arbitrarily. Setback distances were calculated by employing the formula contained in Section 85.22. Recession rates from control point data and photogrammetric data from the WCR report were considered. Based on the data and analysis, the Department does not plan on making any changes to the setback distances for North East Township.

Deed Notices

“Deed notices should not be required for bluff recession hazard areas.” (5)

Response: Based upon further research, the intent of this language can be better addressed by developing a voluntary training program that would bring together realtors, municipalities, etc. The language in the proposed rulemaking has been deleted.

City of Erie Bayfront

“The Erie-Western PA Port Authority wishes to make sure that the expansion of the Act does not restrict the continued development along the Bayfront that has been considered the most important issue for continued economic stability in Western Pennsylvania. The Commonwealth of Pennsylvania has invested over \$100 million in moving our Bayfront forward. We certainly don't wish to impede this momentum.” (7)

Response: The Bayfront area of the City of Erie is not included as an expansion area in this regulation package.

Timeframe for Future Updates

“A reasonable timeframe for future updates is also needed, so that the entities required to comply have ample time to incorporate changes to their zoning and other local codes.” (9)

Response: Section 85.12 of the regulations requires that studies will be conducted when necessary to identify bluff recession hazard areas. The Department's Coastal Resources program performs on-going monitoring and evaluation of bluff recession. Due to the resource burden that would be created by requiring a specific timeframe for updates, it is recommended that no changes be made to the regulations, and that studies be conducted as necessary.

Regarding the allotment of ample time for entities to make changes to local codes, Section 6(a) of the Bluff Recession and Setback Act provides that “[w]ithin 6 months following designation by the [EQB] of an area and municipality subject to bluff recession hazards, each designated municipality shall adopt or amend, and shall implement, such ordinances and regulations as are necessary to regulate construction and development activities in areas subject to bluff recession hazards” Section 4 of the Act also requires that the Department notify the chief executive officer of each municipality prior to submitting the report, and the municipality comments, to EQB. Based on these requirements, the Department does not recommend any changes to the

rulemaking regarding timeframes.

EQB Scope of Authority

“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.” (Independent Regulatory Review Commission)

Response: This comment is related to previous comments that the rulemaking package did not clearly indicate the location of BRHAs. The Department has considered the commentator’s recommendations, and proposes that the previously mentioned amendments to Section 85.12 and Section 85.26 will address this concern.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

July 2, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Bluff Recession and Setback (#7-404)

Dear Mr. Kaufmann:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the House Environmental Resources and Energy Committee. The Environmental Quality Board (EQB) approved this final-form rulemaking at its June 16, 2009, meeting.

This final rulemaking includes amendments to 25 *Pa Code*, Chapter 85, relating to Bluff Recession and Setbacks. As background, the Bluff Recession and Setback Act of 1980 provides for the regulation of structure setbacks in Bluff Recession Hazard Areas (BRHAs) and authorizes the Department to conduct studies necessary to identify such areas in the Commonwealth. The Act also provides authority to the EQB to, by regulation, designate those areas in municipalities that are subject to bluff recession hazards and to establish minimum setback requirements as applicable. Pursuant to a rulemaking petition submitted to the EQB in 2001 by Millcreek Township, the Department commissioned a study of the Lake Erie shoreline in order to identify and update the location of BRHAs. As a result of this and other related studies and data, the Department recommended adding the City of Erie as a municipality possessing a BRHA, with a minimum bluff setback of 25 feet, and that the regulations at 25 *Pa Code*, Sections 85.22 and 85.26 be amended accordingly. In addition to adding the City of Erie as a municipality possessing a BRHA, the rulemaking also includes amendments to update provisions in Section 85.26(d) and (e) to clarify that municipalities may adopt more restrictive bluff setback distances and that the Uniform Construction Code or local zoning regulations may also apply. The amendments included in the final rulemaking do not affect the existing BRHA designations for the current 8 municipalities, as identified in 25 *Pa Code*, Section 85.26, which are designated as possessing BRHAs.

The proposed rulemaking was published for a 60-day public comment period in the *Pennsylvania Bulletin* on August 23, 2008. One public hearing was held by the EQB in Erie on September 23, 2008. During the public comment period, 12 commentators provided comments to the Board. Most prevalent of those comments received were concerns that the Department had failed to specifically identify the locations of BRHAs in its scope of rulemaking amendments. Other commentators questioned the inclusion of property owned by Waldameer Amusement Park in Millcreek Township as a BRHA and

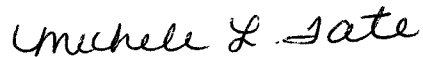


questioned the necessity of requiring a notice within a property deed transfer, which alerts parties that the property in question is located within a designated BRHA.

Based on public comment and input from the Water Resources Advisory Committee (WRAC), the Department has modified the rulemaking by adding a new section which clarifies that BRHAs, as identified in the Sections I and II of the Department's November 2004 study, are the specific geographic locations where setback distances must be implemented. In addition, the Department has deleted the proposed deed restriction requirements in lieu of promoting voluntary efforts at the local level to assure realtors, municipal governments and other interested parties are aware of the setback distance requirements imposed in BRHAs.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the above number if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate
Regulatory Coordinator

Enclosures



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 404

SUBJECT: Bluff Recession and Setback

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolled Regulation
- a. ☐ With Revisions b. ☐ Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 JUL -2 PM 12:48

RECEIVED

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

7-2-09 D. Hentz

Majority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

7-2-9 AK Beasem

Minority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

7-2-9 D. Costello

Majority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

7-2-09 A. Rybanskyk

Minority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

7/2/09 Dr. Belmont

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

