

CHAPTER 85. BLUFF RECESSION AND SETBACK

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Authority

The provisions of this Chapter 85 issued under the Bluff Recession and Setback Act (32 P. S. §§ 5201—5215), unless otherwise noted.

Source

The provisions of this Chapter 85 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3782, unless otherwise noted.

Subchapter A. GENERAL PROVISIONS

85.1.	Definitions.
85.2.	Scope.
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§ 85.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Bluff Recession and Setback Act (32 P. S. §§ 5201—5215).

Bluff—A high bank or bold headland with a broad precipitous cliff face overlooking a lake.

Bluff line—The edge or crest of the bluff.

Bluff recession—The loss of material along the bluff face caused by the direct or indirect action by one or a combination of groundwater seepage, water currents, wind generated water waves or high water levels.

Bluff recession hazard area—An area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby existing or future structures or utility facilities.

(*Editor’s Note:* Section 2 of the act of July 7, 2011 (P. L. 301, No. 72) (Act 72) revised the definition of “bluff recession hazard area” in section 3 of the act (32 P. S. § 5203) by adding the following: “The term shall not include any area

where the horizontal distance, measured perpendicular to the shoreline, between the shoreline and the bluff toe is in excess of 250 feet and such area shall not be subject to any Environmental Quality Board regulations or municipal setback ordinance or regulation established under this act.”)

Bluff setback ordinance and regulations—Building codes, zoning ordinances, subdivision regulations, health regulations, special purpose ordinances and other applications of the police power, which provide standards for the location of structures and facilities in bluff recession hazard areas.

Department—The Department of Environmental Protection of the Commonwealth.

Development—Development shall be defined as follows:

(i) The improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose including, but not limited to one of the following:

(A) A group of two or more buildings.

(B) The division or allocation of land or space between or among two or more existing or prospective occupants by means of or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

(ii) A subdivision of land.

High bank—A bank over 5 feet high.

Lake—A body of fresh water covering at least 9,000 square miles.

Market value—The value of a structure determined by a certified appraisal or by determining the assessed value of a structure and applying the assessment ratio of the county in which the structure is located.

Minimum bluff setback distances—The shortest horizontal distance from a point on the bluff line to a point on a structure.

Municipality—A county, city, borough, town or township or any other governmental unit when acting as an agent thereof or any combination thereof acting jointly.

Parcel—A piece of ground that existed as an independent tax lot on the records of the county prior to its inclusion in designated bluff recession hazard areas of a municipality.

Person—An individual, partnership, public or private association or corporation, firm, trust estate, municipality, governmental unit, public utility or other legal entity which is recognized by law as the subject of rights and duties. Whenever used in any section prescribing or imposing a penalty, the term “person” includes the members of a partnership, the officers, members, servants and agents of an association, officers, agents and servants of a corporation, but excludes any department, board, bureau or agency of the Commonwealth.

Plat—A map, drawing or print accurately drawn to scale showing the proposed or existing location of all structures.

Structure—A man made object having an ascertainable stationary location on or in land whether or not affixed to the land; structures are classified into three categories residential, commercial and light and heavy industrial.

(i) Residential structures are defined as a place providing habitation for an individual or group of individuals. Structures in this category include, but are not limited to single family homes, duplexes and summer cottages as well as any secondary structure associated with the residential structure.

(ii) Commercial structures are defined as a place where commodities are exchanged, bought or sold. Structures in this category include, but are not limited to grocery stores, hardware stores, clothing shops and pharmacies as well as any secondary structure that is associated with the commercial structure.

(iii) Light and heavy industrial structures are defined as a place where materials are refined, produced or fabricated and stored prior to shipment to commercial establishments. Structures in this category include but are not limited to factories, power plants and warehouses, as well as a secondary structure that is associated with the industrial structure. Hospitals, nursing homes, schools and other public service facilities, because of the dangers inherent in bluff recession, will for purposes of setback requirements be considered light and heavy industrial structures.

Structure life span—The useful life of the structure considering both economic and physical factors.

Substantial improvement—Substantial improvement shall be defined as follows:

(i) A repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50% of the market value of the structure either:

(A) Before the improvement or repair is started.

(B) If the structure has been damaged and is being restored, before the damage occurred.

