



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

Mr. Jim Tabor  
Coastal Zone Management Program  
Office for River Basin Cooperation  
Rachel Carson State Office Building  
PO Box 2063  
Harrisburg, PA 17105-2063

Dear Mr. Tabor:

Thank you for your January 18, 2003 request to formally incorporate a number of changes to the Pennsylvania State Coastal Zone Management Program (PACZMP). The due date for the Office of Ocean and Coastal Resource Management's (OCRM) response was changed to June 6, 2003, in discussion and emails with Larry Toth. You specifically requested that these program changes be incorporated as routine program changes (RPC) per the Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. 923 Subpart H and OCRM's Final Program Change Guidance of July 8, 1996. Based on our review of your submission, we concur with your determination that the changes to the statutes, coastal policies, Geographic Areas of Particular Concern (GAPC), and procedures noted below are routine changes, and these are formally incorporated as enforceable policies of the PACZMP.

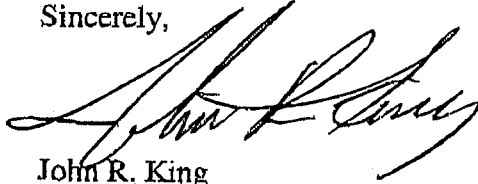
- Changes to Commonwealth's Municipal Waste Regulations (25 PA CODE CHAPTERS 271-273, 278, 279, 281, 283, and 285)
- Addition of Infectious Diseases and Chemotherapeutic Waste (25 PA CODE CHAPTER 284)
- Changes to Hazardous Waste Management Regulations (25 PA CODE CHAPTERS 260a, 261a, 266a, 266b, 268a, and 270a)
- Changes to Residual Waste Management Regulations (25 PA CODE CHAPTERS 287, 288, 289, 291, 293, 295, 297, and 299)
- Addition of Management of Waste Oil Regulations (25 PA CODE CHAPTER 298)
- Addition of Ocean Resources Policy and two related enforceable policies: the Noxious Weed Control Law, Act of 1982, P.L. 228, No. 74 as amended (3 P.S. Section 243 et seq.) and the Aquacultural Development Law, Act of October 16, 1998, as amended (3 P.S. Section 4201 et seq.)
- Relocation of PACZMP to the Office of River Basin Cooperation
- Addition of Burnham Farm Natural Value GAPC



Federal Consistency will apply to the approved changes only after public notice of this approval has been issued, pursuant to 15 C.F.R. section 923.84(b)(4).

We appreciate your cooperation and approval of extension in this review and look forward to continuing to work with you and your staff on completing this and future RPC requests. If you have any further questions, please contact Meredith Bland at 301/713-3098, extension 135.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. King". The signature is fluid and cursive, with a large initial "J" and "K".

John R. King  
Acting Division Chief



**RPC XI**

**PROPOSED ROUTINE PROGRAM CHANGES**

**TO**

**PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM**

**THAT HAVE OCCURRED IN 2000 AND 2001**

**December 2002**

**RPC XI  
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**RPC XI**

**2000 AND 2001 ROUTINE PROGRAM CHANGES  
TO  
PENNSYLVANIA’S COASTAL ZONE MANAGEMENT PROGRAM**

**INTRODUCTION**

Under the Federal Coastal Zone Management (CZM) Act, coastal states can modify their approved CZM Programs. The Commonwealth of Pennsylvania is submitting to the National Oceanic and Atmospheric Administration (NOAA) these modifications as Routine Program Changes (RPCs) rather than Program amendments. **An RPC is defined in CZM regulations (15 C.F.R. Section 923.84) as, “Further detailing of a state’s program that is the result of implementing provisions approved as part of the state’s approved management program that does not result in (an amendment).”**

**An amendment is defined (15 C.F.R. Section 923.80(d)) as “Substantial changes in one or more of the following five coastal management program areas:**

- 1. Uses Subject to Management** (15 C.F.R. Part 923, Subpart B) (i.e., permissible land and water uses within a coastal zone which have a direct and significant impact in coastal waters),
- 2. Special Management Areas** (15 C.F.R. Part 923, Subpart C) (i.e., criteria or procedures for designating or managing geographical areas of particular concern, or areas for preservation or restoration),
- 3. Boundaries** (15 C.F.R. Part 923, Subpart D),
- 4. Authorities and Organization** (15 C.F.R. Part 923, Subpart E) (i.e., the state regulations and organizational structure on which a state will rely to administer its coastal management program), and
- 5. Coordination, Public Involvement, and National Interest** (15 C.F.R. Part 923, Subpart F) (i.e., coordination with governmental agencies having interest and responsibilities affecting the coastal zone; the involvement of interest groups as well as the general public; and the provision for adequate consideration of the national interest involved in planning for and managing the coastal zone, including the siting of facilities (such as energy facilities) which are of greater than local significance).

## **PURPOSE**

Therefore, the purpose of this paper is to demonstrate to NOAA that the following proposed changes to Pennsylvania's CZM Program are not substantial (amendments), but are routine program changes (RPCs) that further detail this Program.

## **PROPOSED CHANGES**

Several CZM Program changes have occurred in 2000 and 2001. The Commonwealth of Pennsylvania is submitting these proposed changes to NOAA's Office of Coastal and Resource Management (OCRM) as RPCs, and not amendments.

The following are proposed RPCs to the Commonwealth of Pennsylvania Coastal Zone Management Program, and Final Environmental Impact Statement (FEIS) (August 1980). These changes are to:

- Chapter 2 – Coastal Zone Policy Framework, and concern general regulatory changes affecting the CZM Program's enforceable authorities;
- Chapter 3 – Special Management Concerns, and concern revisions to CZM's Geographical Areas of Particular Concern; and
- Chapter 4 – Program Authorities and Organization, and concern uses subject to management, and the relocation of the Pennsylvania CZM Program within the Department of Environmental Protection.

The following pages contain a discussion of every program change that had occurred in 2000 and 2001, an analysis of the impact that the change will have on Pennsylvania's CZM Program, and justification as to why the change constitutes an RPC and not a program amendment, as defined by the federal CZM regulations.

## **2000 REGULATORY PROGRAM CHANGES**

### **INTRODUCTION – GENERAL REGULATORY CHANGES**

CZM's enforceable policies are based on Commonwealth agencies' regulations, which are incorporated into this Program. These regulations were in effect at the time of original CZM Program approval in 1980. However, over time these regulations have been amended, and as such change Pennsylvania's originally approved CZM Program. These subsequent changes will further detail the original Program.

Generally in Pennsylvania, regulatory development/amendments are initiated by the Commonwealth through the Commonwealth's Regulatory Basics Initiative (RBI) or are initiated by the regulated community.

In August 1995, the Commonwealth announced its RBI, as an overall review of all state agencies' regulations and policies. It gave the regulated community, local governments, environmental interests and the general public the opportunity to identify specific regulations which are either more stringent than federal standards, serve as barriers to innovation, or are obsolete or unnecessary, or which impose costs beyond reasonable environmental benefits or serve as barriers to adopting new green environmental technologies, recycling, and pollution prevention.

In February 1996, Governor Ridge executed Executive Order 1996-1 (Regulatory Review and Promulgation) establishing standards for the review, development, and promulgation of state regulations under RBI.

A second method of initiating regulatory development/amendments is by the public, the regulated community or a stakeholder petitioning the Department of Environmental Protection (DEP) for the change.

The following regulatory changes were developed in response to the RBI and the Governor's Executive Order 1996-1. The amendments are the result of the DEP evaluating the municipal waste regulations promulgated in 1988, 1991 and 1992. The Commonwealth's municipal waste landfill program is a federally approved program under the U.S. Environmental Protection Agency (EPA) "Subtitle D" Criteria for Municipal Solid Waste Landfills (40 CFR Part 258) (Subtitle D criteria), which became effective October 9, 1993. EPA's Subtitle D criteria contain minimum national criteria for the location, design, operation, cleanup and closure of municipal waste landfills. The Subtitle D criteria give a state flexibility in implementing the criteria if the state has an EPA-approved program, as the Commonwealth does. The Commonwealth's regulations are at least as stringent as the Subtitle D criteria. In several instances amendments were made to regulations that are more stringent than the Subtitle standards



In general, the following RBI changes make the Commonwealth's regulations consistent with the federal requirements, delete obsolete and unnecessary provisions, and include various provisions for protecting the public health and safety from radioactive materials that occasionally arrive at municipal waste facilities.

The following regulatory changes, which are presently in effect statewide, have been subjected to public comments and hearings, and have been approved by the Commonwealth's Environmental Quality Board, and Independent Regulatory Review Committee.

**25 PA CODE CHAPTERS 271-273, 277, 279, 281, 283, and 285 – Municipal Waste (Amended December 2000).**

Chapters 271-273, 277, 279, 281, 283, and 285 contain the Commonwealth's municipal waste regulations. The amendments to these municipal waste regulations clarify existing regulations; eliminate many requirements that are more stringent than standards imposed by Federal law; eliminate requirements which are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach.

Some specific amendments are:

**CHAPTER 271 - Municipal Waste Management**

**§ 271.1 - Definitions.**

*“Airport”*

A definition of “airport” was added to the existing definitions to clarify the types of landing areas that are implicated in the siting restrictions, environmental assessment, permit issuance or denial criteria and notice requirements that are included in the final regulations. The definition cross-references the federal Department of Transportation's regulations.

*“Byproduct material,” “NARM,” “NORM,” “radioactive material,” “TENORM” and “transuranic radioactive material.”*

All chapters of the regulatory amendments except Chapter 285 (relating to storage, collection and transportation of municipal waste), contain provisions designed to protect facility workers, the general public and the environment from the dangers associated with radioactive materials if these materials are unlawfully brought to a municipal waste processing or disposal facility. To facilitate understanding of these provisions, the regulations contain definitions of eight terms relating to radioactive materials that appear in these provisions.

The terms “byproduct material” and “source material” are defined by incorporating by reference their federal definitions from the *Code of Federal Regulations*. The term “special nuclear material” is also defined by incorporating by reference its federal definition, but an

explanation of several terms in the federal definition was necessary to relate them to the Commonwealth's regulations.

The term "NARM" is defined as naturally occurring or accelerator-produced radioactive material. The term does not include byproduct, source or special nuclear material. The definition of "NARM" is taken from 25 Pa. Code § 215.2 (relating to definitions).

The term "NORM" is defined as naturally occurring radioactive material. NORM is a nuclide, which is radioactive in its natural physical state—that is, not man-made—but does not include source or special nuclear material. The definition of NORM is taken from § 215.2 (relating to definitions).

The term "radioactive material" is defined as a substance, which spontaneously emits alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom's nucleus. This definition is taken from Document 250-3100-001 (DEP's Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities) and taken from § 215.2.

The term "TENORM" is defined as technologically enhanced naturally occurring radioactive materials. TENORM is NORM, which has been altered by human activity in a manner that results in increased radiation exposure to people. The alteration could be a chemical or physical change in form, relocation of the NORM or removal of barriers that isolated the NORM.

The "transuranic radioactive material" is defined as material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium and curium.

*"Dredged material."*

Language was added to the existing definition to clarify that material removed or dredged from an impoundment that received solid waste does not fall within the meaning of "dredged material". Dredged material typically refers to material excavated from waterways and ponds.

*"FAA."*

The amendments include a definition of "FAA," which is the Federal Aviation Administration of the U.S. Department of Transportation. This definition was added because new restrictions on the construction and operation of landfills near airports involve the FAA.

*"Special handling waste."*

Dredged material has been added to the definition of "special handling waste" because the variability of the physical and chemical characteristics may necessitate additional management considerations.

*“Waste”*

Language was added to the existing amendments definition of “waste” to clarify that as a general rule, a material whose original purpose has been completed and which is directed to a beneficial use facility or is otherwise beneficially used is a waste. This amendment corrects an oversight by which the regulation had excluded materials that were beneficially used in certain circumstances from the definition of “waste” without having expressly included them. The final language makes clear the original intention of the definition. The exclusions remain in the definition.

*“Wetlands.”*

The existing definition of “wetlands” was amended to make it consistent with the definition in Title 25 Chapter 105. The Pennsylvania CZM Program has based its Wetlands Policy on Chapter 105.

**§271.2 - Scope.**

This subsection was updated by referencing the addition of new Chapter 284 (relating to infectious and chemotherapeutic waste) to the list of chapters. Chapter 284 will be added as a new regulation to the Pennsylvania CZM Program with this RPC. New Chapter 284 will be discussed later in this RPC.

**§271.2 (b) (4)**

Also under this subsection, a new category of waste -- waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material -- has been added to the list of wastes that are subject to the municipal waste regulations. This waste primarily has characteristics that are generally found in the municipal waste stream.

**§ 271.127 - Environmental Assessment**

The word “prime” has been deleted from the term “prime farmland” because there are many categories of farmland that may be impacted by the location of a waste management facility. Some are more sensitive than prime farmland and others are not. This information is necessary for the Pennsylvania Department of Agriculture and other agencies to evaluate the potential harms the facility may present to agricultural land.

*“Local parks”* was added to the list of features in subsection (a) that an applicant must consider in determining the potential impacts of a proposed facility or modification, to fill in the gap left by only listing state and federal parks.

“Airports” was also added to the list of features in subsection (a) to clarify that if a proposed facility will have the potential of causing harm to aircraft arriving at or departing from an airport, the application will have to include a plan to mitigate the harm or potential harm.

***§ 271.201 - Criteria for permit issuance or denial.***

A new paragraph (9) was added to prohibit a new landfill from operating if the landfill is within 6 miles from an airport covered by the April 5, 2000, federal legislative amendment to 49 U.S.C.A. § 44718(d) (relating to limitation on construction of landfills), unless the Administrator of the FAA has determined that exemption of the landfill from application of § 44718(d) would have no adverse impact on aviation safety. Section 44718(d) expressly prohibits the construction of a new landfill within 6 miles of a public airport that has received grants under 49 U.S.C.A.

**CHAPTER 272 - Municipal Waste Planning, Recycling And Waste Reduction**

***§ 272.223 - Description of waste.***

The amendments added construction/demolition waste (other than waste from demolition of an industrial site) to the list of wastes described in subsection (b) that a county must specifically address in describing the waste generated in the county. Construction/demolition waste is added to the list because generation and recycling opportunities for it are increasing, so counties should become aware of the magnitude of this component of the waste stream within their borders and its recycling potential. Furthermore, the EPA is considering adding construction/demolition waste to the list of materials it uses to compare recycling progress from state to state, so county generation and recycling data will become even more important.

A new paragraph was added to subsection (c) to clarify the planning requirements for construction/demolition waste. That paragraph requires an estimate of the amount of construction/demolition waste currently generated in the county, that will be generated in the county within the next 10 years, that is currently recycled and that could be recycled during the next 10 years.

The recycling rate in subsection (d)(3) was changed from 25% to 35% to reflect the Commonwealth’s goal established by proclamation of the Governor in 1998.

**CHAPTER 273 - Municipal Waste Landfills**

***§ 273.140a - Radiation protection action plan.***

A new section has been added requiring that an application for a municipal waste landfill contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. As with the other requirements in this subchapter, this requirement applies to all permit applications, not just applications for new facilities. A transition schedule

has been developed in § 271.114 (relating to transition period) for existing facilities to come into compliance with this regulation. The action plan must be incorporated into the landfill's approved waste analysis plan, under § 271.613 (relating to waste analysis plan). The permit modification will be a major modification. The action plan must be prepared in accordance with DEP's *Guidance Document on Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities*, document number 250-3100-001, or in a manner at least as protective of the environment, facility staff and public health and safety and which meets all statutory and regulatory requirements.

An approved action plan will specify the radiation exposure rate, in accordance with these regulations and the foregoing guidance document, at which the facility's radiation detection monitors will indicate the presence of radioactive material in waste in accordance with § 273.223 (relating to radiation monitoring and response). A waste load that does not trigger a radiation monitor will need no further action regarding radioactive materials screening. A waste load that does trigger a radiation monitor may only be accepted at the landfill if it is within the acceptable range approved in the action plan in accordance with these final regulations, and the operator obtains additional written approval from DEP for that particular waste load. DEP's written approvals will be decided situation by situation or in advance in the facility's approved action plan. DEP will not authorize any waste containing radioactive material to be accepted at a municipal waste landfill if it is above regulatory limits or if its disposal would endanger the health and safety of the public or the environment.

#### **§ 273.201 - Basic limitations.**

Subsection (g) has been revised to prohibit the practice of landfill operators accepting bulk or noncontainerized liquid but provides for the acceptance of containers holding free liquids for the purpose of disposal on site if approved in the permit.

This section has been revised to specify clearly the types of radioactive materials that might be found in the municipal waste stream that may not be accepted at a municipal waste landfill.

Subsection (l) lists six types of radioactive materials that are controlled under specific or general license or order. These are prohibited from disposal at a municipal waste landfill unless they are specifically exempted from disposal restrictions by an applicable Pennsylvania or federal statute or regulation.

The first type, in paragraph (1), is NARM, which includes naturally occurring and accelerator produced radioactive material. Examples of NARM are radium, potassium-40, various isotopes produced in accelerators, such as cobalt-57, and members of the uranium-238 and thorium-232 decay chains when they don't meet the requirements for source material or special nuclear material.

