

## Executive Summary

### Title 25, Chapter 85, Bluff Recession and Setback Rules and Regulations

The final rulemaking includes amendments to Chapter 85 relating to Bluff Recession and Setbacks. The regulations would be promulgated pursuant to the Bluff Recession and Setback Act, 32 P.S. Sections 5201 – 5215. The Act is intended to address bluff erosion and recession matters along the Pennsylvania portion of the Lake Erie shoreline. This final rulemaking is an outgrowth 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. In response to the petition, the Department initiated a study of Pennsylvania's entire Lake Erie shoreline in order to identify and update the number and location of Bluff Recession Hazard Areas (BRHAs). As a result of this and other related studies and data, the Department recommended adding the City of Erie as a municipality identified as having a Bluff Recession Hazard Area. The city is the only municipality along the Lake Erie shoreline which has not been previously 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, it is proposed that this area be designated as having a Bluff Recession Hazard Area and the City of Erie be subject to Chapter 85 (Bluff Recession and Setback Rules and Regulations).

With respect to the City of Erie, based on its evaluation of the available information the Department initially recommended a setback of 50 feet. 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 November 2004 Study to Tentatively Designate Bluff Recession Hazard Areas, 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 reducing the minimum distance from 50 feet to 25 feet.

Chapter 85 was initially promulgated in 1980 and has only been amended once in 1984. Accordingly, it was deemed appropriate to propose other changes and updates to Chapter 85 at the same time the Millcreek Township request was being considered by the Department. The other amendments included in the final rulemaking are as follows:

- **Add Section §85.12 (c) IN ACCORDANCE WITH SECTION 4(c) OF THE ACT, 32 P.S. 5204(c), THE GEOGRAPHIC AREAS IDENTIFIED AS "TENTATIVELY IDENTIFIED BLUFF RECESSON HAZARD AREAS" IN SECTIONS I AND II OF THE**

**DEPARTMENT'S "STUDY TO TENTATIVELY DESIGNATE BLUFF RECESSION HAZARD AREAS", DATED NOVEMBER 2004, ARE DESIGNATED AS BLUFF RECESSION HAZARD AREAS. THE DEPARTMENT SHALL MAKE THE NOVEMBER 2004 STUDY AVAILABLE TO THE PUBLIC.**

- Add Section §85.26 (c) [Designated municipalities and setback distances in feet.] **EXCEPT AS PROVIDED IN SUBSECTION (e), regardless of any other provision of law or ordinance to the contrary, the minimum BLUFF setback distances in the named municipalities THAT POSSESS A BLUFF RECESSION HAZARD AREA, AS DESIGNATED IN SECTION 85.12, shall be in accordance with the following table:**
- Remove from the final regulation the proposed change 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.

The proposal was first submitted to the Coastal Zone Advisory Committee (CZAC) on June 15, 2005 and the CZAC provided constructive supportive comments on the package. It was resubmitted to CZAC on June 13, 2007 with final changes and again received constructive supportive comments. The proposal was also submitted to, and approved by, the Water Resources Advisory Committee (WRAC) on October 13, 2006, on January 10, 2007 and again on January 9, 2008. A motion was made to accept the modification to the minimum bluff setback distance to reduce it from 50' to 25'. At this meeting a vote was taken by the WRAC members and the motion passed. The EQB accepted the proposed rulemaking in June 2008. The proposed rulemaking was published in PA Bulletin in August 2008 and a public hearing in Erie occurred on September 23, 2008. Twelve sets of comments were received addressing the following areas: vegetation management requirements, specific location of BRHAs, methodology for tentatively designating BRHAs, support for this rulemaking, minimum setback distance, setback Distances, deed notices, the City of Erie Bayfront, timeframe for future updates and EQB Scope of Authority.

Two more WRAC meetings were held on April 8 and April 23, 2009. At the latter meeting the Committee members voted to approve the Bluff Regulation Package for submittal to the EQB for consideration. This latest version of the Regulation Package removed 85. 37 (i) and (ii) dealing with deed and plat notices and modified language in 85.12 (c) and 85.26 (c) to identify the Department's November 2004 Study to Tentatively Designate Bluff Recession Hazard Areas where the geographic location of designated BRHAs can be found.