(ii) Repair, reconstruction, or improvement of a structure occurring over a 5 year period, the aggregate cost of which equals or exceeds 50% of the market value of the structure either:

(A) Before the first improvement or repair is started.

(B) If the structure has been damaged and is being restored, before the damage occurred.

(iii) Substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structure part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing State or local health, sanitary, or safety specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State inventory of historic places.

(*Editor's Note:* Section 2 of Act 72 added the following definitions to section 3 of the act:

*“Bluff toe—*The base of a bluff.

*Shoreline—*The ordinary high water mark of Lake Erie of 573.4 feet as defined in accordance with the International Great Lakes Datum 1985 (IGLD 1985) as recognized by the United States Army Corps of Engineers.”)

Source

The provisions of this § 85.1 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234475) to (234477).

§ 85.2. Scope.

This chapter is adopted in accordance with the duties relating to bluff recession placed on the Department by the act, and applies to all municipalities designated as having bluff recession hazard areas and to all persons constructing, installing or engaging in substantial improvement to any structure or utility facility within bluff recession hazard areas.

Source

The provisions of this § 85.2 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234477).

§ 85.3. Purpose.

The basic purposes of the act and this chapter are as follows:

- (1) Encourage planning and development in bluff areas which is consistent with sound land use practices.
- (2) Protect people and property in bluff areas from the dangers and damages associated with the inevitable recession of bluffs.
- (3) Prevent and eliminate urban and rural blight which results from the damages of bluff erosion and recession.
- (4) Minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities.
- (5) Authorize a comprehensive and coordinated program to regulate development activities through the use of setback ordinances in bluff recession hazard areas to preserve and restore the natural ecological systems, and to prevent continuing destruction of property and structures.
- (6) Encourage local administration and management of bluffs consistent with the duty of the Commonwealth as trustee of natural resources, and the constitutional right of the people to the preservation of the natural, scenic, aesthetic and historic values of the environment.

§ 85.4. Violations.

A municipality that fails to adopt and submit a bluff setback ordinance and regulations or fails to properly administer this chapter will be found in violation of the act and will be subject to the sanctions provided for in the act. A person who violates the provisions of the act or this chapter shall be subject to the sanctions provided for in the act.

**Subchapter B. PROCEDURE FOR DESIGNATION OF AREAS WITH
BLUFF RECESSION HAZARDS**

Sec.

- 85.11. General requirements.
- 85.12. Identification of bluff recession hazards.
- 85.13. Department notification to municipalities.
- 85.14. Municipal response on designation.
- 85.15. Department notification to the Environmental Quality Board.

§ 85.11. General requirements.

The Department is authorized under section 4 of the act (32 P. S. § 5204) to identify areas in this Commonwealth that contain bluff recession hazard areas. Prior to formal designation by the EQB, the tentatively identified municipality will be invited to submit comments to the Department concerning the designation.

Source

The provisions of this § 85.11 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234478).

§ 85.12. Identification of bluff recession hazards.

(a) Under section 4 of the act (32 P. S. § 5204), studies will be conducted when necessary to identify bluff recession hazard areas in this Commonwealth. Studies prepared for these purposes must do all of the following:

- (1) Identify the geographic location of the potential hazard area; county, township, and so forth.
- (2) Define and evaluate the bluff recession hazard in relation to geophysical processes such as recession and erosion related phenomena and examine the causative factors.
- (3) Review and evaluate existing and potential damage to property and structures caused by progressive bluff recession.
- (4) Develop a recession rate based on historical evidence.
- (5) Develop conclusions and recommendations based on the findings of the studies.

(b) To prevent the unnecessary expenditure of public funds, the Department will inventory, identify and evaluate previous studies that may have already been completed. If the studies meet the requirements of this chapter, the studies may be utilized for purposes of section 4 of the act.

(c) In accordance with section 4(c) of the act, the geographic areas identified as “tentatively identified bluff recession 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 will make the November 2004 study available to the public.

Source

The provisions of this § 85.12 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234479).

§ 85.13. Department notification to municipalities.

Following completion of the study, the Department will, by certified letter, notify the governing body of the municipality that it has been tentatively designated as possessing a bluff recession hazard area. The letter will contain the following information:

- (1) The geographic location of the hazard area.
- (2) A summary of the findings of the study by the Department.
- (3) The historic recession rate and the process used to calculate this rate.
- (4) The minimum bluff setback distances that will be required by the Department.
- (5) A request for comments from the municipality concerning the tentative designation and setback distances.
- (6) Specification of a 60 day time limit for comment.
- (7) Notice that one or more public hearings will be held concerning the designation of bluff recession hazard areas by the EQB prior to formal designation.

