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PUBLIC NOTICE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

25 Pa. Code Chapter 105

Dam Safety and Waterway Management

PENNSYLVANIA WETLAND REPLACEMENT PROJECT

The Department of Environmental Protection hereby announces the implementation of the Pennsylvania Wetland Replacement Project. This project provides a mechanism by which the Department will assist permit applicants in meeting the wetland replacement/mitigation requirements associated with Chapter 105 Water Obstruction and Encroachment Permits. The project will ease administrative and financial burdens associated with small wetland replacement areas while maintaining appropriate levels of environmental protection for significant wetland resources. The project furthers the goals of the Department to ensure that mitigation efforts are effective, productive and beneficial.

BACKGROUND

The goal of wetlands protection programs is to ensure that the many functions and values provided by wetlands related to water quality, wildlife habitat and public safety, are preserved. In order to meet that goal, regulatory programs require that wetlands lost as a result of federal or state permitting actions be replaced by creating new wetlands. Although seemingly insignificant on an individual basis, the cumulative impact of small incremental wetland losses can, over the long-term, result in major impairments to the environment, especially within the context of a specific watershed or locale. If wetland protection programs are to ensure future environmental quality, the replacement of these small incremental impacts becomes a major concern.

Permit recipients, usually a business, municipality, individual, or state agency, assume the responsibility for providing replacement wetlands as a special condition of the permit. The goal of wetlands replacement is to provide a wetland which replicates and provides the same functions and values as the wetland which was lost.

The creation of wetlands requires careful planning, design, construction, monitoring, and often, new land acquisition. Wetland creation on large scale projects is often incorporated within the project scope and wetland functions and values can be replaced on site or on adjacent sites. However, the creation of wetlands on a small scale present both regulators and permit applicants with challenges which often complicate the permit process.

Permit applicants, even for small projects, are often faced with requirements to identify and acquire suitable land for wetland replacement, and provide funding for wetland construction and long-term monitoring. Permits may not be issued until applicants provide for wetland replacement which often results in permit delays and frustrations for the applicant and the regulatory agency. As a result of this situation, the Department of Environmental Protection was keenly interested in developing a strategy to achieve wetland replacement to meet program goals while minimizing the regulatory burdens on permit applicants, especially those proposing minor projects.

In order to address this regulatory issue, the Department of Environmental Protection, in cooperation with the National Fish and Wildlife Foundation (the "Foundation"), has agreed to establish and manage a fund, titled the Pennsylvania Wetland Replacement Project, to which Chapter 105 permit applicants for activities in wetlands can make a monetary contribution, in lieu of creating replacement wetlands. The Foundation was created by Congress in 1984 as a charitable and non-profit corporation. The purposes of the Foundation are (1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service and (2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife and plant resources of the United States, its territories and its possessions, for present and future generations of Americans.

PUBLIC COMMENTS

On July 1, 1995 the Department of Environmental Protection advertised and requested comments regarding the establishment of the Pennsylvania Wetland Replacement Project (the "Fund") in the Pennsylvania Bulletin. Eighty -three comments were received.

A brief summary of the public comments and the Department's responses follows:

1. The majority of the commenters suggested that the contribution rate be raised to support the purchase of land.

The Department's fee schedule reflects the emphases placed on restoration of wetlands and projects that will partner private landowner and conservation groups on a voluntary basis, thereby eliminating the necessity of buying land. The fee schedule is based on similar restoration programs at the federal level, and the Department believes the fees are appropriate.

2. Many commenters stated that wetlands destruction represents a loss to a specific watershed and restoration work should be done in the watershed where the loss occurred.

The Department will consider the recorded amount of wetland loss within each watershed when evaluating the benefits of proposed projects.

3. Some commenters questioned whether DEP has a plan and/or methodology to evaluate the success of the program and if necessary, make changes to it.

The Department will monitor wetland impacts and evaluate restoration projects based upon the stated goals and objectives of each project. Changes to this effort will be made where and when appropriate.

4. A few commenters believe that a consequence of the fund will be an easing of the current requirement to avoid and minimize wetland impacts before mitigating.

Permit applicants must continue to provide an alternatives analysis including avoidance and minimization as required by Chapter 105.

IMPLEMENTATION

Upon review and consideration of the comments, the Department believes the proposal will ease administrative and financial burdens associated with small replacement wetlands while providing effective resource protection and restoration. The Department further believes that the use of the

fund is an appropriate means of providing regulatory relief for those individuals who meet all other permit requirements but cannot replace wetlands. Those applicants will be afforded the opportunity to make a contribution to the fund in order to meet that requirement.

The Department has the discretion to approve or deny the use of the fund as appropriate wetland mitigation and replacement for permit actions on a case by case basis. Permit applicants must continue to provide sound alternative analyses, demonstrate avoidance, and minimize impacts to wetlands in accordance with existing regulatory requirements contained in 25 Pa. Code Chapter 105. If sufficient on-site area is available and suitable for replacement, and will provide environmental benefits, on-site wetland replacement will be required. The Department is establishing an upper limit of .50 acre for eligibility to participate in the fund. Under special circumstances exceptions to the .50 acre upper limit may be considered. The Department's Regional Office permit review staff will be responsible for determining special circumstances when the .50 acre threshold should be exceeded.

Applicants who propose impacts to wetlands that fall under the threshold of .50 acre will be informed of the potential opportunity to participate in the Pennsylvania Wetland Replacement Project. Applicants for any class of activity who meet all other permit requirements but cannot replace wetlands will be afforded the opportunity to make a contribution to the fund in order to meet that requirement.

The Department has determined that individual impacts to wetlands less than .05 acre are de minimus, and do not present a significant impact individually or cumulatively to wetland resources in the Commonwealth. Therefore, they do not need to be replaced either on the ground or via a contribution to the fund. The fee schedule for impacts greater than .05 acres of wetlands follows:

Greater than .05 acre to .10 acre \$ 500.00

Greater than .10 acre to .20 acre 1,000.00

Greater than .20 acre to .30 acre 2,500.00

Greater than .30 acre to .40 acre 5,000.00

Greater than .40 acre to .50 acre 7,500.00

The fund will be used by the Department to support projects which link volunteer land owners with public and private agencies which will result in the restoration of wetlands, riparian corridors and other aquatic systems. Project sponsors are not limited to any specific public or private agency and can include County Conservation Districts, conservation agencies, sportsmen's groups, municipal governments, and conservancies. All funds contributed under the Pennsylvania Wetland Replacement Project will be released at the direction of the Department to support wetland and stream restoration and protection projects within the Commonwealth.

The Department will, to the best of its ability, strive to ensure that replacement projects are located within the same subbasin (as identified in the State Water Plan), coastal zone management areas, or within reasonable proximity to the wetlands which are impacted. The Division of Wetlands Protection will maintain an accurate and detailed accounting of projects funded and wetland acreage replaced through funds contributed to the Foundation.

Implementation of the Pennsylvania Wetland Replacement Project is effective immediately for all actions reviewed and authorized under the Chapter 105 program including applications presently under review. Applicants and permittees are encouraged to contact the Department's Regional Offices for information regarding specific projects.