

Regulatory Analysis Form		This space for use by IRRC RECEIVED
(1) Agency Department of Environmental Protection		2008 AUG 13 PM 3:43 INDEPENDENT REGULATORY REVIEW COMMISSION
(2) I.D. Number (Governor's Office Use) 7-404		IRRC Number: 2717.
(3) Short Title Bluff Recession and Setback		
(4) PA Code Cite Title 25, Chapter 85	(5) Agency Contacts & Telephone Numbers Primary Contact: Michele Tate, 783-8727 Secondary Contact: Kelly Heffner, 783-8727	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor
(8) Briefly explain the regulation in clear and nontechnical language. 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) State the statutory authority for the regulation and any relevant state or federal court decisions. 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.		

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and 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.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

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 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.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Unregulated development in Bluff Recession Hazard Areas will likely experience property loss and structural damage. Without the benefit of this proposed rulemaking, the health and safety of coastal property owners will not be protected and the destruction of property and structures in designated Bluff Recession Hazard Areas will not be prevented.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

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.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely 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 \$1,000 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.

(15) 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, one municipal historical site and one large vacant industrial site are located within the City of Erie.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

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.

(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.

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. The Erie County Department of Planning estimates that these properties have an approximate current total value (based on recent assessments) of \$5,162,284.

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(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.

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 \$1,000 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 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.

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 \$5,000 (\$2,500 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 \$1,000 per application, that cost saving (benefit) to the Commonwealth is \$5,000. A total savings benefit to the Commonwealth as a result of this proposed rulemaking is \$10,000.

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(20) In the table below, provide an estimate of the fiscal savings and cost 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
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) Explain how the cost estimates listed above were derived.

SAVINGS:

Regulated Community – protected property values over next twenty years is \$5,162,284 and for each year it is \$258,114 .

State Government – fewer permit reviews and enforcement cases over the next twenty years at \$2000 for each year.

COSTS:

Local Government – first-year cost to develop a bluff setback ordinance is \$500 and \$1000 will be required each following year for implementation.

State Government – first-year cost to assist the City of Erie to develop a bluff setback ordinance is \$1500, and \$1000 will be required each following year for implementation.

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

Program	FY-3	FY-2	FY-1	Current FY
Environmental Protection Operations (160-10381)	\$85,898,000	\$87,897,000	\$89,847,000	\$98,582,000
Environmental Program Management (161-10382)	\$37,594,000	\$37,049,000	\$36,868,000	\$39,909,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

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.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There is no non-regulatory alternative to restricting development on properties in hazardous areas along Lake Erie other than returning to before the Bluff Recession and Setback Act and Chapter 85 were adopted in 1980. Without regulatory controls, development will occur in hazardous areas along Lake Erie that are prone to severe erosion and property loss.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

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.

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(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 regulation.

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

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage 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 existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes, it is anticipated that one public hearing will be held in Erie during the public comment period.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

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.

(29) 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.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated date for public comment on the proposed rulemaking is early 2007. The City of Erie is required to have a Bluff Setback Ordinance developed and adopted within six months of the effective date of the final rulemaking. Final rulemaking is expected to be published mid-2007.

(31) 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.

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

(Pursuant to Commonwealth Documents Law)

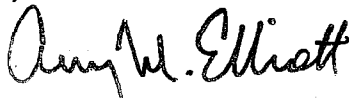
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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: 
(Deputy Attorney General)

JUL 29 2008

DATE OF APPROVAL

☒ Check if applicable
Copy not approved. Objections attached.

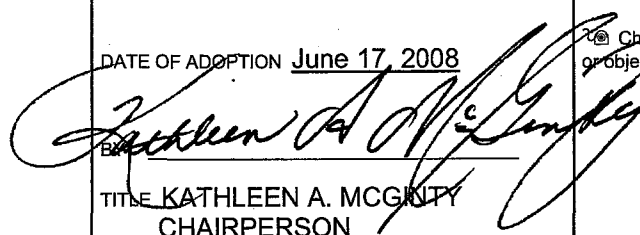
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DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

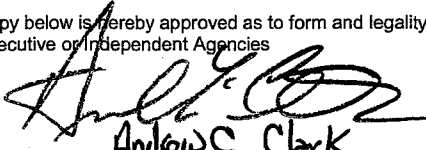
DOCUMENT/FISCAL NOTE NO. 7-404

DATE OF ADOPTION June 17, 2008


By: _____
TITLE KATHLEEN A. MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: 
Andrew C. Clark

DATE OF APPROVAL **JUL 10 2008**

(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 PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Bluff Recession and Setback

25 Pa. Code, Chapter 85

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

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, add a deed and plat notice requirement and delete requirements for specific supporting documentation.

This proposal was adopted by the Board at its June 17, 2008, meeting.

A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Person

For further information on the proposed rulemaking, contact Shamus Malone, Chief of Monitoring and Technical Assistance, PA Coastal Resources Management Program, P.O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-4785. Information regarding submitting comments on the proposed rulemaking appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's website: www.depweb.state.pa.us.