Source

The provisions of this § 85.13 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5414. Immediately preceding text appears at serial page (234479).

Cross References

This section cited in 25 Pa. Code § 85.15 (relating to Department notification to the Quality Board).

§ 85.14. Municipal response on designation.

(a) Each municipality tentatively identified by the Department as possessing a bluff recession hazard area will be invited to submit written comments concerning the tentative designation to the Department within 60 days of receiving the notification letter of the Department.

(b) If a municipality disagrees with the letter of the Department tentatively designating it as possessing a bluff recession hazard area and the required setback distances, the appropriate representatives of the Department will contact and offer to meet with representatives of the municipality to review, discuss, and attempt to resolve the differences. This meeting will be scheduled within 30 days from the date the letter is received from the municipality.

(c) If a municipality does not comment within the time prescribed in § 85.13(6) (relating to Department notification to municipalities), it will be presumed that the municipality is in agreement with the designation and the required setback distance.

Source

The provisions of this § 85.14 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234479) to (234480).

§ 85.15. Department notification to the EQB.

(a) Following the close of the municipal comment period on the tentative designation, the Department will prepare and transmit to the EQB a proposed rulemaking proposing formal designation of the bluff recession hazard area of the municipality and the establishment of bluff setback distances in the bluff recession hazard area. The proposed rulemaking will contain the following:

- (1) The findings of the Department concerning the location and determination of the bluff recession hazard area in the municipality.
- (2) The nature of the existing and potential damage to property and structures.
- (3) Comments received from the affected municipality.
- (4) A recommendation, incorporating consideration of the comments received from the municipality, that the area be designated as a bluff recession hazard area and subject to Subchapter D (relating to municipal bluff setback ordinance and regulations).

(b) Following transmittal of the proposed rulemaking by the Department to the EQB, the EQB will give public notice and hold one or more public hearings on the proposed rulemaking to formally designate areas within municipalities as bluff recession hazard areas.

(c) Following public hearings, the Department will consider the comments received and make appropriate revisions to the proposed rulemaking. The Department will then submit the proposed rulemaking to the EQB for final action. Following adoption by the EQB and publication of the formal designation, the Department will notify the municipality that it must within 6 months comply with the act and this chapter.

Source

The provisions of this § 85.15 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234480) to (234481).

Cross References

This section cited in 25 Pa. Code § 85.26 (relating to designated municipalities and minimum bluff setback distances for identified categories of structures).

**Subchapter C. BLUFF RECESSION HAZARD AREAS SETBACK
REQUIREMENTS**

Sec.	
85.21.	General requirements.
85.22.	Methods of determining minimum bluff setback distances.
85.23.	Modification of minimum bluff setback distances.
85.24.	Activities within a bluff recession hazard area.
85.25.	Variances granted by the Department.
85.26.	Designated municipalities and minimum bluff setback distances for identified categories of structures.

§ 85.21. General requirements.

Under section 5 of the act (32 P. S. § 5205), this subchapter provides procedures for calculation of minimum bluff setback distances and the limitations of activities associated within minimum bluff setback distances in designated bluff recession hazard areas.

§ 85.22. Methods of determining minimum bluff setback distances.

(a) The Department will develop minimum bluff setback distances for each municipality tentatively designated as having a bluff recession hazard area by applying the following formula:

$$\begin{array}{rcccl} \text{Rate of} & & \text{Appropriate} & & \text{Minimum} \\ \text{Bluff} & & \text{Life Span} & = & \text{Bluff Setback} \\ \text{Recession} & \times & \text{of Structure} & & \text{Distance} \end{array}$$

(1) The rate of bluff recession is the average annual rate of recession for all the municipality's bluffs as calculated by the Department.

(2) The appropriate life span of a structure is 50 years for residential homes, 75 years for commercial structures, and 100 years for light and heavy industrial structures.

(b) The minimum bluff setback distance may not be less than 25 feet. When use of the formula identified in subsection (a) would produce a minimum bluff setback distance of less than 25 feet, the formula does not apply and 25 feet shall be the minimum bluff setback distance.

