

Act 167 Stormwater Management Plans

Frequently Asked Questions (FAQ)

April 17, 2023

Version 1.1

The Department of Environmental Protection (DEP) has developed this FAQ document to assist counties and the public in understanding the requirements of Act 167. This document will be maintained by DEP and may be updated with additional content over time. Questions may be directed to the appropriate DEP regional office or to DEP’s Bureau of Clean Water at (717) 787-5017 or RA-EPPAMS4@pa.gov.

Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

FAQ #1: What is Act 167?

Pennsylvania’s [Storm Water Management Act](#) was enacted as Act 167 of 1978 to reduce the damaging impacts of accelerated stormwater runoff that can result from land development. Act 167 requires counties to prepare and adopt a watershed-based stormwater management plan for each watershed within the county (or the county as a whole) and requires municipalities to adopt and implement local ordinances to regulate land development consistent with those watershed-based stormwater management plans.

FAQ#2: What is a watershed-based Stormwater Management Plan?

Stormwater Management Plans (Act 167 Plans) provide municipalities with a framework, including model ordinances and management practices, to control stormwater runoff from new development in a watershed. These plans include standards for managing the quantity, velocity (rate), and quality of stormwater runoff given the characteristics of the watershed, including current and future development plans. The goal is to control post-development stormwater runoff rate, volume, and quality so that those runoff characteristics approximate the pre-development conditions as closely as possible. This helps prevent increased downstream flooding and protects water resources and their uses.

FAQ #3: Does Act 167 require pollutant load reductions?

Act 167 requires that Act 167 Plans provide “criteria and standards for the control of storm water

runoff from existing and new development which are necessary to minimize dangers to property and life...” That requirement stops short of requiring reduction in pollution caused by development that occurred before Act 167 was enacted (i.e., before October 4, 1978).

FAQ #4: Does Act 167 regulate land use?

No, Act 167 Plans are not intended to regulate land use. Municipalities control land use through zoning and subdivision and land development ordinances. Act 167 Plans should be consistent with those ordinances.

FAQ #5: What geographic scale should be used to develop an Act 167 Plan?

The obligation in Act 167 is for each county to prepare and adopt a stormwater management plan for each watershed located in the county as designated by DEP. The majority of designated watersheds are at the HUC-10 scale, but counties may choose to develop Act 167 Plans using a smaller or larger watershed scale. All Act 167 Plans must be developed in consultation with the municipalities located within each watershed; therefore, the larger the scale chosen for Act 167 Plan development, the more municipal partners will need to be included in the plan development process.

FAQ #6: Can a county develop a joint plan with a neighboring county?

Yes. In some cases, it makes sense for counties to develop joint plans where a watershed includes land in more than one county.

FAQ #7: What entity should take the lead in developing an Act 167 Plan?

Any entity can be authorized by the county to prepare the Act 167 Plan. Common choices for lead entities include the County Planning Commission, Planning Department, Planning and Zoning Commission, or Regional Planning Commission (names and roles vary across the state). County commissioners should formally submit the plan to DEP.

FAQ #8: What is the process for reviewing and approving Act 167 Plans?

As specified in Act 167, DEP, in consultation with the Department of Community and Economic Development (DCED), has 90 calendar days to review and approve or disapprove an Act 167 Plan. If no action is taken on an Act 167 Plan within 90 calendar days, the plan is deemed approved. DEP’s review process is explained in the [Standard Operating Procedure \(SOP\) for Review of Act 167 Stormwater Management Plans](#).

FAQ #9: What should a county expect from DEP during the review process?

If DEP finds that an Act 167 Plan is incomplete, the regional office of DEP reviewing the plan may contact the county and provide an opportunity for the county to either make the plan complete or to withdraw the plan. The opportunity must however be limited to what can be done within a short period of time (generally two business days) because DEP has a statutory limit on its review time. If the completion/withdrawal is not done within that period of time, DEP will proceed with a disapproval.

If a plan is to be disapproved by DEP and the issues are relatively minor, and a public hearing was previously held, DEP may allow the county to decide whether a public hearing on the resubmitted plan is necessary. If the county decides another public hearing is not necessary, the county should advertise that the plan will be discussed and potentially adopted at a public meeting. In either case, the plan resubmittal should include documentation of the subsequent public hearing/meeting. Counties will be required to adopt resubmitted plans (either before resubmittal or after approval) regardless of whether the original plan was adopted or not.

FAQ #10: How is the public involved in the watershed stormwater planning process?

During the watershed stormwater planning process, counties are to establish plan advisory committees consisting of county and municipal representatives. Counties may also appoint representatives from relevant interest groups and the public. Advisory committees help to define local concerns and develop stormwater control strategies. The process for county adoption of the Act 167 Plan includes a public hearing. Municipal adoption of ordinances to implement the plan is also an opportunity for public input. County conservation districts may participate in committees, but DEP staff should not participate if they will ultimately review the Act 167 Plan.

FAQ #11: Must the public hearing be held before the SWMP is submitted to DEP for review?