Paragraph (2) prohibits disposal of byproduct materials. These are produced by nuclear fission, or otherwise, in the nuclear energy cycle. Prominent examples are cesium-137 and strontium-90.

Paragraph (3) prohibits disposal of source material, which, by definition, is uranium and/or thorium present at a combined concentration, by weight, of 0.05% or more. Examples are uranium ores and slags produced by smelting rare earth ores containing uranium and thorium.

Paragraph (4) prohibits disposal of special nuclear material, which includes those isotopes of uranium and plutonium that will split, or fission, when struck by neutrons. Examples of special nuclear material include uranium-233, uranium-235, and plutonium-239.

Paragraph (5) prohibits disposal of transuranic radioactive materials, which include all elements with an atomic number greater than 92 (92 = uranium). Examples include neptunium, plutonium, americium, curium, californium, berkelium, einsteinium, fermium, mendelevium, and others. Transuranic elements do not occur naturally and are produced in high-energy accelerators.

Paragraph (6) prohibits disposal of low-level radioactive waste. A definition of low-level radioactive waste is contained in section 130 of the Low-Level Radioactive Waste Disposal Act (35 P.S. § 7130.130).

Subsection (m) lists three categories of radioactive materials that are prohibited from being accepted at a municipal waste landfill unless approved in writing by DEP, and the disposal does not endanger the environment, facility staff or public health and safety.

The first radioactive material, in paragraph (1), is short-lived radioactive material from a patient having undergone a medical procedure. Certain short-lived radioactive materials are administered to medical patients for diagnosing or treating some illnesses. Once these materials are administered to the patient, they no longer fall under Nuclear Regulatory Commission (NRC) or Pennsylvania licensing. Some of the material is retained in the patient and some is excreted in urine, feces, sweat, saliva or mucous and may get into solid waste through disposal of personal care items. It is DEP's intent is to authorize this material to be disposed in waste facilities upon case-by-case permission from the Area Health Physicists or DEP's Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan, using the general concepts provided in DEP's Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities, document number 250-3100-001.

Paragraph (2) addresses TENORM, which is naturally occurring radioactive material, which has been altered by human activity in a manner that results in increased radiation exposure to people. The alteration could be chemical or physical change in form, relocation of the norm, or removal of barriers that isolated the norm. It is DEP's intent is to authorize disposal of TENORM in municipal waste landfills only in amounts and concentrations that will not result in concentrations of the NORM isotopes significantly above local background. Authorization will

be given as case-by-case permission from the Area Health Physicists or DEP's Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan.

Paragraph (3) addresses consumer products containing radioactive material. Some consumer products, such as smoke detectors, luminous dial clocks and watches, or some ceramics will wind up in the waste stream. DEP intends to allow disposal of small quantities of these under conditions specified in the facility's approved action plan or on a case-by-case basis with permission from the Area Health Physicist or DEP's Director of the Bureau of Radiation Protection.

Subsection (n) provides that the limitations set forth in this section will not apply to radioactive material as found in the undisturbed natural environment of the Commonwealth. The original soil and rock in many parts of this Commonwealth contain sufficient uranium, thorium, radium and potassium-40 to cause monitors to alarm even at quite high settings. This provision ensures that facilities may use soil rock from undisturbed sites for cover, regardless of the content of radioactive material.

***§ 273.202 - Areas where municipal waste landfills are prohibited.***

Subsection (a)(2)(ii) clarified that a 100 foot isolation distance from wetlands, other than exceptional value wetlands, only applies to new facilities.

Subsection (a)(8), (formally section (a)(6)), regarding this 300-foot isolation distance from occupied dwellings, was broken down further into four subsections numbered (a)(8)-(11).

The new provisions allow some flexibility for currently operating facilities and facilities expanding onto land already owned or under option rights on the effective date of these final-form regulations, but impose the new isolation distance on new and reopened landfills.

Subsection (a)(8) addresses operations at existing municipal waste landfills and at permitted non-captive (Class I) residual waste landfills that were operating under their residual waste permit and not closed as of the effective date of these amendments and that converts to a municipal waste landfill after the effective date. Under the final-form regulation, these are subject to the old 300-foot setback. Disposal areas may not be closer than 500 feet except upon waiver by the owner of the dwelling.

Subsection (a)(9) addresses expansions of municipal waste landfills where the landfill was permitted before the effective date of these amendments. The subsection also addresses expansions of residual waste landfills that were operating under their residual waste permit and not closed as of the effective date of these regulatory amendments, and that converts to a municipal waste landfill after the effective date of these regulatory amendments. Expansions must be 900 feet from an occupied dwelling unless the owner provides a written waiver that meets the requirements of this subparagraph (i) or the expansion will be on land owned by the applicant on the effective date of these regulatory amendments, subject to an enforceable option contract for purchase of the land on that date or purchased after the effective date of these

amended regulations under an option contract entered into prior to the effective date. (Subparagraph (ii)). If the contract/option provision applies, the expansion may not be operated closer than 300 feet and the disposal area may not be within 500 feet of an occupied dwelling unless the applicant obtains a waiver as described in subparagraph (i).

New municipal waste landfills will be subject to the 900-foot isolation distance, unless they obtain a waiver in accordance with subsection (a)(10). A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

Access roads are not subject to the 900-foot isolation distance. Under subsection (a)(11), access roads are subject to 300-foot setback. While an increase in setback to 900 feet from landfill activity is necessary to address issues such as noise, dust and odors, these issues can continue to be adequately addressed for access roads with a 300-foot setback.

Subsection (a)(12) was amended to require that a municipal waste landfill cannot be located within 100 feet of a perennial stream unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will occur. This isolation distance mirrors that for residual waste landfills.

#### ***§ 273.223 - Radiation monitoring and response.***

A new § 273.223 has been added to these amended regulations to address monitoring for and responding to radioactive materials in municipal waste. Subsection (a) requires the facility operator to implement the action plan approved under § 273.140a (relating to radiation protection action plan). Subsection (b) requires the operator to monitor in accordance with DEP's *Guidance Document on Radioactivity Monitoring at Municipal and Residual Waste Processing and Disposal Facilities*, document number 250-3100-001 (or in an equally protective manner), the facility's approved radiation protection action plan and this section. Subsection (c) describes the required sensitivity of the monitors and establishes the maximum level of radiation at which they must be set to alarm. In addition to the monitors described in subsections (b) and (c), portable radiation monitors that can determine the radiation dose rate and the presence of contamination on a vehicle that has caused an alarm are required by subsection (d). When radiation is detected at a landfill and the alarm exceedance is confirmed, the operator must perform the radiological survey of the vehicle. If a dose rate specified in subsection (e) is detected, the operator must notify DEP immediately and isolate the vehicle. Once notified, DEP staff, and possibly staff from federal agencies, will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed.

To ensure that the monitoring equipment continues to function properly, subsection (f) requires that the equipment be calibrated at least once a year and more often if so specified by the manufacturer.

Subsection (g) notes the federal requirement, that once the presence of radioactivity is detected (that is, above Action Level I, as described in the guidance document), the vehicle is not



permitted to leave the facility with the material on board without written DEP approval and an authorized U.S. Department of Transportation exemption form issued by DEP. The exemption forms will usually be issued by telephone or fax communication for levels between Action Level I and the Action Level II limits specified in subsection (e).

## **CHAPTER 277** - Construction/Demolition Waste Landfills

### ***§ 277.116 - Groundwater quality description.***

Subsection (a)(1) was amended to add lead to the list of parameters analyzed during background groundwater monitoring. Lead is prevalent in construction/demolition waste and establishing the background is necessary to compare to future monitoring data.

### ***§ 277.121 - Notification of proximity to airport.***

This section has been revised to be consistent with its municipal waste landfill corollary, § 273.121 (relating to notification of proximity to airport). The revision restricts construction of construction/demolition waste landfills within 6 miles of airports. Under the revisions, an applicant will have to notify and include copies of any notifications to the FAA, the airport and the Pennsylvania Department of Transportation's Bureau of Aviation as well as any responses received from those entities. This information will assist DEP in determining whether construction of the facility or modification thereof would be safe. If any of the respondents expresses safety concerns, the applicant will generally be required to submit a mitigation plan under § 271.127 (relating to environmental assessment), at a minimum. The section has also been revised to apply to all applications for new landfills or expansions, because the phrase "lateral expansions" was unnecessarily restrictive.

A number of changes to the occupied dwelling provisions of new subsection (a)(6) were made, breaking it into four subsections, numbered (a)(8)-(11). The new provisions allow some flexibility for currently operating facilities and facilities expanding onto land already owned or under option rights on the effective date of these regulations, but impose the new isolation distance on new and reopened landfills.

Subsection (a)(8) addresses operations at existing facilities. Under the amended regulations, these are subject to the old 300-foot setback. Disposal areas may not be closer than 500 feet except upon waiver by the owner of the dwelling.

Subsection (a)(9) addresses expansions of facilities where the facility was permitted before the effective date of these regulatory amendments. Expansions must be 900 feet from an occupied dwelling unless the owner provides a written waiver that meets the requirements of this subparagraph (i) or the expansion will be on land owned by the applicant on the effective date of the amended regulations, subject to an enforceable option contract for purchase of the land on that date or purchased after the effective date of the amended regulations under an option contract entered into prior to the effective date. (Subparagraph (ii)). If the contract/option provision applies, the expansion may not be operated closer than 300 feet and the disposal area

may not be within 500 feet of an occupied dwelling unless the applicant obtains a waiver as described in subparagraph (i).

New landfills will be subject to the 900-foot isolation distance, unless they obtain a waiver in accordance with subsection (a)(10). A closed landfill that submits an application to reopen and expand shall also be subject to this paragraph.

Access roads are not subject to the 900-foot isolation distance. Under subsection (a)(11), access roads are subject to 300-foot setback. While an increase in setback to 900 feet from landfill activity is necessary to address issues such as noise, dust and odors, these issues can continue to be adequately addressed for access roads with a 300-foot setback.

Subsection (a)(12) was amended to require that a municipal waste landfill cannot be located within 100 feet of a perennial stream unless storage, processing and disposal will not occur within that distance and no adverse hydrologic or water quality impacts will occur.

The amendments added a phrase at the end of subsection (a)(15), regarding the isolation distance from a school, park or playground to make this section consistent with its municipal waste corollary in § 273.202.

A new paragraph (16) was added to subsection (a) to prohibit a construction/demolition waste landfill from operating in a manner in which any portion of the landfill would be an obstruction to air navigation under 14 CFR 77.23(a)(5) (relating to standards for determining obstructions). This protects the “imaginary surfaces” which the FAA protects under 14 CFR 77.25 (relating to civil airport imaginary surfaces) for safety reasons.

#### ***§ 277.222 - Radiation monitoring and response.***

This new section has been added to address monitoring for and responding to radioactive materials in the construction/demolition waste stream. This section is the same as the section added for municipal waste landfills, § 273.223 (relating to radiation monitoring and response), which was previously discussed in more detail.

### **CHAPTER 279 - Transfer Facilities**

#### ***§ 279.110 - Radiation protection action plan.***

A new section was added requiring that an application for a transfer facility contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, recordkeeping and reporting. This provision is the same as the provision added for municipal waste landfills, in § 273.140a (relating to radiation protection action plan).

***§ 279.202 - Areas where transfer facilities are prohibited.***

The amendments revised the isolation distance of a transfer facility from a perennial stream in subsection (a)(4) to add an option consistent with revised § 273.202 (relating to areas where municipal waste landfills are prohibited). Under this option, in subparagraph (i), a transfer facility cannot be located within 100 feet of a perennial stream unless storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will occur.

**CHAPTER 281 - Composting Facilities**

***§ 281.202 - Areas where transfer facilities are prohibited.***

The amendments revised the isolation distance of a transfer facility from a perennial stream in subsection (a)(4) to add an option consistent with revised § 273.202 (relating to areas where municipal waste landfills are prohibited). Under this option, in subparagraph (i), a transfer facility cannot be located within 100 feet of a perennial stream unless storage and processing will not occur within that distance and no adverse hydrologic or water quality impacts will occur.

In the amendments, the setback from a property line in subsection (a)(5) has been revised to allow a general composting facility to operate within 50 feet of a property line if the operator demonstrates that actual processing of waste is not occurring within that distance. This would allow access roads to be located within 50 feet of a property line. The amendments also allow storage and processing to occur within 50 feet of a property line if the storage and processing take place in an enclosed facility.

***§ 281.254 - Soil and groundwater monitoring.***

The amendments added new language clarifying that water quality monitoring requirements, assessment and abatement plans and recordkeeping requirements are the same as in Chapter 273. This was done by cross-referencing those sections from Chapter 273. Subsection (b) was added to clarify certain terms from Chapter 273 as they apply to composting facilities.

**CHAPTER 283 - Resource Recovery and Other Processing Facilities**

***§ 283.202 - Areas where resource recovery facilities and other processing facilities are prohibited.***

The amendments corrected an error in subsection (a)(4) concerning the isolation distance from a perennial stream by deleting the reference to an intermittent stream. The amendments also deleted the redundant reference to a perennial stream.

The amendments revised the isolation distance from a property line to be consistent with § 279.202 (relating to areas where transfer facilities are prohibited).

**ADDITION OF NEW CHAPTER 284 - Infectious and Chemotherapeutic Waste (Created December 2000)**

For purposes of clarity and ease of use, the infectious and chemotherapeutic waste regulations of Chapter 271, 283 and 285 were consolidated under this new chapter, Chapter 284. Newly created Chapter 284 will be added to the CZM Program's Final Environmental Impact Statement (FEIS).

**ANALYSIS OF IMPACT – Chapters 271-273, 277, 279, 281 and 283-285 Regulatory Changes.**

Chapters 271-273, 277, 279, 281 and 283-285 are referenced in Policy VIII-1: Energy Facility Siting, found on pages II-2-25 of CZM's FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas, are sited in such a manner that the coastal area ecosystems are not unreasonably adversely affected. The collection and production of methane gas from municipal waste landfills, and its use to produce energy will not be compromised by these regulatory amendments.

The addition of new Chapter 284 to the CZM Program also will not impact the siting of energy facilities in the coastal zones because these regulations existed elsewhere in Chapters 271-283 and 285. The creation of new Chapter 284 will merely consolidate these existing regulations dealing with infectious and chemotherapeutic wastes in municipal landfills.

The amendments to the municipal waste regulations clarify existing regulations; eliminate many requirements that are more stringent than standards imposed by federal law; eliminate requirements, which are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach.

The amendments encourage flexibility and innovation by facility operators. The amendments to the technical standards for municipal waste facilities, for example daily cover requirements, focus on providing performance standards instead of design standards wherever appropriate. Where a design standard is stated and an equivalent method or technology is available if demonstrated by the applicant/operator to be adequate, the equivalency approval process has been simplified. Similarly, the amendments limit the types of permit modifications, which must go through a major modification process (including public notice and comment).

The amendments may result in lower costs for municipal waste disposal because the regulations incorporate Act 2 remediation standards for facilities that ceased accepting waste prior to the effective date of the Federal Subtitle D criteria (October 9, 1993) and are consistent with the Subtitle D standards for facilities that ceased accepting waste after October 9, 1993.

To promote green technologies, the amendments allow for the demonstration of new technology at existing facilities to be done through a permit modification process.

The amendments clarify and simplify the requirements for revising a county municipal waste management plan while focusing on the county's requirement to assure adequate disposal and processing capacity for waste generated within the county. Counties should benefit from these revisions when they prepare their plan revisions. Both counties and municipalities will realize financial benefits from the streamlined planning and grant procedures.

The amendments facilitate easier access to moneys in the site-specific postclosure trust funds established under section 1108 of Act 101 for conducting postclosure activities at municipal waste landfills that operated prior to the 1988 municipal waste regulations and closed with little or no bond in place. This will provide greater protection of the environment and of persons living near these facilities. The amendments also protect the corpus of small site-specific postclosure trust funds from being depleted by administrative costs. This will help ensure availability of the corpus if and when the money is needed for emergency actions or remedial measures during postclosure, as envisioned under Act 101. Amendments were also made to the regulations to authorize host counties to access the trust funds in accordance with the Environmental Stewardship and Watershed Protection Act.

The citizens of this Commonwealth will benefit as a result of the more detailed environmental assessment process, which requires actual mitigation of existing and potential harms to the public and the environment from the facility. Citizens will also benefit from better protection from the improper disposal of radioactive materials.

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, or 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. These final-form regulations have incorporated the following pollution prevention provisions and incentives:

The amendments will encourage pollution prevention by authorizing grants under the Small Business and Household Pollution Prevention Program Act for educational programs on pollution prevention and household hazardous waste and for other technical assistance to small business for pollution prevention. The regulations retain the requirement for generators of residual waste disposed in municipal waste landfills to have a source reduction strategy and requires landfills to provide a plan for recycling and salvaging wastes.

These amendments also incorporate the FAA's airport safety requirements.

As a result of these regulatory amendments, new Chapter 284 will be added to the regulations cited under the section Policy VIII-1 on pages II-2-25 of the FEIS.