Source

The provisions of this § 85.22 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234481) to (234482).

Cross References

This section cited in 25 Pa. Code § 85.24 (relating to activities within a bluff recession hazard area); and 25 Pa. Code § 85.35 (relating to municipal adoption of more restrictive ordinance).

§ 85.23. Modification of minimum bluff setback distances.

A minimum bluff setback distance for a municipality may be modified upon presentation of formal studies acceptable to the Department documenting annual recession rates at variance with the recession rate data of the Department. Upon Department review and acceptance of the data as accurate and compatible with the objectives of the act, a new minimum bluff setback distance will be calculated. The Department will request that the EQB amend the designation in accordance with this subchapter concerning the minimum bluff setback distances.

Source

The provisions of this § 85.23 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234482).

Cross References

This section cited in 25 Pa. Code § 85.35 (relating to municipal adoption of more restrictive ordinance).

§ 85.24. Activities within a bluff recession hazard area.

In any bluff recession hazard area, no person shall construct, install or engage in substantial improvement to any structure or any utility facility such as water, sewage, electric, gas, oil or telephone within the minimum bluff setback distances established under § 85.22 (relating to methods of determining minimum bluff setback distances) except as provided under § 85.25 (relating to variances granted by the Department) or § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality).

Cross References

This section cited in 25 Pa. Code § 85.24 (relating to activities within a bluff recession hazard area); and 25 Pa. Code § 85.35 (relating to municipal adoption of more restrictive ordinance).

§ 85.25. Variances granted by the Department.

(a) During the period between EQB designation of a bluff recession hazard area and the approval of the Department of a bluff setback ordinance and regulations of a municipality, the Department may grant variances to the bluff setback requirements for all construction in a designated bluff recession hazard area. A property owner shall file an application with the Department for a variance to allow construction on his property.

(b) When the Department receives the completed application for a variance, it will review the application based on the criteria for a variance under § 85.37(4) (relating to contents of ordinance and regulations submitted by municipality) within 45 days, and send a certified letter to the applicant approving or disapproving the variance. A copy of this letter will be sent to the municipality for its per-

manent record. If the Department does not take action regarding the application within 45 days of receipt of this application, the application will be deemed approved.

Source

The provisions of this § 85.25 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234482) to (234483).

§ 85.26. Designated municipalities and minimum bluff setback distances for identified categories of structures.

(a) Under § 85.15 (relating to Department notification to the EQB), the municipalities identified in subsection (c) have been designated as possessing a bluff recession hazard area.

(b) The municipalities designated in subsection (c) are required to adopt and implement a bluff setback ordinance and regulations which incorporate the bluff setback distances listed in subsection (c).

(c) 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 § 85.12 (relating to identification of bluff recession hazards), must be in accordance with the following table:

<i>Municipality (by geographic location)</i>	<i>Residential</i>	<i>Commercial</i>	<i>Light and Heavy Industrial</i>
Springfield Township			
Erie County	100'	150'	200'
Girard Township			
Erie County	60'	90'	120'
Lake City Borough			
Erie County	60'	90'	120'
Fairview Township			
Erie County	50'	75'	100'
Millcreek Township			
Erie County	50'	75'	100'
Erie City			
Erie County	25'	25'	25'
Lawrence Park Township			
Erie County	50'	75'	100'
Harborcreek Township			
Erie County	50'	75'	100'
North East Township			
Erie County	50'	75'	100'

(d) The setback distances listed in subsection (c) are minimum distances. The actual distance of the area subject to bluff recession may be greater in certain areas. Nothing in this chapter shall be construed to guarantee that bluff recession

will not occur beyond the specified setback distances during the usable life span of a structure originally installed or constructed in accordance with the setback requirements at the time of installation or construction. Because of variations in the bluff recession rates, municipalities may adopt more restrictive ordinances in accordance with § 85.35 (relating to municipal adoption of more restrictive ordinances).

(e) If the setback distance for the placement of structures regulated under another law or ordinance, such as the Uniform Construction Code or zoning regulation, is greater than that specified in subsection (c), the greater setback distance shall apply within the bluff recession hazard area.

Source

The provisions of this § 85.26 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (317771).

