

Presented below are water quality standards that are in effect for Clean Water Act purposes.

EPA is posting these standards as a convenience to users and has made a reasonable effort to assure their accuracy. Additionally, EPA has made a reasonable effort to identify parts of the standards that are not approved, disapproved, or are otherwise not in effect for Clean Water Act purposes.

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GENERAL**§ 105.1. Definitions.**

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

- Act*—The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).
- Along*—Touching or contiguous; to be in contact with; to abut upon.

Appurtenant works—Structures or materials incident to or annexed to dams or water obstructions which are built or maintained in connection with the dams or water obstructions and are essential to their proper functioning. For dams, the term includes, but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

Discharge of fill material—

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

(A) Fill that is necessary for the construction of a structure in a regulated water of this Commonwealth.

(B) A structure or impoundment requiring rock, sand, soil or other material for its construction.

(C) Site-development fills for recreational, industrial, commercial, residential and other uses.

(D) Causeways or roadfills.

(E) Dams and dikes.

(F) Artificial islands.

(G) Property protection or reclamation devices, such as riprap, groins, seawalls, breakwaters and revetments.

(H) Levees.

(I) Fill for structures such as sewage treatment facilities.

(J) Intake and outfall pipes associated with power plants and subaqueous utility lines.

(K) Artificial reefs.

(ii) The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products.

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

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

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

FEMA—The Federal Emergency Management Agency.

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

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

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

Floodway—The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed, absent evidence to the contrary, that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

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

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

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

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

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

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

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

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

Mitigation—

- (i) An action undertaken to accomplish one or more of the following:
 - (A) Avoid and minimize impacts by limiting the degree or magnitude of the action and its implementation.
 - (B) Rectify the impact by repairing, rehabilitating or restoring the impacted environment.

(C) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.

(ii) If the impact cannot be eliminated by following clauses (A)—(C), compensate for the impact by replacing the environment impacted by the project or by providing substitute resources or environments.

Normal pool elevation—

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

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

(iii) This term does not apply to wetlands.

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

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

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

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

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

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

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

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

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

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

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

- (i) Gas, electricity or steam production, generation, transmission or distribution.
- (ii) Water diversion, pumping, impoundment or distribution.
- (iii) Railroad transportation of passengers or property.
- (iv) Operation of a canal, turnpike, tunnel, bridge, wharf or similar structure.
- (v) Transportation of natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration or other fluid substances by pipeline or conduit.
- (vi) Telephone or telegraph communications.
- (vii) Sewage collection, treatment or disposal.

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

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

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

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

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

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

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

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

Stream—A watercourse.

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

Stream enclosure—A bridge, culvert or other structure in excess of 100 feet in length upstream to downstream which encloses a regulated water of this Commonwealth.

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

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

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

Water obstruction—

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

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

Water Obstructions Act—The act of June 25, 1913 (P. L. 555, No. 355) (32 P. S. §§ 681—691), repealed by section 27 of the act of October 23, 1979 (P. L. 204, No. 70) (32 P. S. § 693.27).

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

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

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

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

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

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

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

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

(viii) Preventing pollution.

(ix) Providing recreation.

Wetlands—Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

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

Authority

The provisions of this § 105.1 amended under the Dam and Safety Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

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

Notes of Decisions

Wild Trout Streams

A permittee failed to show that this section contains an impermissible delegation of authority to the Fish and Boat Commission to determine what is a “wild trout stream.” *Eagle Environmental, L.P. v. Department of Environmental Protection*, 1997 EHB 733.

To the extent that Appellant’s notice of appeal challenged the propriety of the Department of Environmental Protection’s reliance upon the Commission’s classification of wild trout streams in revoking a permit for waste landfill construction, those objections to the Department’s action were reviewable by the Environmental Hearing Board. *Eagle Environmental, L.P. v. Department of Environmental Protection*, 1997 EHB 266.

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to permit applications—information and fees); 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.20a (relating to wetland replacement criteria); 25 Pa. Code § 105.53 (relating to inspections by owners and inspection reports); and 25 Pa. Code § 105.452 (relating to status of prior converted cropland—statement of policy).

