

Executive Summary

Title 25, Chapter 85, Bluff Recession and Setback

This proposal is an amendment to existing regulations that includes both minor administrative changes to update the regulations for purposes of clarity, and procedural changes. Since Chapter 85 is 25 years old, minor clarity and procedural changes are overdue and necessary for proper implementation. It also includes increasing the number of municipalities covered by Chapter 85. This change is the direct result of the Department's response to a petition sent to the Environmental Quality Board (EQB) by Millcreek Township, Erie County, asking for clarification of the designation of Bluff Recession Hazard Areas along Lake Erie. To complete this task, the Department conducted a study of Pennsylvania's entire Lake Erie shoreline in order to identify and update the number and location of Bluff Recession Hazard Areas. All municipalities benefited from the study, which more clearly identified and delineated the Bluff Recession Hazard Areas. Considering the results of this study and other related studies and data, and responses from the coastal municipalities along Lake Erie concerning tentative designations of Bluff Recession Hazard Areas, the Department recommended including the City of Erie as a municipality identified as having a Bluff Recession Hazard Area.

A majority of the shoreline of the City of Erie is along the southern edge of Presque Isle Bay, sheltered from open lake wave energies by the protective land feature of Presque Isle Peninsula. However, approximately 1.5 miles of the City's eastern shoreline are outside Presque Isle Bay and are exposed to open lake wave energies. The bluffs adjacent to this section of shoreline are undercut by wave attack, have steep slopes, are periodically devoid of vegetation, and have experienced active bluff recession or have been heavily protected. If not regulated with setbacks and improvement limitations, existing and future development in this area will be subject to property damage from bluff recession. Therefore, this area is tentatively designated as having a Bluff Recession Hazard Area and the City of Erie should be included as a regulated municipality in Chapter 85 (Bluff Recession and Setback Rules and Regulations).

A brief description of the proposed amendments follows:

- Section 85.1. (relating to definitions) is proposed to be amended by adding the EQB as a definitional term and clarifying the definitions for Act, Person, Plat and Structure.
- Minor editorial changes to §85.11 (relating to general requirements) and §85.13 (relating to department notification to municipalities) and adding clarifying language to §85.14 (relating to municipal response on designation) and §85.15 (relating to department notification to the EQB).
- Section 85.22 (c) relating to a change in the minimum bluff setback distance from 50' to 25'. Additional discussion of this change is contained later in this document.
- Minor editorial changes to §85.23 (relating to modification of minimum bluff setback distances) and to move §85.22 (b) to §85.25 (b) for clarity.

- Minor editorial changes to §85.26 (relating to designated municipalities and minimum bluff setback distances for identified categories of structures) along with an important clarification in (c.) that this table sets minimum setback requirements and adds the City of Erie as a designated municipality.
- Subsections §85.26 (d) and (e) are proposed to be added to clarify that municipalities may adopt more restrictive bluff setback distances and that the Uniform Construction Code or local zoning regulation may also apply.
- Minor editorial changes to §85.32 (relating to time limit for municipal adoption of bluff setback ordinance and regulation), to §85.35 (relating to municipal adoption of more restrictive ordinance), and to §85.37 (relating to contents of ordinance and regulations submitted by municipality). A cross reference to the Solid Waste Management Act and regulations is proposed to be added to §85.37(4)(i)(B) and a clarification made to §85.37(7) regarding notice to applicants.
- A new requirement is proposed in §85.37(7) (i) and (ii) for every deed or plat within the bluff recession hazard area to include an appropriate bluff recession hazard area notice.
- Deleting §85.41 (relating to general requirements), deleting the requirement for notification by certified letter in §85.42 (b), and making minor editorial changes to §85.42(d).
- Minor editorial changes to §85.52 (relating to limitation of grants and reimbursements) and replacing the specific list of records and supporting documentation required in §85.55 (relating to records and audits) with the requirement that the records be maintained in accordance with generally accepted accounting practices.
- Minor editorial changes to §85.61(b)(1) (relating to appeals).

Regarding changes to Section 85.22 (c), the Department's study recommended a setback of 50 feet. Section 85 of the regulations requires that notification be given to municipalities prior to any formal designations of Bluff Recession Hazard Areas by the EQB. The City of Erie reviewed the study data and requested an opportunity to discuss several points. The Department's bluff recession monitoring control point data for the 1.5 miles of the City's Lake Erie shoreline produced an average recession rate of 0.24 feet/year, which, when utilized in the formula contained in Section 85.22 (c), results in a minimal residential setback of 12 feet, a commercial setback of 18 feet and an industrial setback of 24 feet. Furthermore, the data produced by the photogrammetric process used in the 2003 Bluff Hazard Study, showed an even lower recession rate. This data showed a 0.01 feet/year recession rate, resulting in a minimal residential setback of 0.5 feet, a commercial setback of 0.75 feet and an industrial setback of 1.0 feet. The Department has accepted the City's request to consider modifying the minimum bluff setback distances proposed in the bluff study, reducing the minimum distance from 50 feet to 25 feet.

The bluff study also shows recession rates of less than one foot/year for five of the existing eight regulated municipalities. The Department, through the provision of technical assistance, will work with these municipalities to encourage them to maintain their existing minimum setbacks. If these municipalities establish less restrictive setbacks it may result in new development being placed too close to episodically receding bluff areas. For example, North East Township has both the highest and the lowest bluffs along the Lake Erie shoreline. The corresponding bluff recession rates are also some of the highest and the lowest in the eight regulated municipalities. When averaged, the recession rate data is 0.55 foot/year or a 27.5 feet residential setback. In high-elevated bluffs with higher recession rates this lower averaged recession rate may not afford reasonable safety or protection for new development. In theory, the steep slope setbacks in the state's Uniform Construction Code can provide a fallback safety net to keep new development further back than required by the minimum bluff setbacks in Chapter 85, Bluff Recession and Setback Regulations.

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

The proposal was submitted to the Coastal Zone Advisory Committee (CZAC) on June 15, 2005 and the CZAC provided constructive supportive comments on the package. The proposal was also submitted to the Water Resources Advisory Committee (WRAC) on October 13, 2006 and again on January 10, 2007. In the first meeting WRAC endorsed the submittal of the proposed amendments to Chapter 85. WRAC asked the WPO to evaluate alternative methods of determining bluff setbacks other than the one current method, which is based on averaging recession rates within municipal boundaries. At the latter meeting the WPO presented information in support of the current system used to define bluff setbacks. After discussion, WRAC accepted the information in support of the adequacy of the current system. Also, at this latter meeting the WPO informed the WRAC that since the City of Erie's first review of the bluff study, a new Mayor was elected. The WRAC recommended that the WPO contact the City to discuss the results of the study. The WRAC also requested feedback from the WPO on any issues or problems expressed by the City of Erie. The WPO met with the City Zoning Officer on April 3, 2007, to discuss the previously mentioned 25 foot setback.

In the current Chapter 85, Subchapter B. Procedure for Designation of Areas with Bluff Recession Hazards, Section 85.15, the EQB must give notification of a comment period. No specific public comment period is specified in the regulations. It is recommended that there be a 60-day public comment period with one EQB hearing to be held in Erie.