The original Regulation(s) section read:

Regulation(s): 25 Pa. Code Chapters 75, 91, 92, 93, 95, 97, 101, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260, 262, 263, 264, 265, 266, 267, 269, 270, 271, 272, 273, 275, 277, 279, 281, 283, 285, 287, 288, 289, 291, 293, 295, 297, 299, 6 Pa. Code Chapter V et seq.

With the addition (*in bold/italics*), this section will now read:

Regulation(s): 25 Pa. Code Chapters 75, 91, 92, 93, 95, 97, 101, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260, 161, 262, 263, 264, 265, 266, 267, 269, 270, 271, 272, 273, 275, 277, 279, 281, 283, **284**, 285, 287, 288, 289, 291, 293, 295, 297, 299, 6 Pa. Code Chapter V et seq.

### **SUMMARY AND CONCLUSION – Chapters 271-273, 277, 279, 281, and 283-285 Regulatory Changes**

These regulatory amendments are in response to the Commonwealth's RBI process and subsequent comments from stakeholders on draft regulations afford for public comment. These regulatory amendments will make the Commonwealth's regulations consistent with federal requirements, and delete obsolete and unnecessary provisions.

Chapters 271-273, 277, 279, 281, 283, and 285 are currently networked into the Pennsylvania CZM Program. The changes to these regulations were made for clarity purposes. The infectious and chemotherapeutic waste regulations of Chapters 271, 283 and 285 were consolidated under new Chapter 284 to facilitate the use of these municipal waste regulations. Chapter 284 will be added to the Pennsylvania CZM Program. As such, these regulatory amendments to Chapters 271-273, 277, 279, 281, and 283-285 are not substantial changes to Pennsylvania's CZM Program, but are routine

As can be concluded by the previous discussion of these changes, the siting of energy facilities in the coastal areas will not be impacted by the regulatory changes to Chapters 271-273, 277, 279, 281 and 283-285. Although these regulatory chapters apply to CZM's policy regarding the siting and operation of energy facilities, the changes to the regulations pertain to the siting permitting, and management of municipal waste landfills, not energy facilities.

The amendments to the municipal waste regulations clarify existing regulations; eliminate many requirements that are more stringent than standards imposed by federal law; eliminate requirements that are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach.

The citizens of this Commonwealth will benefit as a result of the more detailed environmental assessment process, which requires actual mitigation of existing and potential harms to the public and the environment from the facility. Citizens will also benefit from better protection from the improper disposal of radioactive materials.

These amended regulations are currently in use throughout the Commonwealth. This RPC will formally add these regulatory amendments to the CZM Program's enforceable policies. The changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

These changes are not substantial changes to an enforceable policy related to **Uses Subject to Management**, and to CZM Program **Authorities**. Based on the previous discussion and impact analysis of the amendments to Chapters 271-273, 277, 279, 281, and 283-285, we have determined that these regulatory changes are routine program changes.

### **25 PA CODE CHAPTERS 261a, 266b, 268a, and 270a – Hazardous Waste Management (Amended December 2000)**

These chapters deal with the management and permitting of hazardous waste facilities in Pennsylvania. These facilities include treatment, storage, and disposal, as well as generators of hazardous waste. The amendments to these chapters add mercury-containing devices to the list of hazardous wastes that will be regulated as universal wastes.

The Commonwealth's Universal Waste Rule is a set of environmentally protective, simplified standards for the management of certain hazardous wastes identified as universal wastes. The Universal Waste Rule is intended to encourage the recycling of certain classes of hazardous wastes while ensuring that the environment and the public's health, safety and welfare are adequately protected. Universal wastes share the following common characteristics.

- a. They are frequently generated in a variety of settings including those industrial settings usually associated with hazardous wastes.
- b. A vast community generates them, and the size of this community poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program.
- c. They may be present in significant volumes in nonhazardous waste management systems.

Currently, this Commonwealth's hazardous waste regulations recognize four classes of hazardous waste regulations recognize four classes of hazardous waste that may be managed under the Universal Waste Rule. The recognized classes of hazardous wastes that may be managed as universal wastes are certain batteries, certain pesticides, thermostats and universal waste lamps.

These regulatory amendments add mercury-containing devices to the list of hazardous wastes that may be managed as universal wastes. Mercury-containing lamps are not included because the EPA on January 6, 2000, began allowing universal waste lamps--a category of waste

that includes mercury-containing lamps—to be managed as universal waste. The federal regulations are incorporated in Pennsylvania’s regulations by reference.

Sections relating to mercury containing devices have been added to Chapters 261a, 266b, 268a, and 270a to define and incorporate this hazardous waste that will be regulated as a universal waste.

### **ANALYSIS OF IMPACT – Chapters 261a, 266b, 268a and 270a Regulatory Changes**

Chapters 261a, 266b, 268a and 270a contain the Commonwealth’s hazardous waste management regulations. The regulatory amendments to these chapters result from a request from a recycling company, and not DEP’s Regulatory Basics Initiative.

Incorporating mercury-containing devices as universal wastes will prevent pollution by facilitating the recycling or proper disposal of these wastes. Currently, these wastes are frequently illegally disposed. Universal waste management requires the use of environmentally protective streamlined standards for the collection and transportation of these wastes. By making these management standards less complex and less costly to comply with, the recycling or proper disposal of these wastes is facilitated.

Regulatory Chapters 261a, 266b, 268a and 270a are contained in Policy VIII-1: Energy Facility Siting/Permitting found on page II-2-25 of CZM’s FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas sited in such a manner that the coastal areas’ ecosystems are not adversely affected.

### **SUMMARY AND CONCLUSION – Chapters 261a, 266b, 268a and 270a Regulatory Changes**

The main purpose of these regulatory amendments is to add mercury-containing devices to the list of hazardous wastes that will be regulated as universal wastes by the Commonwealth. Incorporating mercury-containing devices as universal wastes will prevent pollution by facilitating the recycling or proper disposal of these wastes. Currently, these wastes are frequently illegally disposed. The addition of mercury containing devices is a minor addition to these regulations.

As can be concluded by the previous discussion of changes, these regulatory changes will not affect CZM’s Policy VIII-1: Energy Facility Siting/Permitting, which regulates the siting of energy facilities in the coastal zones. These regulatory amendments will have a positive impact upon CZM’s Intergovernmental Coordination/Water Quality Policy by adding further protection to ground and surface waters.

The regulatory amendments to Chapters 261a, 266b, 268a and 270a are not substantial changes to the Pennsylvania CZM Program, but are routine. The amended regulations are



currently in use throughout the Commonwealth. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments will also serve to strengthen the CZM Program. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

These changes are not substantial changes to enforceable policies related to **Uses Subject to Management** and CZM Program's **Authorities**. Based on the previous discussion and impact analysis of the amendments to Chapters 261a, 266b, 268a and 270a, we have determined that these changes to the Pennsylvania CZM Program are routine program changes.

**2000 ORGANIZATIONAL CHANGE –  
RELOCATION OF PA CZM PROGRAM TO THE  
OFFICE FOR RIVER BASIN COOPERATION**

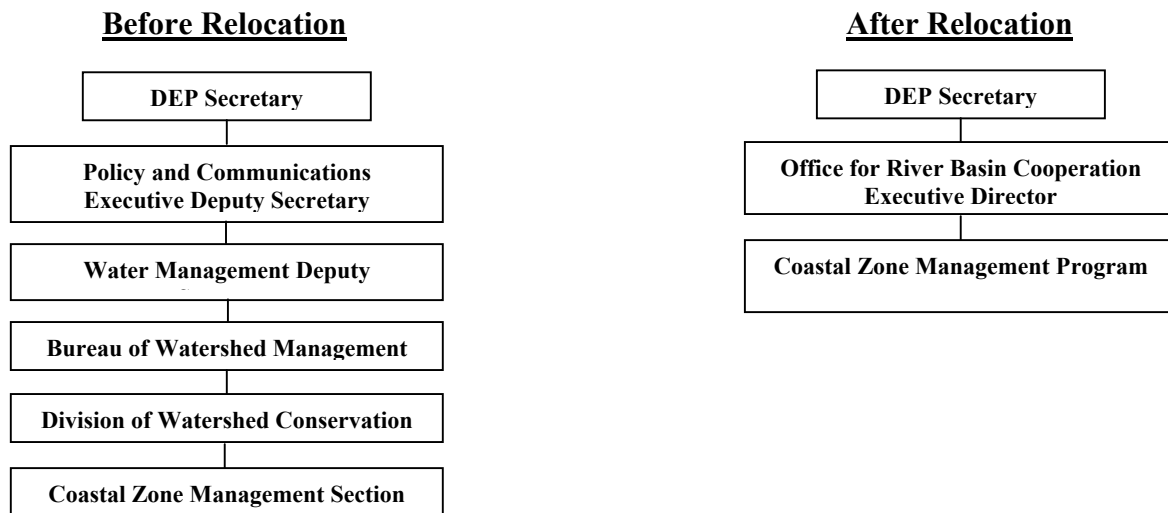
Pennsylvania DEP has been steadily moving toward a watershed management approach for environmental management, targeting resources and establishing priorities through its environmental futures planning process.

In recognition of similar missions on a broad range of inter-state and river basin issues such as coastal hazards, wetland preservation, cumulative and secondary impacts of development, habitat preservation, public access, air and water quality, fisheries management, invasive species, inter-governmental cooperation and port activities, the Pennsylvania CZM Program was reassigned to the Office for River Basin Cooperation (ORBC) from the Bureau of Watershed Management. The Program moved on an interim basis in May 2000 and the reorganization became official in January 2001. This change serves to re-emphasize the important role of Pennsylvania's Lake Erie and Delaware Estuary Coastal Zones in management of their integral river basins and watersheds. Using coastal zone management resources for pilot projects for state issues and local watershed initiatives, DEP recognizes the potential for technology transfer and policy development statewide and throughout our interstate river basins.

In its new role, the Pennsylvania CZM Program will assist ORBC efforts to maximize benefits to Pennsylvania from membership on the Delaware River Basin Commission and the Great Lakes Commission, through cooperation on regional projects and policy initiatives. CZM will continue its activities in providing local grants, monitoring and technical assistance for policy implementation in both coastal zones, working to integrate these efforts with overall watershed management.

**ANALYSIS OF IMPACT – Relocation of the Pennsylvania CZM Program to the Office for River Basin Cooperation**

The relocation of the Pennsylvania CZM Program will not affect the requirements for federal approvability. In addition as per the decision-making flow chart below, the relocation will place CZM in a better position from which to carry out its policies.



The relocation of the Pennsylvania CZM Program into the ORBC is a positive move because the Program is elevated within DEP, and has greater access to the DEP Secretary. As a result, the inter-state aspects of the Program are given more attention, and the networking ability of the Program is maximized.

As a result of the relocation of CZM, all references to the former Coastal Zone Management Section, the Division of Watershed Conservation, and the Bureau of Watershed Management maintained in Chapter 4 and elsewhere through CZM's FEIS will be changed. Chapter 4, which discusses the CZM Program's authorities and organizations, begins on page II-4-1 of our FEIS. All references to the former Coastal Zone Management Section will now read ***Coastal Zone Management Program***, and all references to the Division of Watershed Conservation and the Bureau of Watershed Management will now read ***Office for River Basin Cooperation***.

### **SUMMARY AND CONCLUSION – Relocation of the Pennsylvania CZM Program.**

The Pennsylvania CZM Program will remain in DEP, but will be housed in another DEP agency. The relocation will provide CZM with a more effective position to manage Pennsylvania's water resources from a watershed approach. The relocation will have a positive affect on the CZM Program's ability to carry out its objectives as an approved CZM Program under the federal CZM Act. This change is in keeping with NOAA's and the nation's policies and objectives.

This change is not a substantial change to the CZM Program's **Organizational Structure**. Based on the previous discussion and impact analysis, we have determined that the relocation of the CZM Program is a routine program change.

## **2000 CHANGES TO GEOGRAPHICAL AREAS OF PARTICULAR CONCERN (GAPC)**

### **INTRODUCTION – GAPC CHANGES**

The Federal CZM Act while noting the importance of the entire coastal zone finds that certain areas are of greater significance. As a requirement for Program approval, the Act required the Pennsylvania CZM Program to inventory and denote these geographical areas of particular concern (GAPC).

In addition, the Act further required the Pennsylvania CZM Program to make provisions to denote future GAPC areas in order to preserve, protect and restore them. The approved Pennsylvania CZM Program has met both of these requirements. (See FEIS page II-3-1 - Purpose of Designated and Nominated GAPC.)

GAPCs can either be designated or nominated. Designated GAPCs are designated by virtue of state ownership, state regulation, or contractual agreement with the agency or entity responsible for management of the GAPC. Nominated GAPCs are those areas which the public, state, and federal agencies, interest groups, and other affected parties identified as deserving special management attention by CZM.

### **ADDITION OF BURNHAM FARM GAPC – Lake Erie**

The Burnham Farm will be designated as an area of significant natural value at the request of the Lake Erie Coastal Zone Steering Committee.

The Clyde and Judith Burnham Farm is located within the Lake Erie Coastal Zone, in North East Township (See Burnham Map 1). The farm consists of three parcels of land covering approximately 94.398 acres. Parcel 1 consists of approximately 38.47 acres; Parcel 2 consists of approximately 9.41 acres (See Burnham Map 2), and Parcel 3 of approximately 46.51 acres (See Burnham Map 3). As per North East Township zoning, the Burnham farm is located in a Targeted Development Area. The Burnham Farm is in agricultural use.

The Burnham family has no interest in developing any portion of their farm and would like to see the entire farm permanently preserved. By designating the Burnham Farm as a Natural Value GAPC, CZM funds can be used to protect this land in perpetuity. A CZM grant will be used by Erie County as the County's monetary contribution, as required under Commonwealth's Farmland Preservation Program of 1988 (Act 149).

### **ANALYSIS OF IMPACT – Addition of Burnham Farm GAPC**

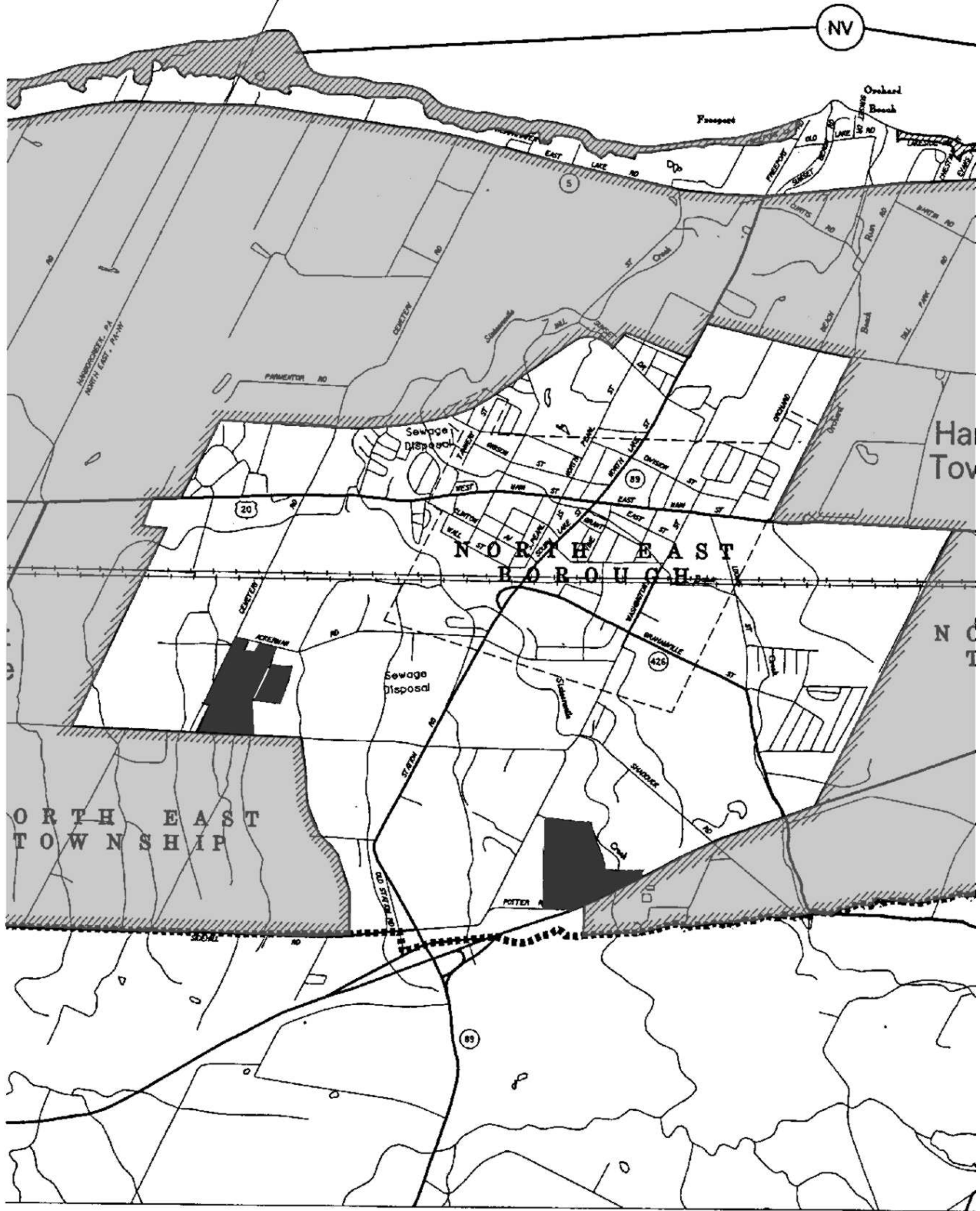
Areas of significant natural value are determined according to the concentration of natural characteristics that are either valuable as amenities, or unique to the coastal environment.