C. Statutory Authority

The proposed amendments are published under the statutory authority of the Bluff Recession and Setback Act (32 P.S.5201-5315).

D. Background and Purpose

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 Regulatory Requirements

A brief description of the proposed amendments follows:

Subchapter A. General Provisions

Section 85.1. (relating to definitions) is proposed to be amended by adding the EQB as a definitional term and clarifying the definitions for Act, Person, Plat and Structure.

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

This subchapter is proposed to be amended by making minor editorial changes to §85.11 (relating to general requirements) and §85.13 (relating to department notification to

municipalities) and adding clarifying language to §85.14 (relating to municipal response on designation) and §85.15 (relating to department notification to the EQB).

Subchapter C. Bluff Recession Hazard Areas Setback Requirements

This subchapter is proposed to be amended by making changes to 85.22(c) (relating to methods of determining minimum bluff setback distances) to change the minimum allowable bluff setback distance from 50 feet to 25 feet.

This subchapter is proposed to be amended by making minor editorial changes to §85.23 (relating to modification of minimum bluff setback distances) and to move §85.22 (b) to §85.25 (b) for clarity.

In addition, §85.26 (relating to designated municipalities and minimum bluff setback distances for identified categories of structures) is proposed to be amended by making minor editorial changes along with an important clarification in (c.) that this table sets minimum setback requirements and adds the City of Erie as a designated municipality.

Following formal approval and designation of this additional Bluff Recession Hazard Area, the City of Erie will be required to adopt and implement a Bluff Setback Ordinance within six months. The existing regulation (Chapter 85) has been in existence since 1980. Eight municipalities were originally identified as having Bluff Recession Hazard Areas. The proposed rulemaking adds one additional municipality to this list, based on the results of a recently completed study of bluff recession hazards along Pennsylvania's Lake Erie shoreline.

The City of Erie has permitting, technical and administrative capabilities and no additional staff or support capabilities are anticipated to be needed to administer a Bluff Setback Ordinance. The cost of administering the ordinance is reflected by the number of building permits issued for structures in the Bluff Recession Hazard Area. Since the City of Erie already has a building permit system in place, administering the Bluff Setback Ordinance should require only minimal costs and no additional resources.

Subsections §85.26 (d) and (e) are proposed to be added to clarify that municipalities may adopt more restrictive bluff setback distances and that the Uniform Construction Code or local zoning regulation may also apply.

Subchapter D. Municipal Bluff Setback Ordinance and Regulations

This subchapter is proposed to be amended by making minor editorial changes to §85.32 (relating to time limit for municipal adoption of bluff setback ordinance and regulation), to §85.35 (relating to municipal adoption of more restrictive ordinance), and to §85.37 (relating to contents of ordinance and regulations submitted by municipality). A cross reference to the Solid Waste Management Act and regulations is proposed to be added to §85.37(4)(i)(B) and a clarification made to §85.37(7) regarding notice to applicants.

A new requirement is 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.

Subchapter E. Department Oversight of Municipal Compliance

This subchapter is proposed to be amended by deleting §85.41 (relating to general requirements), deleting the requirement for notification by certified letter in §85.42 (b) making minor editorial changes to §85.42(d).

Subchapter F. Grants and Reimbursements to Municipalities

This subchapter is proposed to be amended by making minor editorial changes to §85.52 (relating to limitation of grants and reimbursements) and replacing 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.

As required by statute, the Department reimburses affected municipalities up to seventy-five percent of the costs incurred to develop an ordinance, and up to fifty percent of the cost of ongoing administration. Currently, the grant amount budgeted and spent by the Department for ongoing administrative costs for the eight municipalities is \$4400 annually. For various reasons, one being the addition of another municipality (City of Erie) to the municipalities needing reimbursed for administrative costs, the Department has increased the budgeted amount for this activity in future grant years.

The Department provides free annual training to affected municipalities to keep them up to date with new methods of monitoring development activities in Bluff Recession Hazard Areas. Furthermore, this proposed rule making would result in only minimal changes to the primary technical guidance document used to help the municipalities with daily implementation of their Bluff Setback Ordinances. This change would be to include the City of Erie as one of the regulated municipalities.

Subchapter G. Appeals

This subchapter is proposed to be amended by making a minor editorial change to §85.61(b)(1) (relating to appeals).

The Department is seeking public comment on the possible future inclusion of a section in Chapter 85 on Proper Vegetation Management. This would be a regulatory section that would require coastal property owners to adhere to certain vegetation management practices to ensure bluff stability on their properties and adjoining properties. Poor vegetation management practices (indiscriminant felling of mature trees or property wide topping and thinning mature tree canopies) at the bluff crest or on the bluff face can have devastating effects on bluff stability that usually initiate large scale bluff recession that can result in property loss and/or structural damage.

F. 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".

G. 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 proposed 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 setbacks for new construction (from the bluff crest) are 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.

H. 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.

I. 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 these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comment

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 22, 2008. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 22, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 22, 2008. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Environmental Quality Board will hold one public hearing for the purpose of accepting comments on this proposal. The hearing will be held as follows:

September 23, 2008
10:00 a.m.