§ 105.2. Purposes.

The purposes of this chapter are to:

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

Notes of Decisions

Reservoir was not an “available” alternative supplemental cooling water source within the meaning of 25 Pa. Code § 105.14(b)(7) where there was substantial evidence to support conclusion that such use of the reservoir was technically not feasible, there were legal impediments to such use and it would be unfair to give all unallocated water to one consumptive user. *Del-Aware Unlimited, Inc. v. Department of Environmental Resources*, 508 A.2d 348 (Pa. Cmwlth. 1986).

Cross References

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

§ 105.15. Environmental assessment.

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

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

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

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

- (i) The surface area of the impoundment.
- (ii) The height of the dam.
- (iii) The mean depth and maximum depth of the stream at the location of the dam.
- (iv) A description of the release structure.
- (v) The rate of a conservation release.
- (vi) The design of bypass structures.
- (vii) The use of the dam.
- (viii) The material used for construction of the dam.

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

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

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

Authority

The provisions of this § 105.15 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.15 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117651) to (117652).

Cross References

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

§ 105.16. Environmental, social and economic balancing.

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

Authority

The provisions of this § 105.16 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.16 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117652) to (117654).

Notes of Decisions

Because the petitioner failed to utilize available alternatives, the Department was not required to consider the petitioner's proposed mitigation measures. *Hatchard v. Department of Environmental Resources*, 612 A.2d 621 (Pa. Cmwlth. 1992).

Cross References

This section cited in 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.17. Wetlands.

Wetlands are a valuable public natural resource. This chapter will be construed broadly to protect this valuable resource.

(1) *Exceptional value wetlands.* This category of wetlands deserves special protection. Exceptional value wetlands are wetlands that exhibit one or more of the following characteristics:

(i) Wetlands which serve as habitat for fauna or flora listed as “threatened” or “endangered” under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531–1543), the Wild Resource Conservation Act (32 P. S. §§ 5301–5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).

(ii) Wetlands that are hydrologically connected to or located within 1/2-mile of wetlands identified under subparagraph (i) and that maintain the habitat of the threatened or endangered species within the wetland identified under subparagraph (i).

(iii) Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 (relating to water quality standards) and the floodplain of streams tributary thereto, or wetlands within the corridor of a watercourse or body of water that has been designated as a National wild or scenic river in accordance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271–1287) or designated as wild or scenic under the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21–820.29).

(iv) Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply.

(v) Wetlands located in areas designated by the Department as “natural” or “wild” areas within State forest or park lands, wetlands located in areas designated as Federal wilderness areas under the Wilderness Act (16 U.S.C.A. §§ 1131—1136) or the Federal Eastern Wilderness Act of 1975 (16 U.S.C.A. § 1132) or wetlands located in areas designated as National natural landmarks by the Secretary of the Interior under the Historic Sites Act of 1935 (16 U.S.C.A. §§ 461—467).

(2) *Other wetlands.* This category includes wetlands not categorized as exceptional value wetlands.

(3) *Permits.* The Department will maintain a list of permit decisions involving wetlands. This list will be a matter of public record and will be available for inspection at the Department’s offices.

Authority

The provisions of this § 105.17 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.17 adopted November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117654) and (126083).

Notes of Decisions

Exceptional Value Wetlands

Wetlands adjacent to corporate water project meet the criteria for “exceptional value” wetlands as defined by this regulation because they: (1) serve as habitat for threatened or endangered plants and animals; (2) there are areas of wetland on the property of the proposed well that are hydro geologically connected to and within one-half mile of wetlands that serve as habitat to endangered and threatened species; and (3) the wetlands are located in or along the floodplain of a wild trout stream or “exceptional value waters.” Therefore, because the Department of Environmental Protection failed to consider the effects of the project on the wetlands and adjacent exceptional value creek, and failed to determine whether the proposed activity was environmentally inconsequential, the permit was remanded for further consideration. *Oley Township v. Department of Environmental Protection*, 1996 EHB 1098.