# BURNHAM FARM

ERIE CO.

## MAP 1 LAKE ERIE

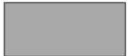
Lake Erie Bluff



Burnham Farm



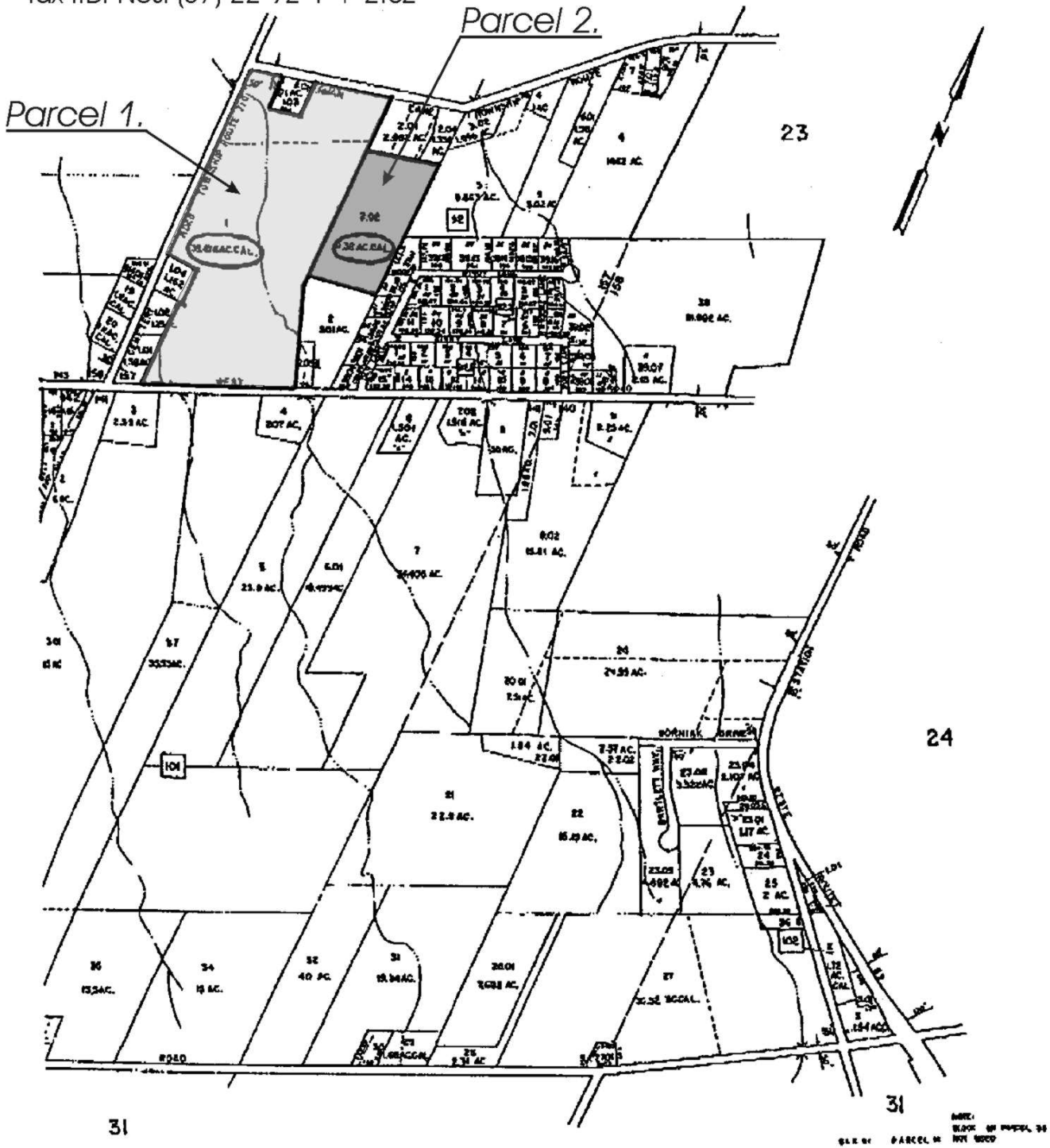
Lake Erie Coastal Zone Boundary



Existing Areas of Significant Natural Value GAPC.

# BURNHAM FARM MAP 2

Tax I.D. Nos. (37) 22-92-1 + 2.02



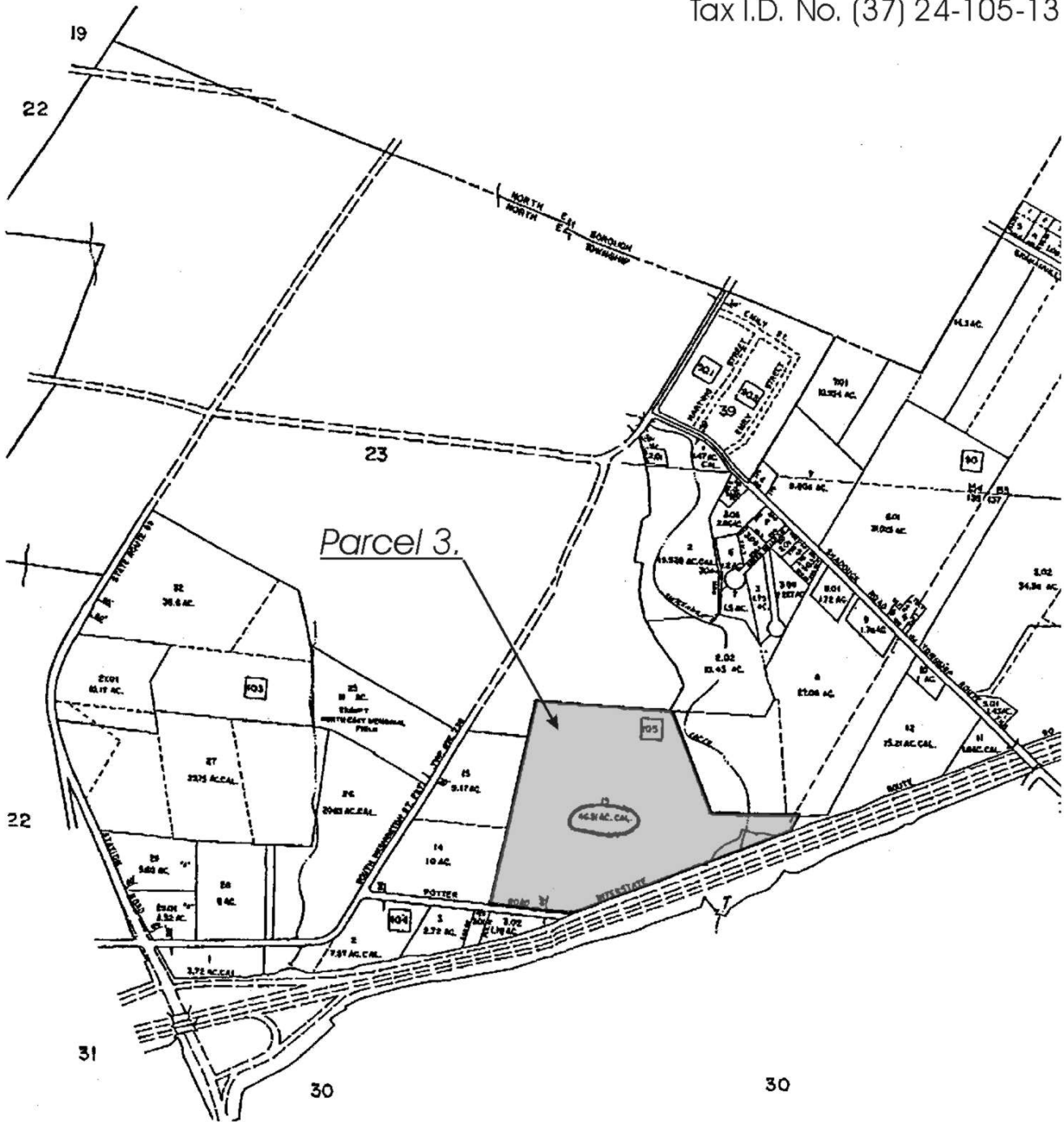
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**ERIE COUNTY**  
Office of Assessor  
PENNSYLVANIA

NORTH EAST TOWNSHIP  
Map No. 22  
Photo No. 24      Scale: 1" = 400'  
Date Photography: 5-3-62      Date Map: 9-22-66

# BURNHAM FARM MAP 3

Tax I.D. No. (37) 24-105-13



Legend		Revisions																																		
<ul style="list-style-type: none"> <li> Right of Way</li> <li> Easement</li> <li> Right of roadway</li> <li> Right of utility</li> <li> Right of drainage</li> <li> Railroad right-of-way</li> <li> Road shoulder</li> </ul>	<ul style="list-style-type: none"> <li> Boundary</li> <li> Easement</li> <li> Death</li> </ul>	<ul style="list-style-type: none"> <li> Original town or township</li> <li> Not in parcel number</li> <li> Road for location</li> <li> Road number</li> <li> Island</li> <li> Cemetery</li> <li> Death</li> </ul>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">No.</th> <th style="text-align: left;">Description</th> <th style="text-align: left;">Date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Original map</td> <td>10/1/78</td> </tr> <tr> <td>2</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>3</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>4</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>5</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>6</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>7</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>8</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>9</td> <td>Amended map</td> <td>10/1/78</td> </tr> <tr> <td>10</td> <td>Amended map</td> <td>10/1/78</td> </tr> </tbody> </table>	No.	Description	Date	1	Original map	10/1/78	2	Amended map	10/1/78	3	Amended map	10/1/78	4	Amended map	10/1/78	5	Amended map	10/1/78	6	Amended map	10/1/78	7	Amended map	10/1/78	8	Amended map	10/1/78	9	Amended map	10/1/78	10	Amended map	10/1/78
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**ERIE COUNTY**  
Office of Asses  
PENNSYLVANIA

These land-based characteristics include woodlands, uplands, wildlife habitats, and prime agricultural and erodible soils.

The Erie County Agricultural Land Preservation Board has appraised the agricultural value of the property, and has determined that it is one of the top producing agricultural properties in Erie County. Due to the agricultural value of the property, and the Burnham family’s desire to preserve their farm for agricultural purposes, the Pennsylvania Department of Agriculture (PDA) has entered into an agreement with the Burnham family for the purchase of an Agricultural Conservation Easement. The purchase of this easement will entrust to the Commonwealth, the responsibility for maintaining the property as an agricultural conservation area, and thereby insure the protection of the prime agricultural soils situated on the property.

One of the major goals of the CZM Program is the protection and enhancement of these unique areas, and the encouragement of only those uses, which will not interfere with the area’s natural functions. The CZM Program’s FEIS (page II-3-5) lists agricultural activities that occur within prime and unique soils areas, as a High Priority Activity for Significant Natural Value GAPCs.

Through the purchase of an Agricultural Conservation Easement, PDA will be responsible for the management and protection of this GAPC.

The designation of the Burnham Farm GAPC has been approved by the Lake Erie Coastal Zone Steering Committee and the State Coastal Zone Advisory Committee.

As a result of designating the Burnham Farm as a GAPC, the FEIS’ Inventory of GAPC (see page II-3-11) will be revised. With the revisions (*in bold italics*), the inventory will read as follows:

<u>Identification No.</u>	<u>Natural Value Areas</u>	<u>Approx. Size (Acres)</u>
**NV-1	Lake Erie Bluff	--
NV-5	Harborcreek and North East Township Prime and unique Agricultural Land	21,000
***NV-6	McCord Vineyard	185.54
***NV-7	Dobosiewicz Farm	258.44
***NV-8	Pero Farm	208.00
*** <b><i>NV-9</i></b>	<b><i>Burnham Farm</i></b>	<b><i>94.398</i></b>

- \* Denotes state ownership
- \*\* Denotes state regulated
- \*\*\* Denotes contractual agreement



## **SUMMARY AND CONCLUSION – Addition of Burnham Farm GAPC**

The entire Burnham Farm is presently located within the Lake Erie Coastal Zone. The Burnham Farm is in an area targeted for development by the township. The Burnham family has no interest in developing their farm, and would like to permanently preserve it. The Burnham Farm contains prime agricultural soils. The CZM Program's FEIS (page II-3-5) lists agricultural activities that occur within prime and unique soil areas, as a High Priority Activity for Significant Natural Value GAPCs. The wildlife and vegetation communities existing in Significant Natural Value GAPCs constitute a significant natural resource, which in many instances provide a greater than local benefit. The major goals of the CZM Program are the protection and enhancement of these areas and the encouragement of only those uses, which will not interfere with the area's natural functions.

Through state ownership (purchase of a conservation easement using a CZM grant), state regulation, and contractual agreement with PDA, CZM will be able to better preserve and protect this prime agricultural site. This easement will entrust to the Commonwealth, the responsibility for maintaining the property as an agricultural conservation area, and thereby insure the protection of the prime agricultural soils situated on the property. This minor GAPC addition will further one of the CZM Program's major goals

The addition of the Burnham Farm GAPC to the existing Inventory of GAPCs is not a substantial change to the CZM Program's **Special Management Areas**. Based on the previous discussion and impact analysis concerning the addition of this GAPC, we have determined that this change is a routine program change.

## **2000 REGULATORY CHANGES REQUIRED UNDER THE FEDERAL CLEAN AIR AND CLEAN WATER ACTS**

### **INTRODUCTION – INCORPORATION OF FEDERAL WATER POLLUTION AND AIR POLLUTION REQUIREMENTS**

Section 307(f) of Federal CZM Act requires the “incorporation” of the requirements of the Federal Water Pollution Control Act, as amended, and the Federal Clean Air Act, as amended, into state coastal zone management programs.

As a result, states are not required to submit these requirements to NOAA’s Office of Coastal Resources Management (OCRM) as program changes. However, states must notify OCRM, federal, state, and local agencies, and other interested parties, of the incorporation of these requirements into their state coastal management programs. As such, Pennsylvania’s CZM Program is taking this opportunity to provide the required notification (See FEIS page II-5-14 - Incorporation of Water Pollution and Air Pollution Requirements).

#### **25 PA CODE CHAPTER 121** – Air Resources – General Provisions, and **25 PA CODE CHAPTER 123** – Standards for Containments (Both amended March 2000)

Chapter 121 contains definitions applicable to the Commonwealth’s air quality regulations, and Chapter 123 prohibits the emission into the outdoor atmosphere of a fugitive air contaminant from a source (i.e., company facility) not listed in Appendix E of Chapter 123.

The regulatory changes amended the definition of “NO<sub>x</sub> affected source” in Chapter 121 to clarify that the definition is applicable to 15-megawatt (MW) sources rather than facilities. The amendment also made a number of minor technical amendments to Appendix E. The first amendment provides allowance allocations for newly discovered sources as provided under § 123.117(b) (relating to new NO<sub>x</sub> affected source provisions). In addition, the amendments to the allocations in Appendix E correct an accounting error contained in the original allocation. The amendments deleted the listing of “baseline MMBtu” in Appendix E, and modified the listing of “baseline NO<sub>x</sub> lbs. per MMBTU.” A number of sources mistakenly included in Appendix E have been deleted.

#### **25 PA CODE CHAPTER 121** – General Provisions, and **25 PA CODE CHAPTER 129** – Standards for Sources (Both amended June 2000)

Chapter 121 contains definitions applicable to the Commonwealth’s air quality regulations. Chapter 129 contains emission standards for all sources of emissions in the Commonwealth.

These amendments provide procedures for determining compliance with the volatile organic compound (VOC) emission limits for surface coating processes in § 129.52 (relating to surface coating processes). These amendments include an averaging approach for evaluating

VOC emissions; an exemption for small quantities of coatings; and revision of the existing Table 1 to express VOC content in volume-solids-based and weight-solids-based emission limits. The amendments also establish presumptive reasonably available control technology (RACT) requirements for wood furniture manufacturing operations in §§ 129.101-129.107. The presumptive RACT requirements, based on EPA Control Techniques Guidelines (CTG), apply Statewide to VOC-emitting wood furniture manufacturing facilities with actual or potential emissions of 25 tons per year or more of VOCs.

**25 PA CODE CHAPTER 123** – Standards for Contaminants (Amended September 2000)

The amendments establish a program to limit the emission of nitrogen oxides (NO<sub>x</sub>) from fossil-fired combustion units with rated heat input capacity of greater than 250 MMBtu per hour and electric generating facilities of greater than 25 megawatts. This program, which will begin in May 2003, will replace the existing NO<sub>x</sub> allowance requirements contained in Chapter 123. The program will be applicable to sources located in other states that significantly contribute to nonattainment in Pennsylvania if related Commonwealth Clean Air Act programs are not sufficient to control these sources.