Tom Ridge Environmental Center
301 Peninsula Drive, Suite 1
Room 108
Erie, PA 16505-2042

Persons wishing to present testimony at the hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Board may accommodate their needs.

BY:

JOSEPH R. POWERS
Acting Chairperson
Environmental Quality Board

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).

* * * * *

EQB-Environmental Quality Board

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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 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**.

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§ 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.

§ 85.13. 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) If 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) If 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) If 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) If 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:

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

[(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 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.] Regardless of any other provision of law or ordinance, the minimum setback distances in the named municipalities shall be in accordance with the following table:**

<i>Municipality (by geographic location)</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</u> <u>Erie County</u>	<u>50'</u>	<u>75'</u>	<u>100'</u>
Millcreek Township Erie County	50'	75'	100'
<u>[Fairview Township</u> <u>Erie County]</u>	<u>[50']</u>	<u>[75']</u>	<u>[100']</u>
<u>Erie City</u> <u>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 Erie County	50'	75'	100'

(d) The setback distances listed in § 85.26(c) (relating to designated municipalities and minimum bluff setback distances for identified categories of structures) 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 (relating to municipal adoption of more restrictive ordinance).

(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** (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:

* * * * *

- (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.

* * * * *

(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) (relating to designated municipalities and minimum bluff setback distances for identified categories of structures).**

(i) A 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, a 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.

*** * * * ***

(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.**

*** * * * ***

(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 (relating to appeals) of this chapter.**

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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%** 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.

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(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.



Pennsylvania Department of Environmental Protection

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August 13, 2008

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Proposed Rulemaking: Bluff Recession and Setback
(25 Pa. Code, Chapter 85) (#7-404)

Dear Mr. Kaufman:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on August 23, 2008, with a 60-day public comment period and one public hearing scheduled in Erie, PA, on September 23, 2008. The Environmental Quality Board (EQB) adopted this proposal on June 17, 2008.

The proposed rulemaking was initiated in response to a petition submitted to the EQB in 2001 by Millcreek Township, Erie County. In its petition, Millcreek Township requested the Department clarify the extent and location of Bluff Recession Hazard Areas within the township. Following a Request for Proposals, the Department awarded a contract to Wetland and Coastal Resources to produce a study of bluff recession along the coast of Lake Erie, including an assessment of the loss of material along bluff faces caused by the direct or indirect action by one or a combination of ground-water seepage, water current, wind generated water waves, or high water levels. Through the study, it was found that the City of Erie's 1.5 miles of shoreline receded at an average rate of .024 feet/year, while five of the existing eight municipalities designated as Bluff Recession Hazard Areas have recession rates of less than one foot/year. Concerning the City of Erie's shoreline, a majority of it is protected from open lake wave energies by Presque Isle Peninsula; however, approximately 1.5 miles of the City's eastern shoreline is outside of Presque Isle Bay, leaving it vulnerable to undercutting by wave attack, as well as active bluff recession. This area, if not regulated with appropriate zoning setbacks and improvement limitations, will be subject to recession and property damage to existing structures.

Based on the results of the study completed by Wetland and Coastal Resources, as well as other related studies and data, including responses from the coastal municipalities along Lake Erie concerning the study, the Department is recommending through this proposed rulemaking that the City of Erie be designated as a Bluff Recession Hazard Area, 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, which will set 25 feet as the minimum bluff setback distance for all areas defined as a Bluff Recession Hazard Area. The existing setbacks for the other eight municipalities designated as a Bluff Recession Hazard Area are not amended through this rulemaking.

This proposed rulemaking also includes amendments to update provisions in Chapter 85, among those include changes to 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 proposed rulemaking also includes a new requirement in Section 85.37(7)(i) and (ii), which requires that every deed or plat within a Bluff Recession Hazard Area include an appropriate bluff recession hazard area notice. In the Preamble of the rulemaking, the Department is also requesting public comment on the possible future inclusion of a section in Chapter 85 that would require coastal property owners to adhere to certain vegetation management practices to ensure bluff stability on their properties and adjoining properties.

The proposed rulemaking was submitted to the Coastal Zone Advisory Committee on June 15, 2005, June 13, 2007, and January 16, 2008, where the Committee provided constructive, yet supportive comments on the rulemaking. The proposed rulemaking was also submitted to the Water Resources Advisory Committee on October 13, 2006, January 10, 2007, and January 9, 2008, who endorsed the adequacy of the Department's methodology to define bluff setbacks and the proposed rulemaking package. The Department also personally met with officials from the City of Erie to discuss the pending regulatory proposal, which is also supported by the city.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,



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 Tolloed Regulation
- a. ☐ With Revisions b. ☐ Without Revisions

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INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

8/13/08 P. Newk

Majority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

8/13/08 ReBeaman

Minority Chair, HOUSE COMMITTEE ON
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8-13-08 A Long

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8-13-08 A Rybaczuk

Minority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

8/13/08 Kathy Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

8-13-08 Mayra Garcia

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