Act 167 requires counties to hold a public hearing and to formally adopt their Act 167 Plan. Neither of those actions are required prior to the submittal of the plan to DEP.

It is DEP's preference and strong suggestion that counties hold the hearing prior to submission to make interested parties aware of issues earlier in the process. Counties may adopt a plan prior to submittal to DEP at their discretion. If the county has not held the public hearing and/or adopted the plan, the DEP approval letter will advise the county that those actions need to be taken, and when completed, that documentation must be submitted to DEP.

FAQ #12: What is required by counties after DEP approves the Act 167 Plan?

If the Act 167 Plan public hearing and/or adoption were not completed prior to submittal to DEP, DEP will instruct the county to complete those actions and notify DEP. The county should also inform municipalities that the municipalities have a responsibility to amend local ordinances so that the ordinances are consistent with the plan within six months of plan adoption or DEP approval (whichever is later). Under Act 167, DEP is required to take enforcement action against municipalities that do not enact ordinances consistent with Act 167 Plans.

FAQ #13: How are Act 167 Plans implemented?

After DEP approves an Act 167 Plan and the county adopts it, Act 167 requires that anyone engaged in land development activities is required to implement stormwater management measures consistent with the plan and the requirements of Act 167. In addition, Act 167 requires each municipality in the watershed to adopt or amend ordinances consistent with the plan, including zoning, subdivision and land development, building code, and erosion and sedimentation control requirements.

FAQ #14: Does DEP provide technical assistance to counties developing SWMPs?

DEP provides assistance through general guidance and training to explain what is required by Act 167 and its review process but cannot offer technical assistance with individual plan development.

FAQ #15: Does DEP provide financial assistance to counties developing or updating Act 167 Plans?

Counties are responsible for the preparation, enactment, implementation, administration, and enforcement of Act 167 Plans, and for obtaining the necessary financial support. Under Section 17 of Act 167, DEP is authorized to award grants to municipalities and counties for reimbursement of costs in preparing and revising stormwater management plans and administrative, enforcement and implementation costs when funds are appropriated by the General Assembly for this purpose. DEP may enter into grant agreements with counties for preparation or revision of Act 167 Plans in accordance with [25 Pa. Code Chapter 111](#).

Prior to 2009, the General Assembly consistently appropriated funds for Act 167 and DEP was able to provide funding to assist with the development of many plans. There was no funding appropriated for Act 167 from 2010 to 2022. Funding for Act 167 was included in the FY 2022-23 budget. Future grants and reimbursements for plan development and revisions will depend on the availability of funding. When funds are not appropriated for Act 167, plan development or revision may be an eligible use for other state funding sources.

FAQ #16: What is Act 15 and how does it affect Act 167 Plans?

Each Act 167 Plan should be reviewed to ensure that it does not regulate or endorse the regulation of “High Tunnels” in a manner contrary to Act 15 of 2018 (Act of April 15, 2018, P.L. 91, No. 15). Act 15 amended Act 167 to include a definition for the term high tunnel, exempted some high tunnels from the provisions of Act 167, defined the characteristics of high tunnels exempt from the provisions of Act 167, and required any municipality with an ordinance in conflict with the provisions of Act 15 to amend that ordinance. DEP does not provide legal advice on municipal ordinances, so municipalities are encouraged to contact their legal counsel to review their ordinance in relation to Act 167.

FAQ #17: How often must Act 167 Plans be updated?

Act 167 requires that plans be periodically reviewed and revised at least every five years.

FAQ #18: Why is it advantageous for a county to have a current Act 167 Plan?

Virtually every municipality has local flooding issues that need attention. The short-term and long-term solutions to those issues are not necessarily obvious, nor is a collective consensus of solutions assured. The development of an Act 167 Plan can identify those problems, their solutions, and support applications for funding the solutions. The plan can include modeling to help identify where future development needs may call for stormwater controls that exceed DEP regulatory minimums so that flooding issues are not created or made worse. The plan can provide a model stormwater ordinance that reflects local priorities and assures municipal stormwater ordinances

are consistent with DEP requirements. The model ordinance can promote actions not specifically required by DEP and can promote uniformity of ordinances among neighboring municipalities. A current Act 167 Plan puts all land development on the same page when it comes to regulations. It simplifies the land development process, especially for an out-of-state developer. It unifies the watershed/county, spanning municipal boundaries and creates confidence that projects can move forward in a timely way.

Additionally, some grant programs, such as the Growing Greener Plus Grants Program, incorporate current Act 167 Plans in their grant evaluation criteria, which can result in projects located within counties or watersheds with current plans scoring higher than projects located in counties without current plans.

Version History

Date	Version	Revision Reason
4/17/2023	1.1	Updated FAQ #5 to modify the recommendation for geographic scale of Act 167 Plans; updated FAQ #8 to include reference to DEP's Act 167 SOP; revised FAQ #14 to clarify that DEP does not provide technical assistance for individual Act 167 Plan development; modified FAQ #15 to reflect funding availability starting in FY 2022-23; and other minor clarifications made throughout.
6/17/2021	1.0	Original