**25 PA CODE CHAPTER 91** – Water Quality General Provisions,

**25 PA CODE CHAPTER 97** – Industrial Wastes, and

**25 PA CODE CHAPTER 101** - Special Water Pollution Regulations. (All Amended January 2000)

Chapters 91, 97 and 101 contain the requirements for those applying for permits for wastewater treatment facilities. These regulatory amendments support DEP's pollution prevention strategies, make the application of new green technologies easier and eliminate obsolete regulations. The amendments were designed to assist industries and individuals proposing new or innovative ways to prevent pollution through modifications to waste streams or wastewater processes and those proposing new technologies to treat wastewater by eliminating regulatory barriers to these activities. The elimination of obsolete regulations simplifies and clarifies the existing regulations for those applying for permits for wastewater treatment facilities. The consolidation of Chapter 101 into Chapter 91 and the transfer of several sections of Chapter 97 to Chapter 91 provide a single source of regulations regarding related wastewater issues.

As a result of this regulatory consolidation/transfer Chapters 97 and 101 will be deleted as regulations cited under CZM's Intergovernmental Coordination/Water Quality, Wetlands and Energy Facility Siting policies.

**25 PA CODE CHAPTER 92** - National Pollution Discharge Elimination System,

**25 PA CODE CHAPTER 93** - Water Quality Standards

**25 PA CODE CHAPTER 95** - Wastewater Treatment Requirements, and

**25 PA CODE CHAPTER 97** - Industrial Waste. (All Amended November 2000)

Chapter 92 requires a NPDES permit prior to discharging pollutants from a point source into navigable waters.

Chapter 93 sets forth water quality standards for the waters of this Commonwealth. These standards are based upon water uses which are to be protected and will be considered by DEP in its regulation of discharges. Chapter 93 contains specific water quality standards for Lake Erie and Delaware Estuary coastal waters.

Chapter 95 contains the requirements for wastewater treatment facilities.

Chapter 97 sets the treatment requirements of industrial waste discharged to Commonwealth waters. This Chapter sets the water quality standards for oil-bearing wastewater.

Chapters 92, 93, 95 and 97 deal with water quality. These regulations regulate discharges to Commonwealth waters. The regulations also designate water uses and water quality criteria for each river basin in the Commonwealth.

These November 2000 amendments revise water quality management regulations including Chapters 92, 93, 95 and 97, and create a new Chapter 96 (to be discussed later) to incorporate Total Maximum Daily Loads (TMDLs) into the regulatory calculus, all as part of the Regulatory Basics Initiative (RBI).

In these amendments, the water quality standards implementation provisions in Chapter 93 and portions of 95 are moved to Chapters 96 and 92, as appropriate. Chapter 96 incorporates existing and modified provisions of Chapters 93, 95 and 97, and includes language describing TMDLs and individual water quality based effluent limitations (WQBEL). The provisions of Chapter 97 have been relocated to Chapters 92, 95 and 96.

Since the requirements of Chapter 97 have been relocated to Chapter 92, 95 and 96, DEP has placed Chapter 97 in reserve, possibly for future use. As a result of this regulatory consolidation/transfer Chapter 97 will be deleted as a regulation cited under CZM's Intergovernmental Coordination/Water Quality, Wetlands and Energy Facility Siting policies. The major changes resulting from these regulatory amendments occurred in Chapter 92, 96 and 97; minor changes occurred in Chapter 93 and 95 as a result of relocating existing regulations into them.

The amendments to Chapter 92 are primarily intended to consolidate existing requirements into a single chapter, clarify existing requirements and make the state regulations more closely mirror federal regulations. Chapter 96 is primarily aimed at describing how and when DEP will develop TMDLs and WQBELs. The TMDLs and WQBELs developed under these final-form regulations will be used as the basis for addressing point and nonpoint pollutant discharges.

Overall, the citizens of this Commonwealth will benefit from these changes because they provide appropriate protection of designated and existing uses of surface waters in this Commonwealth in a more efficient and easily administrable manner. The amendments reorganize and consolidates existing water management regulations in a more understandable manner, and should help to assure that pollution control actions are as cost effective as possible and that pollution control costs are equitably distributed. The language should also make it easier for citizens to understand how NPDES permits are developed and administered, and how water quality standards are developed and implemented.

These revisions also assure compliance with applicable federal requirements. Under the revisions to Chapter 92, persons required to obtain a new or renew an existing NPDES permit may benefit because of the clarification provided in the amendments, as well as improved consistency with federal regulations. In addition, these persons may benefit by the modification of some requirements, which are more stringent than federal regulations without a compelling public interest.

#### **25 PA CODE CHAPTER 96 - Water Quality Standards (Created November 2000)**

As mentioned above, Chapter 96 was created in November 2000 to fulfill the requirements of the Federal Clean Water Act. Chapter 96 contains regulatory requirements which were previously located in Chapter 93, 95 and 97. Because the requirements of chapter 93, 95 and 97 are required by the Federal Clean Water Act, and are found in several of Pennsylvania CZM program's policies, it is appropriate that Chapter 96, which now contains these relocated requirements, be adopted by reference into the Pennsylvania CZM Program.

Chapter 96 was created to incorporate Total Maximum Daily Loads (TMDLs) and Water Quality Based Effluent Limitations (WQBEL) into the regulatory calculus. The purpose of Chapter 96 is to establish the process for achieving and maintaining water quality standards throughout the Commonwealth including the coastal zones. It requires that the water quality criteria described in Chapter 93 be achieved at least 99% of the time, unless otherwise specified.

#### **25 PA CODE CHAPTER 16 - Water Quality Toxics Management Strategy Statement Policy (Created 1989)**

Chapter 16 was created in 1989, and is a water quality policy for regulating toxic pollutants. It sets the guidelines for development of criteria for toxic substances, and lists the water quality criteria and the analytical methods and detection limits for toxic substances.

Chapter 16 is directly referenced as a support policy document in DEP's toxic substances regulation in section 93.8a (relating to toxic substances).

Water quality criteria are the numeric concentrations, levels or surface water conditions that need to be maintained or attained to protect existing and designated uses. They are designed to protect the water uses listed in Chapter 93 (relating to water quality standards). The most sensitive of these protected uses are generally water supply, recreation and fish consumption, and aquatic life related. Therefore, criteria designed to protect these uses will normally protect the other uses listed in Chapter 93. Chapter 16 specifies guidelines and procedures for development of criteria for toxic substances and also lists those criteria, which have been developed.

The specified guidelines in Chapter 16 cover the Federal Clean Water Act section 307(a) priority pollutants and other toxic substances, which DEP determined to be of concern due to their verified presence in wastewater discharges. Priority pollutants are the primary focus of concern because the EPA has determined them to be the most commonly used, persistent and toxic substances in wastewater discharges. They include many heavy metals and solvents.

In November 1980, the EPA published criteria for protection of human health and aquatic life for 104 of the 129 priority pollutants. (There are currently 126 priority pollutants since three have subsequently been deleted.) These criteria were developed in accordance with National Guidelines summarized in 45 FR 79318 (1980). DEP's procedures for establishing criteria for aquatic life and human health protection for priority pollutants, and other toxics of concern are discussed in Chapter 16.

Of particular importance to the Pennsylvania CZM Program is that Chapter 16 contains the toxic substances criteria for the Delaware Estuary Coastal Zone, and a section of special provisions for the Lake Erie Coastal Zone.

Since Chapter 16 is directly referred as a support policy document in DEP's toxic substances regulations in Chapter 93, it is appropriate that Chapter 16 be added to the Pennsylvania CZM Program. As a result, Chapter 16 will be adopted by reference into the Pennsylvania CZM Program.

## **NOTICE OF INCORPORATION OF FEDERAL CLEAN AIR AND WATER ACT REQUIREMENTS**

This routine program change will incorporate by reference the regulatory amendments to Chapters 92, 93, 95, 97, 122, 126 and 128. As a result, of the ~~deletion~~ of Chapters 97 and 101, and the **addition of Chapters 16 and 96 (in bold/italics)**, the regulations section cited under several of CZM's policies would be changed. The changed regulations sections of these policies will now read:

- Policy IV-I: Wetlands/Wetlands, page II-2-17)

Regulation(s): 25 Pa. Code, Chapters **16**, 71, 91, 93, 94, 95, **96**, **97**, 99, 100, ~~101~~, 102, 105, 106, 107, 109, 289, and 299.

- Policy VIII-I: Energy Facility Siting/Permitting, page II-2-25

Regulation(s): 25 Pa. Code, Chapters **16**, 75, 91, 92, 93, 95, **96**, **97**, ~~101~~, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 268, 269a, 270a, 271, 272, 273, 275, 277, 279, 281, 283, 285, 287, 288, 289, 291, 293, 295, 297, 299, 6 Pa. Code Chapter V et seq.

- Policy IX-B.1: Intergovernmental Coordination/Water Quality, page II-2-29

Regulation(s): 25 Pa. Code, Chapters **16**, 91, 92, 93, 94, 95, **96**, **97**, 99, 100, ~~101~~, 289, 299

In addition, it has come to the Pennsylvania CZM Program's attention during the Program's review of state permit applications and federal consistency activities that the Program could not adequately address the requirements of two existing enforceable policies, due to the lack of several state regulatory authorities. The omitted state regulations are Chapters 16, 92, 93 and 97. These regulations, which are currently in effect throughout Pennsylvania, are requirements of the Federal Water Pollution Control Act. As mentioned in the beginning of this section, Section 307(f) of the Federal CZM Act requires the incorporation of the requirements of the Federal Water Pollution Control Act into state coastal zone management programs. As a result, the following two existing enforceable policies will be supported by adding these existing state regulations, required by the Federal Clean Water Act to them. (The added regulations are in ***bold/italic*** print.)

- Policy II-1: Dredging and Spoil Disposal, page II-2-10

Regulation(s): 25 Pa. Code, Chapters **16**, **92**, **93**, **96**, and 105

- Policy III-1: Fisheries Management, page II-2-13

Regulation(s): 25 Pa. Code, Chapters **16**, 92, 93, and **96**

As a result of Section 307(f) of the CZM Act, the Pennsylvania CZM Program is providing notice that these aforementioned regulatory changes, required by the Federal Clean Air and Clean Water Acts, have been incorporated into the Pennsylvania CZM Program.

## **2001 REGULATORY PROGRAM CHANGES**

### **INTRODUCTION - GENERAL REGULATORY CHANGES**

CZM's enforceable policies are based on Commonwealth agencies' regulations, which are incorporated into this Program. These regulations were in effect at the time of original CZM Program approval in 1980. However, over time these regulations have been amended, and as such change Pennsylvania's originally approved CZM Program. These subsequent changes are minor, and will further detail the original Program.

These regulatory amendments were initiated by DEP to consolidate the Commonwealth's waste oil recycling regulations, and to align DEP's hazardous waste management program to the federal program.

These regulatory amendments, which are presently in effect statewide, have been subjected to public comments and hearings, and have been approved by the Commonwealth's Environmental Quality Board, and Independent Regulatory Review Committee.

**25 PA CODE CHAPTERS 260a, 261a, 266a, 270a - Hazardous Waste Management,  
25 PA CODE CHAPTER 287 - Residual Waste Management (All Amended June 2001),  
and  
25 PA CODE CHAPTER 298 - Management of Waste Oil (Created June 2001).**

The amendments and new Chapter 298 consolidate the requirements for recycling waste oil into one location. In addition, the waste oil regulations largely incorporate federal requirements for management of the same waste type.

Regulations pertaining to the waste oil recycling program were found in various sections throughout the hazardous and residual waste programs. This rulemaking is an effort to consolidate the regulations into one location, a new Chapter 298. Chapter 298 waste oil regulations will apply to the collection, storage, transportation, processing, rerefining and burning for energy recovery of waste oil. Chapter 298 will be added to the Pennsylvania CZM Program.

These amendments also align the DEP's hazardous waste management program more closely to the federal hazardous waste management program and the federal used oil management standards under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§ 6901-6986). On September 10, 1992, EPA published 40 CFR Part 279 (relating to recycled used oil management standards). These regulations apply to the recycling of nonhazardous used oil and used oil that is hazardous due to a characteristic. The EPA expects all states with authorized RCRA programs to amend their programs to include these used oil recycling management standards. The Commonwealth's current authorized program does not include the EPA's recycled used oil management standards and DEP will apply for authorization



of this portion of the RCRA program upon completion of these amended waste oil recycling regulations.

Some specific amendments are:

***§ 260a.3. Terminology and citations related to federal regulations.***

For purposes of interfacing with 40 CFR Parts 260-279 various federal terminology and citations of federal hazardous waste regulations have been added.

***§ 261a.2. Definition of “solid waste.”***

The federal definition of solid waste found in 40 CFR 261.2(c)(2)(ii) and incorporated by reference into this section (261a.2) has been modified to clarify that commercial chemical products, which include characteristically hazardous commercial fuel products, are not regulated as hazardous wastes, but are regulated under Chapters 287-299.

***§ 266a.100. Applicability***

The reference to “Part 279 of this chapter” in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with new Chapter 298 (relating to management of waste oil).

***§ 270a.60. Permits-by-rule***

Due to changes in the types of characteristically hazardous waste that can be mixed with waste oil and regulated under new Chapter 298 (see § 298.10(b)(2) (relating to applicability), this amendment modified the permit-by-rule language to add new subsection (b)(2)(v) to allow generators to mix waste that is hazardous due to a toxicity characteristic for benzene, arsenic, cadmium, chromium or lead with waste oil.

***§ 287.1. Definitions***

The term “waste oil” has been added to the definitions to promote consistency in the application of this term throughout the residual waste management regulations.

***§ 298.1. Definitions***

Defines “waste oil” and other terms associated with waste oil generation, transfer, storage and processing.

***§ 298.2. Scope***

This section specifies general procedures and rules for persons or municipalities who generate, manage or handle waste oil that is being recycled, and requires that waste oil that is being recycled shall be managed in accordance with this chapter.

### **§ 298.10. *Applicability***

(a) *Waste oil.* It is presumed that waste oil is to be recycled unless a waste oil handler disposes of waste oil, or sends waste oil for disposal. Except as provided in § 298.11 (relating to waste oil specifications), this chapter applies to waste oil and to materials identified in this section as being subject to regulation as waste oil whether or not the waste oil or material exhibits any characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope).

§ 298.10. (c)(2) Clarifies that material contaminated with waste oil that is burned for energy recovery at an industrial furnace or boiler is regulated under Chapter 298. If the material is burned for energy recovery at a resource recovery facility, then it is regulated under municipal waste regulations, Chapter 287 and Chapter 297 (relating to incinerators and other processing facilities) of the residual waste regulations or the hazardous waste regulations. This will prevent resource recovery facilities that are energy recovery facilities from being regulated under this chapter.

### **§ 298.43. *Waste oil transportation***

This section specifies that waste oil transporters may only deliver waste oil to another waste oil transporter, a waste oil processing/refining facility, an off-specification waste oil burner facility, a waste oil transfer facility, or an on-specification waste oil burner facility.

### **§ 298.54. *Waste oil management***

This section incorporates closure and postclosure care requirements applicable to hazardous waste landfills where not all contaminated soil associated with the closure of aboveground waste oil storage tanks can be practicably removed. These requirements apply even in circumstances where the waste oil that was stored would not qualify as either a listed or characteristic hazardous waste. The language is taken directly from the federal used oil regulations at 40 CFR 279.54(h)(ii) (relating to used oil management).

## **ANALYSIS OF IMPACT - Chapters 260a, 261a, 266a, 270a, 287, and 298 Regulatory Changes**

The amendments to Chapter 260a, 261a, 266a, 270a, and 287, and the creation of new Chapter 298 consolidate the Commonwealth's requirements for recycling waste oil into one location in new Chapter 298.

These amendments also align DEP's hazardous waste management program more closely to EPA's hazardous waste management program and the federal used oil management standards under RCRA. This alignment is required of all states with approved RCRA programs. Chapters 260a, 261a, 266a, 270a and 287 are regulations presently networked into the Pennsylvania CZM Program. Since sections of these regulations dealing with the management

of waste oil have been relocated into new Chapter 298, the CZM Program will add Chapter 298 to its cited regulations.

Regulatory Chapters 260a, 261a, 266a, 270a, and 287 are contained in Policy VIII-1: Energy Facility Siting/Permitting found on page II-2-25 of CZM's FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not adversely affected.

As a result of the addition of Chapter 298 to the CZM Program the regulations section of Policy VIII-1 will be revised.

With the addition of new Chapter 298 (*in bold italics*), this section will now read:

Regulation(s): 25 Pa. Code Chapters **16**, 75, 91, 92, 93, 95, **96**, ~~97, 101~~, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, *260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 268a, 269a, 270a, 271, 272, 273, 275, 275, 277, 279, 281, 283, 285, 287, 288, 289, 291, 293, 295, 297, 298, 299*, 6 Pa. Code Chapter V et. seq.

(NOTE: The addition of Chapters **16 and 96** and the deletion of Chapters ~~97 and 101~~ were made to this Policy under the previous section entitled NOTICE OF INCORPORATION OF FEDERAL CLEAN AIR AND WATER ACT REQUIREMENTS).