Standing

In appeal from Environmental Hearing Board adjudication under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), Game Commission lacked standing to invoke review under Article I, Section 27 of the Pennsylvania Constitution since Department of Environmental Resources

and not the Game Commission has the duty to protect wildlife under the act. *Game Commission v. Department of Environmental Resources*, 509 A.2d 877 (Pa. Cmwlth. 1986).

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to permit applications—information and fees); 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing); 25 Pa. Code § 105.442 (relating to authorization for general permits); 25 Pa. Code Chapter 105 Appendix E (relating to utility line stream crossings; general permit BDWM-GP-5); 25 Pa. Code Chapter 105 Appendix H (relating to temporary road crossings; general permit BDWM-GP-8); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.311 (relating to evaluation of ecological receptors); 25 Pa. Code § 271.915 (relating to management practices); 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited); 25 Pa. Code § 275.202 (relating to areas where the land application of sewage sludge is prohibited); § 277.202 (relating to areas where construction/demolition waste landfills are prohibited); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 281.202 (relating to areas where general composting facilities are prohibited); and 25 Pa. Code § 283.202 (relating to areas where resource recovery facilities and other processing facilities are prohibited).

§ 105.18. [Reserved].

Source

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

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

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

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

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

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

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

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

(b) *Other wetlands.* Except as provided for in subsection (c), the Department will not grant a permit under this chapter for a dam, water obstruction or encroachment in, along, across or projecting into the wetland which is not an

exceptional value wetland, or otherwise affecting the wetland, unless the applicant affirmatively demonstrates in writing and the Department issues a written finding that the following requirements are met:

(1) The project will not have a significant adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15. The determination of whether an adverse impact is significant includes an evaluation of the following factors:

(i) The areal extent of the wetland impacts.

(ii) The wetland's values and functions.

(iii) Whether the affected wetlands values and functions are unique to the area or region.

(iv) Comments from other State and Federal environmental agencies concerning the scope and effect of the impact.

(2) Adverse environmental impacts on the wetland will be avoided or reduced to the maximum extent possible.

(3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less adverse impact on the wetland, and that would not have other significant adverse impacts on the environment. An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the proposed project shall be considered as a practical alternative.

(i) It shall be a rebuttable presumption that there is a practicable alternative, not involving a wetland, to a nonwater-dependent project, and that the alternative would have less adverse impact on the wetland.

(ii) To rebut the presumption, an applicant for a permit under this chapter shall demonstrate with reliable and convincing evidence and documentation and the Department will issue a written finding that the following statements are true:

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

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

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

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

Cross References

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

§ 105.20a. Wetland replacement criteria.

(a) Wetlands replacement shall meet the following general criteria:

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

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

(3) *Siting criteria.* Replacement shall be located adjacent to the impacted wetland unless an alternative replacement site is approved by the Department. Alternative replacement sites will generally not be approved unless the replacement site is located within the same watershed as the wetland being replaced or within the designated boundaries of the coastal zone management area where the loss occurs.

(b) In addition to the general criteria in subsection (a), the Department will use its guidelines entitled "*Design Criteria for Wetlands Replacement*" in making decisions under this section. These guidelines provide for design, flexibility and utilization of best available technology in environmental engineering. These guidelines are available from the Division of Rivers and Wetlands Conservation, Post Office Box 8761, Harrisburg, Pennsylvania 17105-8761.

Authority

The provisions of this § 105.20a issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

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

Cross References

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

PERMIT ISSUANCE, TRANSFER AND REVOCATION**§ 105.21. Criteria for permit issuance and denial.**

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

(1) The application is complete and accurate.

(2) The proposed project or action complies with the standards and criteria of this title and with other laws administered by the Department, the Fish Commission and river basin commissions created by interstate compact.

(3) The proposed project or action will adequately protect public health, safety and the environment.

(4) The proposed project or action is consistent with the environmental rights and values secured by Pa. Const. Art. I, § 27 and with the duties of the Commonwealth as trustee to conserve and maintain public natural resources of this Commonwealth.

(5) The applicant has not been found to be in continuing violation of this title or other laws administered by the Department, the Fish Commission or a river basin commission, including, but not limited to, a violation of an adjudication and order, agreement, consent order or decree, whether or not the applicant's violation resulted in an order or civil penalty assessment.