### **SUMMARY AND CONCLUSION - Chapters 260a, 261a, 266a, 270a, 287 and 298 Regulatory Changes**

The amendments to Chapter 260a, 261a, 266a, 270a, 287 and the addition of new Chapter 298 were made to consolidate the requirements for recycling waste oil into one regulatory location. In addition, these amendments were made in order to incorporate EPA's used oil recycling management standards into the Commonwealth's authorized RCRA program.

As can be concluded by the previous discussion of changes, the siting of energy facilities in the coastal areas will not be affected by the regulatory changes to Chapters 260a, 261a, 266a, 270a, 287 and 298 since these regulatory amendments only deal with the regulation of waste oil. However, after being sited in the coastal zones, energy facilities may be subject to these regulations if they transport and store waste oil, for use as a fuel source. If waste oil is used as a fuel source, these energy facilities will benefit through the use consolidated waste oil regulations less than one new Chapter, 298. Furthermore, since these amendments also align the DEP's hazardous waste management program more closely to the federal hazardous waste management program and the federal used oil management standards, compliance with the federal requirements should be facilitated.

In conclusion, these regulatory changes are minor in that they consolidate regulations currently networked into the CZM Program, and incorporate required federal requirements. As

such, these changes are not substantial changes to the Pennsylvania CZM Program, but are routine. The amended regulations are currently in use throughout the Commonwealth. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments, along with the addition of Chapter 298, will also serve to strengthen the CZM Program. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

These changes are not substantial changes to enforceable policies related to **Uses Subject to Management** and CZM Program's **Authorities**. Based on the previous discussion and impact analysis of the amendments to Chapters 260a, 261a, 266a, 270a, 287 and 298, we have determined that these changes are routine program changes.

### **25 PA CODE CHAPTERS 287, 288, 289, 291, 293, 295, 297 and 299 – Residual Waste Management (Amended January 2001)**

Chapters 287, 288, 289, 291, 293, 295, 297 and 299 contain the Commonwealth's residual waste management regulations. The amendments are the result of DEP's evaluation of these residual waste regulations in accordance with the Regulatory Basics Initiative (RBI) and Executive Order 1996-1. The RBI and Executive Order were previously discussed in the INTRODUCTION section of the 2000 Regulatory Program Changes. Furthermore, the amendments were made to include the interaction between DEP's Land Recycling and Environmental Remediation Standards Act (Act 2)<sup>1</sup>, and the residual waste regulations.

The residual waste program in Pennsylvania was predominantly developed under the state Solid Waste Management Act (SWMA) (35 P.S. Section 6018.101 – 6018.1003) (Act 97). Currently, there are no comprehensive federal regulations governing the management of nonhazardous industrial, mining and agricultural wastes (residual waste), with the exception of federal regulations for the management of used oil. Act 97 authorized DEP to develop and promulgate regulations to manage residual waste. Under Act 97, residual waste generally consists of waste from industrial, mining and agricultural operations, and includes nonhazardous sludge from an industrial, mining, or agricultural waste treatment or pollution control facility. On July 4, 1992, DEP promulgated a comprehensive set of regulations for the management of residual waste. The regulations were developed over a long period of time to allow extensive input from the public and the regulated community.

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<sup>1</sup> The Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P. S. §§ 6026.101--6026.909) establishes the environmental remediation standards to provide a uniform framework for the private cleanup of industrial sites. The standards established under Act 2 are used for most voluntary and mandatory cleanups conducted in Pennsylvania. The regulations implementing Act 2 are found in 25 PA Code Chapter 250. Chapter 250 is not networked into the Pennsylvania CZM Program.

With the passage of Act 2 in 1995 and the promulgation in 1997 of regulations to implement that law, DEP has taken the opportunity to further consider the interaction between Act 2 and the SWMA, with respect to waste management facilities, during this rulemaking process. Amendments to these residual waste regulations are intended to properly place relevant performance standards identified by Act 2 into the operational sections of permitted facilities.

In addition, these regulatory amendments were developed in response to the RBI and the Governor's Executive Order 1996-1, which required all Departments to reevaluate existing regulations. The RBI requires evaluation of regulations based on the following criteria: agency requirements are no more stringent than standards imposed by federal law unless justified by a compelling and articulable Pennsylvania interest or authorized by State law; requirements are eliminated which are no longer necessary or redundant; performance-based requirements are encouraged; new green technologies are encouraged; a pollution prevention approach is supported; and information is prepared in plain, simple, clear and concise language.

The amendments reflect recommendations identified as a result of the RBI process, necessary changes identified as a result of 5 years of experience in implementing the regulations and recommendations identified during the rulemaking's public comment period.

## **CHAPTER 287** - Residual Waste Management - General Provisions

### ***Subchapter A - General Provisions***

#### ***§287.1 - Definition.***

Definitions for the following terms were added for further clarification of the regulations: "airport," "association," "autofluff," "byproduct material," "FAA," "NARM," "NORM," "radioactive material," "source material," "special nuclear material," "TENORM" and "transuranic radioactive material." The term "airport" was added to clarify the types of landing areas that are implicated in the siting restrictions and environmental assessment. A definition for "association" was added for clarification in the permit application requirements relating to the identification of interests and compliance history. The definition is taken from section 102 of the Corporations Code (15 Pa.C.S. § 102) (relating to definitions). A definition for "autofluff" was added to clarify the use of the term in the scope section, § 287.2. The term "FAA," which refers to the Federal Aviation Administration of the United States Department of Transportation (FFA), was added because the new restrictions on the construction and operation of landfills near airports involve the FAA. Definitions for the other terms mentioned here were added to clarify their usage throughout the regulations in the monitoring requirements for radioactive material.

#### ***§287.2 - Scope***

In the final regulations, a new category of waste-waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material-has been added to the list of wastes that are subject to the municipal waste regulations. This waste primarily has

characteristics that are generally found in the municipal waste stream. Also, subsection (i) was amended to include the word "permitted" when referring to a hazardous waste unit at a facility. This change makes it clear that residual waste may be managed at a hazardous waste facility, without a residual waste permit, as long as the hazardous waste facility is permitted.

***§287.4 - Computerized data submission***

A new subsection (a) has been added to the regulations to allow data submissions electronically or on magnetic or optic storage media if the DEP is capable of receiving it in that manner for review. A new subsection (c) was added to authorize DEP specifically to require a different scale on maps, reports and plans that are submitted electronically or on magnetic or optic storage media. Maps, reports and plans submitted in this format are capable of showing much more detail than paper maps, reports and plans, and the more detailed information can be accessed and used in many useful, new ways when submitted in this format.

***§287.54 - Chemical analysis of waste***

A new subsection has been added requiring a person to perform a chemical analysis every 5 years. This requirement was added to verify the initial analysis to make sure that the waste characteristics have not changed, and to assist with the evaluation of the source reduction requirements.

***§287.55 - Retained record keeping***

Language has been added to clarify that the generation of any quantity of residual waste triggers the records retention requirements.

***Subchapter C - General Requirements for Permits  
and Permit Applications - General***

***§287.101 - General requirements for permit.***

The requirements for demonstration permits have been modified in the final regulations to allow greater flexibility for these operations.

Also new language has been added to subsection (c) that clarifies circumstances when DEP may require a person or municipality to obtain a permit, regardless of the exemptions outlined in (b), based on harmful conduct. In addition, a new subsection (e) has been added that would allow the movement of waste, encountered during a site remediation under Act 2, from one location of the site to another as long as the waste remains onsite, is moved in accordance with a DEP-approved remedial investigation report under the site-specific standard, and is moved in accordance with this subsection. No permit is required for the movement of waste in accordance with this subsection.

### ***§287.102 - Permit-by-rule***

Subsection (f), relating to beneficial use, was modified by adding an expiration date of July 4, 2002, unless a specific permit term is written as a condition of the prior written approval, for activities conducted under this permit. Many of the uses approved prior to 1992 may be outdated and may be in conflict with present beneficial use requirements. After 2002, these operations would be eligible to apply for general permits. In addition, a new permit-by-rule, subsection (k), was added, which allows the temporary storage of residual waste at a hazardous waste transfer facility. Many operations transport both hazardous and residual wastes from industries. This permit will facilitate the transportation or transfer of the wastes as long as all waste is stored in accordance with hazardous waste requirements for hazardous waste transfer facilities and the conditions of this permit are met.

### ***§287.127 - Environmental assessment***

In the final regulations, "local parks" was added to the list of features in subsection (a) that an applicant must consider in determining the potential impacts of a proposed facility or modification to fill in the gap left by only listing state and federal parks.

"Airports" was also added to the list of features in subsection (a) to clarify that if a proposed facility will have the potential of causing harm to aircraft arriving at or departing from an airport, the application will have to include a plan to mitigate the harm or potential harm.

A requirement was added to subsection (a) that an application contain correspondence from any agencies to the applicant in regard to the environmental assessment to facilitate DEP's review of the environmental assessment.

Subsection (c) was amended to clarify that harms and mitigation measures described in subsection (b) will be taken into consideration when the benefits and harms of the proposed facility are weighed. The same reference to subsection (b) was made to subsection (d).

### ***§287.131 - Scope***

Subsection (a)(1) was intended to refer only to "captive" transfer facilities. The effect of this change is to apply the waste analysis requirements to noncaptive transfer facilities--not captive transfer facilities. Captive facilities are exempt because the waste streams received at these facilities are generated by one generator. The waste types, therefore, do not change and the waste stream is predictable.

## ***Subchapter D - Permit Review Procedures and Standards***

### ***§287.201 - Criteria for permit issuance of denial.***

A new subsection (a)(4) was added to require that mitigation plans required by § 287.127 be implemented prior to obtaining a permit if required by DEP. This requirement is designed to help ensure proper and effective mitigation of harms and potential harms that can and should be mitigated prior to permitting.

## *Subchapter H - Beneficial Use*

### ***§287.621 - Application for general permit***

In Subsection (b)(5)(vi) a criterion for demonstrating the use of waste as a construction material was added. The criterion requires that a description of the construction activities and detailed timelines for the prompt completion of construction activities be included in the demonstration. This language addresses problems encountered by DEP where persons placed waste on land with no subsequent beneficial use.

## **CHAPTER 288 - Residual Waste Landfills**

### ***Subchapter B - Application Requirements***

#### ***§288.112 - Facility plan***

Language was added in paragraph (2) to require the permit application for a residual waste landfill to include a description of the method by which the soil necessary for construction and operation will be delivered. If soil is not located on-site, the traffic, access roads, and other impacts need to be evaluated when performing the environmental assessment process.

#### ***§288.122 - Geology and groundwater description***

Language was added in subsection (a)(9) to allow DEP to require more frequent water level measurements after significant precipitation events. This information is necessary if the monthly measurements required by the regulations do not adequately represent the highest possible water levels, which are needed to design the site.

#### ***§288.128 - Notification of proximity to airport***

This section was added to require that the applicant notify the Bureau of Aviation of the Department of Transportation, the FAA and the airport if a proposed landfill that accepts putrescible waste or lateral expansion is within 6 miles of an airport runway. This was added to be consistent with the municipal waste regulations and will assist DEP in determining whether construction of the facility or modification thereof would be safe. If any of the respondents expresses safety concerns, the applicant will generally be required to submit a mitigation plan under § 287.127 (relating to environmental assessment), at a minimum.

#### ***§288.139 - Radiation protection action plan***

A new section was added requiring that an application for a noncaptive residual waste landfill contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, record keeping and reporting. As with the other requirements of this subchapter, this requirement applies to all permit applications, not just applications for new facilities.



### ***§288.191 - Plan for disposal of PCB's***

Language was added to §288.191(b) to clarify that the disposal of certain PCB-containing wastes, as described in the disposal plan, is only applicable to Class I or Class II residual waste landfills. Disposal at Class III, or unlined residual waste landfills, would not be permitted.

### ***Subchapter C - Operating Requirements***

#### ***§288.20 - Basic limitations***

This section has been revised to specify clearly the types of radioactive materials that might be found in the residual waste stream that may not be accepted at a residual waste landfill.

Subsection (g) lists six types of radioactive materials that are controlled under specific or general license or order. These may not be accepted unless they are specifically exempted from disposal restrictions by an applicable Pennsylvania or federal statute or regulation.

The first type, in paragraph (1), is NARM, which includes naturally occurring and accelerator produced radioactive material. Examples of NARM are radium, potassium-40, various isotopes produced in accelerators, such as cobalt-57, and members of the uranium-238 and thorium-232 decay chains when they don't meet the requirements for source material or special nuclear material.

Paragraph (2) prohibits disposal of by-product materials. These are produced by nuclear fission, or otherwise, in the nuclear energy cycle. Prominent examples are cesium-137 and strontium-90.

Paragraph (3) prohibits disposal of source material, which, by definition, is uranium and/or thorium present at a combined concentration, by weight, of 0.05% or more. Examples are uranium ores and slags produced by smelting rare metal earth ores containing uranium and thorium.

Paragraph (4) prohibits disposal of special nuclear material, which includes those isotopes of uranium and plutonium that will split, or fission, when struck by neutrons. Examples of special nuclear material include uranium-233, uranium-235, and plutonium-239.

Paragraph (5) prohibits disposal of transuranic radioactive materials, which include all elements with an atomic number greater than 92 (92 = uranium). Examples include neptunium, plutonium, americium, curium, californium, berkelium, einsteinium, fermium, mendelevium, and others. Transuranic elements do not occur naturally and are produced in high-energy accelerators.

Paragraph (6) prohibits disposal of low-level radioactive waste. A definition of low-level radioactive waste is contained in section 130 of the Low Level Radioactive Waste Disposal Act (35 P. S. § 7130.130).

Subsection (h) lists three categories of radioactive materials that are prohibited from being accepted at a residual waste landfill unless approved in writing by DEP and the disposal does not endanger the environment, facility staff or public health and safety.

The first radioactive material, in paragraph (1), is short-lived radioactive material from a patient having undergone a medical procedure. Certain short-lived radioactive materials are administered to medical patients for diagnosing or treating some illnesses. Once these materials are administered to the patient, they no longer fall under NRC or Pennsylvania licensing. Some of the material is retained in the patient and some is excreted in urine, feces, sweat, saliva or mucous and may get into solid waste through disposal of personal care items. DEP's intent is to authorize such material to be disposed in waste facilities upon case-by-case permission from DEP's Area Health Physicists or Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan, using the general concepts provided in DEP's *Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*, Document Number 250-3100-001.

Paragraph (2) addresses TENORM, which is naturally occurring radioactive material, which has been altered by human activity in a manner that results in increased radiation exposure to people. The alteration could be a chemical or physical change in form, relocation of the norm, or removal of barriers that isolated the norm. DEP's intent is to authorize disposal of TENORM in landfills only in amounts and concentrations that will not result in concentrations of the NORM isotopes significantly above local background. Authorization will be given as case-by-case permission from the Area Health Physicists or Director of the Bureau of Radiation Protection, or advance authorization in the landfill's approved action plan.

Paragraph (3) addresses consumer products containing radioactive material. Some consumer products, such as smoke detectors, luminous dial clocks and watches, or some ceramics will wind up in the waste stream. DEP intends to allow disposal of small quantities of these under conditions specified in the facility's approved action plan or on a case-by-case basis with permission from the Area Health Physicist or Director of the Bureau of Radiation Protection.

Subsection (i) provides that the limitations set forth in this section will not apply to radioactive material as found in the undisturbed natural environment of this Commonwealth. The original soil and rock in many parts of this Commonwealth contain sufficient uranium, thorium, radium and potassium-40 to cause monitors to alarm even at quite high settings. This provision ensures that facilities may use soil and rock from undisturbed sites for cover, regardless of the content of radioactive material.

#### ***§288.222 - Radiation monitoring and response for noncaptive landfills***

A new §288.222 has been added to address monitoring for and responding to radioactive materials in residual waste in noncaptive landfills. Subsection (a) requires the facility operator to implement the action plan approved under § 288.139 (relating to radiation protection action plan). Subsection (b) requires the operator to monitor in accordance with DEP's "*Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities*," Document Number 250-3100-001 (or in an equally protective manner) the facility's approved radiation protection action plan and this section. Subsection (c) describes the required sensitivity of the monitors and establishes the maximum level of radiation at which they must be set to alarm. In addition to the monitors described in subsections (b) and (c), portable radiation monitors that can determine the radiation dose and the presence of contamination on a vehicle

that has caused an alarm are required by subsection (d). When radiation is detected at a landfill and the alarm exceedance is confirmed, the operator must perform a radiological survey of the vehicle. If a dose rate specified in subsection (e) is detected, the operator must notify the DEP immediately and isolate the vehicle. Once notified, the DEP staff, and possible staff from federal agencies, will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed.

To ensure that the monitoring equipment continues to function properly, subsection (f) requires that it be calibrated at least once a year--and more often if so specified by the manufacturer.

Subsection (g) notes the federal requirement that, once the presence of radioactivity is detected (that is, above Action Level I, as described in the guidance document), the vehicle is not permitted to leave the facility with the material on board without written DEP approval and an authorized United States Department of Transportation exemption form issued by the DEP. The exemption forms will usually be issued by telephone or FAX communication for levels between Action Level I and the Action Level II limits specified in subsection (e).

#### **§288.301 - PCB's**

Subsection (a) was added to clarify that PCB-containing waste material is prohibited from disposal at a residual waste landfill, if the waste material is prohibited from disposal at a municipal waste landfill by the Toxic Substances Control Act (15 U.S.C.A. §§ 2601--2629).

### ***Subchapter D - Additional Requirements for Class I Residual Waste Landfills***

#### **§288.422 - Areas where class I residual waste landfills are prohibited**

A new subsection (a)(11)(iii) was added to ensure that areas permitted on or after the effective date of the regulations would not be an obstruction to air navigation under 14 CFR 77.23 (a)(5) (relating to standards for determining obstructions). This will offer greater protection against intrusion into an airport's flight paths.

## **CHAPTER 289 - Residual Waste Disposal Impoundments**

### ***Subchapter B - Application Requirements***

#### **§289.128 - Notification of proximity to airport**

This section was amended to require the applicant to notify the Bureau of Aviation of the Pennsylvania Department of Transportation, the FAA and the airport if a proposed disposal impoundment or lateral expansion is within 6 miles of an airport runway. This was added to be consistent with the municipal waste regulations and will assist DEP in determining whether

construction of the facility or modification thereof would be safe. If any of the respondents expresses safety concerns, the applicant will generally be required to submit a mitigation plan under §287.127 (relating to environmental assessment), at a minimum.

#### ***§289.138 - Radiation protection and action plan***

A new section was added requiring that an application for a noncaptive residual waste disposal impoundment contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, record keeping and reporting.

#### ***§289.201 - Basic limitations***

This section has been revised to specify clearly the types of radioactive materials that might be found in the residual waste stream that may not be accepted at a residual waste landfill.

Subsection (f) lists six types of radioactive materials that are controlled under specific or general license or order. These are prohibited from disposal at a residual waste impoundment unless they are specifically exempted from disposal restrictions by an applicable Pennsylvania or federal statute or regulation.

#### ***§289.230 - Radiation monitoring and response for noncaptive residual waste disposal impoundments***

A new § 289.230 has been added to address monitoring for and responding to radioactive materials in residual waste in noncaptive disposal impoundments. Subsection (a) requires the facility operator to implement the action plan approved under §289.138 (relating to radiation protection action plan). Subsection (b) requires the operator to monitor in accordance with DEP's "Guidance Document on Radioactivity Monitoring at Solid Waste Processing and Disposal Facilities," Document Number 250-3100-001 (or in an equally protective manner), the facility's approved radiation protection action plan and this section. Subsection (c) describes the required sensitivity of the monitors and establishes the maximum level of radiation at which they must be set to alarm. In addition to the monitors described in subsections (b) and (c), portable radiation monitors that can determine the radiation dose and the presence of contamination on a vehicle that has caused an alarm are required by subsection (d). When radiation is detected at an impoundment and the alarm exceedance is confirmed, the operator must perform a radiological survey of the vehicle. If a dose rate specified in subsection (e) is detected, the operator must notify DEP staff, and possible staff from federal agencies will assist the facility and its consultants in identifying, localizing and quantifying the radioactive material in the load. This is a stepwise investigative process that will ultimately determine what corrective action is needed. The entire problem may be in one bag or the whole load may require disposal.

To ensure that the monitoring equipment continues to function properly, subsection (f) requires that it be calibrated at least once a year--and more often if so specified by the manufacturer.

Subsection (g) notes the federal requirement that, once the presence of radioactivity is detected (such as, above Action Level I, as described in the guidance document), the vehicle is

not permitted to leave the facility with the material on board without written DEP approval and an authorized United States Department of Transportation exemption form issued by the Department. The exemption forms will usually be issued by telephone or fax communication for levels between Action Level I and the Action Level II limits specified in subsection (e).

**CHAPTER 291** - Land Application of Residual Waste

***Subchapter C - General Operating Requirements for  
Land Application of Residual Waste***

***§291.201 - General provisions***

On final rulemaking, the Board added language to address the land application of human waste that is not sewage sludge. Human waste generated at a location where other residual waste is generated, that is then land applied, is subject to the operating requirements for pathogen and vector attraction reduction in Chapter 271, Subchapter J (relating to beneficial use) in addition to the operating requirements of this chapter.

**CHAPTER 293** - Transfer Facilities for Residual Waste

***Subchapter B - Application Requirements  
for Transfer Facilities***

***Subchapter C - Operating Requirements  
for Transfer Facilities***

***§293.201 - Basic limitations***

In subsection (d), language was added to clarify that hazardous waste may not be stored, processed or disposed at a residual waste transfer facility. In addition, new subsections were added to specify clearly the types of radioactive materials that might be found in the waste stream that may not be accepted at a residual waste transfer facility. These provisions are the same as the provisions added for residual waste landfills in §288.201 (relating to basic limitations), which are previously discussed in more detail.

**CHAPTER 295** - Composting Facilities For Residual Waste

***Subchapter B - Application Requirements  
for Composting Facilities Operations***

***§295.120 - Radiation protection action plan.***

A new section was added requiring that an application for a noncaptive composting facility contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, record keeping and reporting. This provision is the same as the provision added for residual waste landfills in §288.139, which was previously discussed in more detail.

***Subchapter C - Operating Requirements  
for Composting Facilities***

***§295.201 - Basic limitations***

Subsection (d)(3) was added to clarify that hazardous waste may not be stored, processed or disposed at a residual waste composting facility. In addition, the regulations were amended in subsection (e) to prohibit the management of sewage sludge at these facilities. Sewage sludge composting is managed under the municipal waste regulations.

In addition, the Board added new subsections to specify clearly the types of radioactive materials that might be found in the waste stream that may not be accepted at a residual waste composting facility. These provisions are the same as the provisions added for residual waste landfills in §288.201 (relating to basic limitations), which were previously discussed in more detail.

***§295.222 - Radiation monitoring and response for noncaptive residual waste composting facilities***

This new section has been added to address monitoring for and responding to radioactive materials in the waste stream. This section is the same as the section added for noncaptive residual waste landfills, § 288.222 (relating to radiation monitoring and response), which was previously discussed in more detail.

**CHAPTER 297 - Incinerators and Other Processing Facilities**

***Subchapter B - Application Requirements  
for Processing Facilities***

***§297.113 - Radiation protection action plan***

A new section was added in the final-form rulemaking requiring that an application for a noncaptive processing facility contain an action plan specifying procedures for monitoring for and responding to radioactive material entering the facility, as well as related procedures for training, notification, record keeping and reporting. This provision is the same as the provision added for residual waste landfills in § 288.139, which was previously discussed in more detail.

## **CHAPTER 299** - Storage and Transportation of Residual Waste

### ***Subchapter A - Standards for Storage of Residual Waste***

#### ***§299.155 - Storage of whole and processed waste tires***

This section was added to apply to whole and processed waste tires, rather than just waste tires, as these are the ultimate state once tires become a waste. Sections 299.155 to 299.163 were amended to delete the term "tire derived material" because tire derived material is included within the category of processed waste tires.

#### **ANALYSIS OF IMPACT** - Chapter 287, 288, 289, 291, 293, 295, 297, and 299 Regulatory Changes

The amendments to Chapters 287, 288, 289, 291, 293, 295, 297, and 299 were made in response to the RBI Process and Executive Order 1996-1. They were also made to include Act 2's interaction with these residual waste statutes

The residual waste regulatory amendments clarify existing regulations; eliminate requirements, which are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach.

By modifying the definition of "waste" and related terms, more generators will be encouraged to use materials since no regulations will apply to materials used as an ingredient in manufacturing or used as a substitute for a commercial product.

Numerous changes are made to encourage flexibility and innovation by facility operators. The amendments to the technical standards for residual waste landfills, for example daily cover requirements, focus on providing performance standards instead of design standards whenever appropriate. Where a design standard is stated and an equivalent method or technology is available if demonstrated by the applicant/operator to be adequate, the equivalency approval process has been simplified. Similarly, the amendments limit the types of permit modifications that must go through a major modification process (including public notice and comment).

To promote green technologies, the amendments allow for the demonstration of new technology at existing facilities to be performed through a permit modification process.

The citizens of this Commonwealth will benefit as a result of the more detailed environmental assessment process, which requires actual mitigation of existing and

potential harms to the public and the environment from the facility. Citizens will also benefit from better protection from the improper disposal of radioactive materials.

These amendments also incorporate the FAA's airport safety requirements.

Regulatory Chapters 287, 288, 289, 291, 293, 295, 297, and 299 are contained in Policy VIII-1: Energy Facility Siting/Permitting found on page II-2-25 of CZM's FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not adversely affected.

Regulatory Chapters 288 and 289 are contained in Policy IX-B.1: Intergovernmental Coordination/Water Quality found on page II-2-29 of CZM's FEIS. This policy requires the Pennsylvania CZM Program to adopt by reference, the requirements of the Federal Clean Water Act, and to incorporate these requirements into the Commonwealth's CZM Program.

Chapters 288 and 289 contain the permitting requirements for residual waste disposal facilities, and residual waste impoundments. Permit applications submitted under these two chapters require specific information regarding site geology, soils and hydrology. The issued permit requires impoundment liners, leachate treatment and a water quality monitoring plans to ensure that surface and groundwater will not be affected. The regulatory amendments that were made concerning water quality will further the requirements of the Federal Clean Water Act by adding further protection to ground and surface waters.

### **SUMMARY AND CONCLUSION** - Chapters 287, 288, 289, 291, 293, 295, 297, and 299 **Regulatory Changes**

The amendments to Chapters 287, 288, 289, 291, 293, 295, 297, and 299 clarify existing regulations; eliminate requirements, which are no longer necessary or are redundant; encourage performance-based requirements; encourage green technologies; and support a pollution prevention approach. They will have no impact upon CZM's Energy Facility Siting/Permitting Policy, and will have a positive impact upon CZM's Intergovernmental Coordination/Water Quality Policy by adding further protection to ground and surface waters.

These regulatory amendments deal with residual waste management. As can be concluded by the previous discussion of changes, the regulatory changes to Chapters 287, 288, 289, 291, 293, 295, 297, and 299 will not adversely affect the siting of energy facilities in the coastal areas. However, these regulatory amendments may be beneficial to energy facilities after they have been sited/constructed in Pennsylvania's coastal zones, for the above-mentioned reasons. In addition, these residual waste regulatory amendments now include the interaction between DEP's Land Recycling and Environmental Remediation Standards Act (Act 2). Act 2 will have a positive affect on the siting of energy facilities in the coastal zone because the Act removes the disincentives of using former industrial sites (i.e. unknown contamination and



liability), and encourages recycling and redevelopment of these sites. As such, many of these Brownfield sites will be available for the siting of energy facilities.

The amendments reflect recommendations identified as a result of the RBI process, necessary changes identified as a result of 5 years of experience in implementing the regulations and recommendations identified during the rulemaking's public comment period. These regulatory changes are not sweeping changes, but are routine changes developed overtime, with input by DEP, the public, and affected stakeholders.

As such, the regulatory amendments to Chapters 287, 288, 289, 291, 293, 295, 297, and 299 are not substantial changes to the Pennsylvania CZM Program, but are routine. The amended regulations are currently in use throughout the Commonwealth. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments, will also serve to strengthen the CZM Program. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

These changes are not substantial changes to enforceable policies related to **Uses Subject to Management** and the CZM Program's **Authorities**. Based on the previous discussion and impact analysis of the amendments to Chapters 287, 288, 289, 291, 293, 295, 297, and 291, we have determined that these are routine program changes.

## **2001 SECTION 309 PROGRAM CHANGES**

### **INTRODUCTION - SECTION 309 PROGRAM CHANGE**

Section 309 of the Coastal Zone Management Act (16 U.S.C.A. § 1456), as amended in 1990 and in 1996 establishes a voluntary coastal zone enhancement grants program to encourage states to reassess their programs and develop program changes in one or more of the following nine coastal zone enhancement areas: wetlands, public access, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, special area management plans, and aquaculture. The main purpose of the reassessment was for coastal states to identify new coastal problems that have arisen since the original state program's approval; and to develop program changes to resolve these problems.

In its 1996 Section 309 assessment, the Pennsylvania CZM Program developed a Special Area Management Planning Process as a means to address long-standing multiple-use issues affecting the coastal zones. From this process, a Special Area Management Plan was developed to address several problems facing the Lake Erie shoreline.

In its 2001 assessment, Pennsylvania CZM identified Ocean Resources as a high priority for enhancement. The Pennsylvania DEP/CZM program defines ocean (coastal) resources as all living or non-living natural, historical, or cultural resources found in, or migrating through coastal waters and habitats of Lake Erie, the Delaware River, the Schuylkill River, inland watersheds of Lake Erie, the Delaware Estuary, and their contiguous tidal and freshwater wetlands. In the Lake Erie coastal zone, ocean resources include, but are not limited to: fisheries, native and endangered shellfish, aquatic, riparian and wetland ecosystems, sand and pebble beaches, offshore sand, and submerged shipwrecks. In the Delaware Estuary coastal zone, ocean resources include, but are not limited to: fisheries and aquatic, riparian, and wetland ecosystems.

Aquatic nuisance species (ANS) threaten the biodiversity of native plant and animal species, and significantly affect recreation and tourism along Pennsylvania's coasts. Introduced into the Great Lakes via ballast water, zebra mussels, round gobies and other invasive species rapidly colonized Lake Erie and are competing with native species for food and habitat. Indirectly, they pose a public health risk through trophic transfer of sediment contaminants. In the Delaware and Schuylkill River watersheds, flathead catfish have established reproducing populations. Preying on several important species of sport fish (i.e. shad, sunfish, bass, and channel catfish), this non-native catfish may impact the quality of recreational fishing in the Delaware Estuary coastal zone.

Presently, the federal government and the U.S. Coast Guard manage ballast water introductions of ANS pursuant to the National Invasive Species Act of 1996 (NISA). While NISA addresses ANS introductions in the Great Lakes and coastal ports, it does not provide an adequate mechanism to prevent the spread of ANS among Commonwealth watersheds through

recreational and other pathways. Therefore, as a result of the 2001 Section 309 program assessment, the CZM Program will add a new Ocean Resources Policy to address the introduction and spread of ANS in Pennsylvania's coastal zones.

### **PROPOSED ADDITION OF OCEAN RESOURCES POLICY**

The following policy (*in italics*) will be incorporated into Chapter 2 - Coastal Zone Policy Framework, of CZM's FEIS. Chapter 2 begins on page II-2-1.

## ***11. OCEAN RESOURCES (OR)***

*Section 309 of the Coastal Zone Management Act, as amended, (16 U.S.C.A. § 1456) encourages states to revise their previous 309 Assessments and develop new strategies to achieve program changes on one or more of the coastal zone enhancement objectives. Ocean Resources was identified as a high priority area for enhancement in 2001, during the Section 309 Assessment of Pennsylvania's Coastal Zone Management (CZM) Program.*

*The Pennsylvania DEP/CZM program defines ocean (coastal) resources as all living or non-living natural, historical, or cultural resources found in, or migrating through coastal waters and habitats of Lake Erie, the Delaware River, the Schuylkill River, and inland watersheds of Lake Erie, the Delaware Estuary, and their contiguous tidal and freshwater wetlands. In the Lake Erie coastal zone, ocean resources include, but are not limited to: fisheries, native and endangered shellfish, aquatic, riparian and wetland ecosystems, sand and pebble beaches, offshore sand, and submerged shipwrecks. In the Delaware Estuary coastal zone, ocean resources include, but are not limited to fisheries and aquatic, riparian and wetland ecosystems.*

*Ocean resources provide significant environmental, recreational, and economic benefits to Pennsylvania's coastal communities and the Commonwealth as a whole. Lake Erie's Presque Isle attracts over 4 million visitors annually for swimming, boating, and picnicking. Opportunities for recreational boating, fishing and scuba diving are also abundant throughout other parts of the region, and Erie's industrial port connects this coastal community to the Great Lakes and beyond. The Delaware Estuary, an essential habitat for migratory populations of shad, herring, and striped bass, also boasts the largest freshwater port in the world. More than 3,000 cargo vessels and an expanding number of cruise ships dock in the international ports of Philadelphia each year. Balancing ocean resource management with competing economic uses, and coordinating these efforts across the ecologically distinct coastal zones of Lake Erie and the Delaware Estuary will require cooperation among state and federal agencies, regional authorities, and local communities.*

**POLICY 11.1: Ocean Resources/Aquatic Nuisance Species**

**PROBLEMS ADDRESSED / Policies 11.1 and 11.2**

*Aquatic nuisance species (ANS) threaten the biodiversity of native plant and animal species, and significantly affect recreation and tourism along Pennsylvania's coasts. Introduced in the Great Lakes via ballast water, zebra mussels, round gobies, and other invasive species rapidly colonized Lake Erie and are competing with native species for food and habitat. Indirectly, they pose a public health risk through trophic transfer of sediment contaminants. In the Delaware and Schuylkill watersheds, flathead catfish have established reproducing populations. Preying on several important species of sport fish, i.e. shad, sunfish, bass, and channel catfish, this non-native catfish may impact the quality of recreational fishing in the Delaware Estuary coastal zone.*