(6) The applicant has submitted adequate proof of financial responsibility, if required under § 105.20 (relating to proof of financial responsibility).

(b) A permit issued under this chapter shall be subject to the general and special conditions regarding construction, operation, maintenance, inspection and monitoring of a project or action that the Department may deem necessary to assure compliance with the requirements and purposes of this chapter, the act, the Flood Plain Management Act (32 P. S. §§ 679.101–679.601) and other laws

mit BDWM-GP-7); 25 Pa. Code Chapter 105 Appendix H (relating to temporary road crossings; general permit BDWM-GP-8); 25 Pa. Code Chapter 105 Appendix I (relating to agricultural activities; general permit BDWM-GP-9); 25 Pa. Code Chapter 105 Appendix J (relating to abandoned mine reclamation; general permit BDWW-GP-10); and 25 Pa. Code Chapter 105 Appendix O (relating to private residential construction in wetlands; general permit BDWW-GP-15).

Subchapter M. STATEMENTS OF POLICY

WETLANDS

Sec.

105.451. Identification and delineation of wetlands—statement of policy.

105.452. Status of prior converted cropland—statement of policy.

WETLANDS

§ 105.451. Identification and delineation of wetlands—statement of policy.

(a) This section sets forth the policy of the Department as to the methodology to be used for the identification and delineation of wetlands.

(b) The use of some delineation method is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.

(c) The Department adopts and incorporates by reference the 1987 *Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1)* along with the guidance provided by the United States Army Corps of Engineers, Major General Arthur E. Williams' memorandum dated 6 March 1992, *Clarification and Interpretation of the 1987 Manual* and any subsequent changes as the methodology to be used for identifying and delineating wetlands in this Commonwealth. The 1987 *Corps Wetland Delineation Manual*, Publication No. ADA 176734 is available from the National Technical Information Service (NTIS), Springfield, VA 21161, or telephone: (703) 487-4650. Copies of the Supplemental Guidance issued by the Corps concerning use of the 1987 Manual, (that is, the October 7, 1991, Questions and Answers, and the March 6, 1992, Clarification and Interpretation Memorandum) as well as the Administration's Wetlands Plan of August 24, 1993, may be obtained by contacting the regulatory branch of a local Corps District, or the EPA Wetlands Hotline at (800) 832-7828. For more information, con-

tact Pennsylvania Department of Environmental Protection, Bureau of Dams, Waterways and Wetlands, Post Office Box 8554, Harrisburg, Pennsylvania 17105-8554, telephone (717) 787-6827.

Source

The provisions of this § 105.451 adopted October 27, 1989, effective December 27, 1989, 19 Pa.B. 4612; amended February 2, 1996, effective February 3, 1996, 26 Pa.B. 494. Immediately preceding text appears at serial pages (207778) to (207781).

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to permit applications—information and fees).

§ 105.452. Status of prior converted cropland—statement of policy.

(a) This section sets forth the policy of the Department as to the status of prior converted cropland in this Commonwealth.

(b) The use of some procedure for determining wetlands is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.

(c) Naturally occurring events may result in either creation or alteration of wetlands. It is necessary to determine whether alterations to an area have resulted in changes that are now “normal circumstances” of the particular area. The Department recognizes “prior converted cropland,” as defined in the *National Food Security Act Manual* (180-V-NFSAM, Third Edition, March 1994), as “normal circumstances” as the term is used in the definition of wetlands in § 105.1 (relating to definitions). These prior converted croplands are not regulated as wetlands under the Commonwealth’s Wetland Protection Program contained in this chapter. Prior converted cropland is defined in the *National Food Security Act Manual*, as wetlands that were drained, dredged, filled, leveled or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, and have not been abandoned, for the purpose of, or to have the effect of making the production of an agricultural commodity possible, and an agricultural commodity was planted or produced at least once prior to December 23, 1985.

(1) Abandonment is the cessation of cropping, forage production or management on prior converted cropland for 5 consecutive years, so that:

- (i) Wetland criteria are met.
- (ii) The area has not been enrolled in a conservation set-aside program.