*Presently, the federal government and the US Coast Guard manage ballast water introductions of ANS pursuant to the National Invasive Species Act of 1996 (NISA). While NISA addresses ANS introductions in the Great Lakes and coastal ports, it does not provide an adequate mechanism to prevent the spread of ANS among Commonwealth watersheds through recreational and other pathways.*

**POLICY 11.1: Enforcement/Regulations**

*IT IS THE POLICY OF THE COASTAL ZONE MANAGEMENT PROGRAM, ACTING THROUGH THE DEPARTMENT AND IN CONCERT WITH THE DEPARTMENT OF AGRICULTURE, THE FISH AND BOAT COMMISSION, AND OTHER NETWORKED PARTNERS, TO ACTIVELY ASSIST IN PREVENTING AQUATIC NUISANCE SPECIES FROM BEING INTRODUCED INTO, SPREAD WITHIN, OR TRANSFERRED OUT OF THE COASTAL ZONES TO OTHER WATERS/ WATERSHEDS OF THE COMMONWEALTH, AND TO FACILITATE THEIR ERADICATION, WHERE ENVIRONMENTALLY APPROPRIATE, WITH BIOLOGICAL, CHEMICAL, AND OTHER MEANS OF CONTROL.*

**AUTHORITY(S) / Policy 11.1**

*The Noxious Weeds Control Law, as amended, (3 P.S. Section 255.1 et seq.) provides for the regulation of noxious weeds, and imposes duties and confers powers on the Department of Agriculture. The Clean Streams Law, as amended, (35 P.S. Section 691.1 et seq.) provides for the protection of water supply for consumption, recreational use, and aquatic life from physical, chemical, and biological pollution, and confers powers on the Department of Environmental Protection. The Dam Safety and Encroachments Act, as amended, (32 P.S. Sections 693.1 et seq.) provides for the regulation of dredging and filling activities (as encroachments) through permit, and for the protection of natural resources, environmental rights and values of Pennsylvanians, and confers powers on the Department of Environmental Protection. The provisions of Part II of 30 Pa. C.S.A.*

*relating to Fish and Fishing provide for the regulation of transportation, introduction, or importation of fish into or within the Commonwealth, and confers powers on the Fish and Boat Commission. The Aquacultural Development Law, (3 P.C.S. Sections 4201 et seq.) provides for the regulation of aquatic species approved for artificial propagation, or sale by live aquatic animal dealers, and confers powers on the Department of Agriculture. The Environmental Rights Amendment (Pennsylvania Constitution, Article I, Section 27) entitles Commonwealth citizens to the rights of clean air and pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.*

Regulation(s): 7 Pa. Code Chapter 110; 25 Pa. Code Chapters 91, 105; 58 Pa. Code Chapters 71, 73, 77, 137.

*7 Pa Code, Chapter 110, relates to the authority of the Department of Agriculture to issue and amend the list of noxious weeds for which sale, transport, planting, and propagation are prohibited, and to coordinate with state and federal agencies for noxious weed control on Commonwealth lands.*

*25 Pa Code, Chapter 91, relates to the authority of the Department of Environmental Protection and the Fish and Boat Commission to jointly approve the use of algaecides, herbicides, and fish control chemicals to control aquatic plants in surface waters and manage fish populations, and to the authority of the Department of Environmental Protection to use copper sulfate to control algae in public water supply sources, except when the use of such chemicals violates a specific order or permit.*

*25 Pa Code, Chapter 105, relates to the authority of the Department of Environmental Protection to issue permits for encroachments, and to regulate wetlands mitigation through review of wetlands mitigation plans. The applicant must submit a list of the species that will be planted to the Department to ensure that mitigation plans do not contain plant species identified in the noxious weeds control list (7 Pa Code 110.1), or species that are known to be invasive in the region where mitigation will occur.*

*58 Pa Code, Chapter 71, relates to the authority of the Fish and Boat Commission to issue a list of approved species for artificial and closed-system propagation, live bait sales, and transport between states or watershed basins within the Commonwealth, to prohibit the introduction of grass carp and tilapia into the waters of the Commonwealth, and to prohibit the escape of fish from registered artificial propagation facilities to escape into Commonwealth waters.*

*58 Pa Code, Chapter 71, relates to the authority of the Fish and Boat Commission to refuse to issue permits or licenses that would result in the introduction of a species of fish into a watershed where it is not now present, and to maintain a list of species by watershed for which the Department of Agriculture may issue permits for artificial propagation and live bait operations.*

*58 Pa Code, Chapter 73, relates to the authority of the Fish and Boat Commission to regulate the interstate and intrastate transfer of fish species, and to regulate the stocking of farm ponds and licensed fee fishing ponds with non-native species.*

*58 Pa Code, Chapter 77, relates to the authority of the Fish and Boat Commission to prohibit the introduction of non-native reptiles and amphibians into the natural environment of the Commonwealth.*

*58 Pa Code, Chapter 137, relates to the authority of the Game Commission to prohibit the introduction of certain species of wildlife, i.e. nutria, and species listed as injurious by the Commonwealth or the United States Department of Interior, and to issue permits for the importation of lawfully acquired wildlife for educational or scientific purposes, or for the transfer of lawfully imported wildlife by sale, trade, barter, or gift.*

### **POLICY 11.2: Encouragement**

*FURTHERMORE, IT IS THE POLICY OF THE COASTAL ZONE MANAGEMENT PROGRAM TO LIMIT THE INTRODUCTION AND SPREAD OF AQUATIC NUISANCE SPECIES IN THE COASTAL ZONE BY PROVIDING FUNDING AND TECHNICAL ASSISTANCE TO ENCOURAGE DEVELOPMENT OF RESEARCH AND OUTREACH PROGRAMS THAT WILL EFFECTIVELY REDUCE THE IMPACT OF AQUATIC NUISANCE SPECIES ON PENNSYLVANIA'S OCEAN RESOURCES, A COORDINATED, MULTI-SPECIES APPROACH TO AQUATIC NUISANCE SPECIES MANAGEMENT, AND A RAPID RESPONSE PLAN FOR UNINTENTIONAL INTRODUCTIONS. (Also see Policies 3.2, 3.4, 4.1, 9.1)*

### **CZMP Actions / Policies 11.1 and 11.2**

*Through the implementation of these two policies, CZMP shall encourage and require the development and use of appropriate mechanisms to limit the introduction and dispersal of non-indigenous aquatic nuisance species, and to protect Pennsylvania's living ocean resources.*

*Under the enforceable aspects of this OR Policy, the CZMP will rely mainly on its review of permit applications submitted under Chapter 105 regulations of the Dam Safety and Encroachments Act. Chapter 105 regulates encroachments into Commonwealth waters and wetlands. The activities regulated under this Act are identical to the activities regulated by the federal Rivers and Harbors Act of 1899, and Section 404 of the federal Clean Water Act.*

*In its review of the Chapter 105 permit applications, and through placement of conditions on permits, CZMP will require that ANS species are not introduced into or spread throughout the coastal zones. The main tool will be through wetland mitigation. Through CZMP's participation in the development and approval of wetland mitigation plans, CZMP will ensure that ANS species listed under 7 Pa Code Chapter 110, and 58*

*Pa Code Chapters 71, 73, 77 and 137 are not included / introduced in wetland mitigation plans. Furthermore, CZMP will recommend the eradication methods under 25 Pa Code Chapter 91, to control existing ANS species. CZMP actions under this Policy will also be used in its review of federal consistency activities, when a Chapter 105 encroachment permit is required.*

*Specific encouragement actions of CZMP will include: identifying priority research needs for ANS prevention and control; facilitating intrastate and interstate coordination of ANS management activities; and collaborating with Sea Grant, federal and state agencies, and regional and interstate organizations to develop outreach materials and educational programs to encourage public involvement in limiting the spread of ANS.*

With the addition of new Policy 11 - Ocean Resources, two new authorities will also be added to the CZM Program's FEIS: the Noxious Weed Control Law, Act of 1982, P.L. 228, No. 74, as amended (3 P.S. Section 243 et seq.) and the Aquacultural Development Law, Act of October 16, 1998, as amended (3 P.S. Section 4201 et seq.) The following synopsis of these new authorities (*in bold italics*) will be added to Appendix A - Existing Management Authorities of CZM's FEIS. Appendix A begins on page II-A-1.

***Noxious Weed Control Law, Act of 1982, P.L. 228, No. 74, as amended (3 P.S. Section 243 et seq.)***

***The purpose of this Act is to:***

- a. Create a Noxious Weed Control Committee to establish a noxious weed control list for the Commonwealth. Plants can be added to or deleted from the list following public hearings.***
- b. Prohibit the sale, transport, planting, or propagation of a noxious weed in the Commonwealth except if the Secretary grants permission for horticultural or experimental use.***
- c. Enable the Secretary to designate weed control areas.***
- d. Enforce landowner compliance in designated weed control areas.***

***“Noxious weeds” are defined as plants that are determined to be injurious to public health, crops, livestock, agricultural land, or other property.***

***Purple loosestrife and its cultivars, which are normally found in wetlands, have been designated noxious weeds.***

*Aquacultural Development Law, Act of October 16, 1998, P.L. ---, as amended (3 P.S. Section 4201 et seq.)*

*The purpose of this Act is to:*

- a. Encourage aquacultural operators to make a long-term commitment to aquaculture by offering them the same protections afforded other agricultural practices*
- b. Reduce the amount of governmental agencies with jurisdiction over aquaculture by transferring authority over commercial aquacultural operations to the Department of Agriculture*
- c. Encourage further development of the aquacultural industry by including aquaculture in any and all promotional and other economic developmental programs, which are made available to other industry sectors.*

*The Act designates the Fish and Boat Commission as the agency of the Commonwealth, which shall be responsible for determining which species of fish are allowed to be propagated in each watershed. Except triploid and other nonreproducing forms, species may be propagated in watersheds where they are allowed to be stocked.*

*The Act designates the Department of Agriculture as the agency of the Commonwealth, which shall be responsible for administering registration for artificial propagation. Under this registration, the purchase, sale, or offer for sale is restricted to fish species approved for propagation and stocking under section 4219. This Act does not authorize registrants to harvest species of fish taken from Commonwealth waters, or to transport species of fish that were not cultivated or purchased by the registrant. Registrants are also not permitted to stock or maintain species of fish or eggs taken from Commonwealth waters that are not listed on their registration.*

*The Act also designates the Department of Agriculture as the agency of the Commonwealth, which shall be responsible for administering registration for dealers of live aquatic animals. Under this registration, distribution of live aquatic animals is limited to fish species approved by the Department, and approved health inspection permits are required to transport fish species into the Commonwealth.*

*The Act prohibits propagation of fish species that are not approved under section 4219 or by Department regulations.*

*“Aquatic organism” means any plant or animal that grows or lives in or upon the water. “Fish” are defined as game fish, fish bait, baitfish, amphibians, reptiles, and aquatic organisms.*

*Sanctions for violations of this Act include criminal penalties.*



Finally, the following amended Memorandum of Understanding (MOU) with the Pennsylvania Fish and Boat Commission (PF&BC) will replace the existing MOU found in the Appendices of our FEIS.

**Appendix to Pennsylvania Fish & Boat Commission's Memorandum of Understanding**

***THIS APPENDIX D is part of the INTERAGENCY MEMORANDUM OF UNDERSTANDING concerning COASTAL ZONE MANAGEMENT for the PENNSYLVANIA COASTAL ZONE MANAGEMENT PROGRAM entered into on this day of \_\_\_\_\_, \_\_\_\_\_ 2002, between the Pennsylvania Department of Environmental Protection, hereinafter called "DEPARTMENT", and the Pennsylvania Fish and Boat Commission, hereinafter referred to as the "COMMISSION".***

**WITNESSETH:**

***The COMMISSION and the DEPARTMENT agree to use their legal and administrative authorities to the fullest extent possible to actively address the issues of water quality, habitat and aquatic resource conservation through cooperation and coordination. The COMMISSION and the DEPARTMENT will help ensure through monitoring and project review that coastal waters shall not contain substances attributable to point or nonpoint source waste discharges in concentrations or amounts sufficient to be inimical or harmful to the water uses to be protected as specified in Chapter 95 of the Department Rules and Regulations (25 PA. Code Section 95.1 et seq.) or to human, animal, plant, or aquatic life including cold water, warm water, and migratory fishes.***

***The COMMISSION and the DEPARTMENT agree to use their legal and administrative authorities to the fullest extent possible to prevent introductions and limit the spread of nonnative aquatic invasive species as specified in the Fish and Boat Code (58 PA Code Chapters 71, 73, and 77) and through review of wetland mitigation plans as specified in Chapter 105 of the Department Rules and Regulations (25 PA Code Section 105.1 et seq.). The COMMISSION and the DEPARTMENT will assist in the control of harmful aquatic nuisance species in an environmentally sound manner, through timely review of applications to approve the use of algicides, herbicides, and fish control chemicals to control plants in surface waters and manage fish populations as specified in Chapter 91 of the Department Rules and Regulations (25 PA Code Section 91.38).***

***The COMMISSION agrees to use its legal and administrative authorities to the fullest extent possible to actively augment native stocks and introduce appropriate species (i.e. trout and triploid carp), only after careful consideration of the potential impacts of nonnative or genetically modified organisms on coastal ecosystems, in order to provide diverse, unique, and bountiful catches for the Commonwealth's coastal recreational anglers.***

***The COMMISSION agrees to use its legal and administrative authorities to the fullest extent possible to improve access to the Delaware Estuary and the Lake Erie waterfronts through supporting the acquisition of new sites and/or the expansion of existing sites including the***

*Coastal Zone Management Program's Geographic Areas of Particular Concern nominated as areas of significant natural value and areas of historical, cultural, or recreational significance.*

*The COMMISSION agrees to give full consideration to the undertaking of detailed technical studies of coastal fisheries, their aquatic habitat and associated issues that impact their management.*

*The COMMISSION agrees to actively assist the DEPARTMENT in undertaking comprehensive studies aimed at improving the regulatory permitting process in the Commonwealth's coastal zones.*

*IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have caused these presents to be executed the day and year first above written.*

**ATTEST: COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
*(Title)* *David Hess, Secretary*

*Approved as to legality and form:*

\_\_\_\_\_  
*Assistant Attorney General  
Department of Environmental Protection*

**ATTEST: COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA FISH AND BOAT COMMISSION**

\_\_\_\_\_  
*(Title)* *Peter Colangelo, Executive Director*

*Approved as to legality and form:*

\_\_\_\_\_  
*Assistant Attorney General  
Pennsylvania Fish and Boat Commission*

## **ANALYSIS OF IMPACT - Addition of Ocean Resources Policy**

The addition of an Ocean Resources Policy to Pennsylvania's CZM Program is provided for, and encouraged by Section 309 of the Federal CZM Act. The addition of this new policy is necessary to address a need identified by the 2001 Section 309 Assessment of the Pennsylvania CZM Program.

The assessment determined that aquatic nuisance species (ANS) pose a direct threat to the biodiversity of native plant and animal species and critical habitat of the coastal zone, as well as coastal watersheds. The assessment also shows that this threat is being addressed to a limited degree by the US Coast Guard. However much more needs to be done.

Through a 2001 amendment to its Memorandum of Understanding with the PF&BC, and through a Governor's Executive Order covering the Pennsylvania Department of Agriculture (PDA), the Pennsylvania CZM Program will begin to help in limiting the introduction and spread of ANS throughout Commonwealth waters. The CZM Program will accomplish this by incorporating by reference existing PF&BC and PDA authorities and regulations. It is expected that with these regulations/enforceable ANS policy, CZM will be able to limit the introduction and spread of ANS through its state permit application and federal consistency reviews.

Through its Ocean Resources Policy, CZM's efforts will focus on the coastal areas, whereas the PF&BC and PDA's efforts encompass the entire Commonwealth.

## **SUMMARY AND CONCLUSIONS - Addition of Ocean Resources Policy**

The addition of an Ocean Resources Policy is not a substantial change to the Pennsylvania CZM Program, but is routine. This change is provided for by Section 309 of the Federal CZM Act.

The addition of this Ocean Resources Policy will enable the CZM Program to help prevent the introduction/spread of ANS in the Commonwealth, by using existing enforceable regulations of the Commonwealth. The CZM Program's efforts will not replace existing PF&BC and PDA's efforts in the coastal zone. CZM's effort will assist these two state agencies by providing focus to the ANS coastal zone pathway.

This proposed addition is not a substantial change to **Chapter 2 - Coastal Zone Policy Framework**, and the **Appendix A - Existing Management Authority** sections. Based on the previous discussion and impact analysis of the proposed Ocean Resources Policy, we have determined that this is a routine program change.

This and related environmental information are available electronically via Internet. For more information, visit us through the PA PowerPort at <http://www.state.pa.us> PA Keyword "Coastal Zones".



[www.GreenWorks.tv](http://www.GreenWorks.tv) - A web space dedicated to helping you learn how to protect and improve the environment. The site features the largest collection of environmental videos available on the Internet and is produced by the nonprofit Environmental Fund for Pennsylvania, with financial support from the Pennsylvania Department of Environmental Protection, 877-PA-GREEN.