Notes of Decisions

Environmental Quality Board Regulations

The Bluff Recession and Setback Act and regulations promulgated by the Environmental Quality Board contain substantive provisions governing bluff setbacks and variances from those setbacks; therefore, variances contained in the Municipalities Planning Code were not applicable to amusement park's request for variance from setback requirements of township's bluff setback ordinance. *Candela v. Millcreek Township Zoning Hearing Board*, 887 A.2d 335, 340 (Pa. Cmwlth. 2005).

Subchapter D. MUNICIPAL BLUFF SETBACK ORDINANCE AND REGULATIONS

Sec.

- 85.31. General requirements.
- 85.32. Time limit for municipal adoption of bluff setback ordinance and regulations.
- 85.33. Municipal adoption and administration.
- 85.34. Geographic limit of bluff setback ordinance and regulations.
- 85.35. Municipal adoption of more restrictive ordinance.
- 85.36. Procedures for submission of an ordinance and regulations by a municipality.
- 85.37. Contents of ordinance and regulations submitted by municipality.

Cross References

This subchapter cited in 25 Pa. Code § 85.15 (relating to Department notification to the Environmental Quality Board).

§ 85.31. General requirements.

As required by section 6 of the act (32 P. S. § 5206), designated municipalities shall adopt and implement a bluff setback ordinance and regulations. This subchapter outlines the procedures for meeting these requirements.

§ 85.32. Time limit for municipal adoption of bluff setback ordinance and regulations.

Each municipality, following publication of the formal EQB designation of a bluff recession hazard area, shall within 6 months of receiving notification amend or adopt and implement a bluff setback ordinance and regulations which are consistent with § 85.37 (relating to contents of ordinance and regulations submitted by municipality).

Source

The provisions of this § 85.32 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (317772).

§ 85.33. Municipal adoption and administration.

Each designated municipality is required to adopt and administer a bluff setback ordinance and regulations in a manner consistent with the provisions of the Pennsylvania Municipalities Planning Code (53 P.S. §§ 10101—11202) or other applicable enabling legislation.

§ 85.34. Geographic limit of bluff setback ordinance and regulations.

A municipality may adopt a bluff setback ordinance and regulations for a bluff recession hazard area without adopting an ordinance and regulations governing any other area of the municipality, notwithstanding any provision of the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11202) or other applicable enabling legislation.

§ 85.35. Municipal adoption of more restrictive ordinance.

No provision of the act may be construed as in any way limiting the power of any municipality to adopt more restrictive ordinances, codes or regulations governing construction and development in bluff recession hazard areas that are established under Subchapter C (relating to bluff recession hazard areas setback requirements).

Source

The provisions of this § 85.35 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (311772).

§ 85.36. Procedures for submission of an ordinance and regulations by a municipality.

A municipality in developing a bluff setback ordinance may use an existing ordinance and regulations, amend an existing ordinance and regulations, or develop a new ordinance and regulations.

- (1) When an existing ordinance and regulations are utilized, the municipality shall forward one copy of the proposed ordinance and regulations to the

Department along with comments on how the ordinance and regulations meet the requirements of the act and this chapter.

(2) When an existing ordinance and regulations are amended to meet the requirements of the act, the municipality shall forward one copy of the ordinance and regulations and amendments to the Department along with comments on how the proposed amendment of the ordinance and regulations meet the requirements of the act and this chapter.

(3) When the municipality develops a new ordinance and regulations, the municipality shall forward one copy of the ordinance and regulations to the Department along with comments on how the proposed ordinance and regulations meet the requirements of the act and this chapter.

§ 85.37. Contents of ordinance and regulations submitted by municipality.

The ordinance and regulations submitted by a municipality to the Department must include at a minimum the following components:

(1) A setback ordinance and regulations must meet the minimum requirements and contain a minimum setback distance for each class of structure under this chapter.

(2) The municipality must provide a mechanism for permitting all proposed construction, installation, or substantial improvement of structures, or utility facilities such as water, sewage, electric, gas and telephone facilities in designated bluff recession hazard areas. This bluff setback permitting process may be incorporated into any existing permitting process administered by a municipal building code or zoning officer. At the request of the municipality, the Department will provide assistance to the municipality in developing this procedure.

(3) The municipality must provide a procedure, as a part of the ordinance and regulations, that enables monitoring of substantial improvements to structures bisected by or within the bluff setback distance. The procedure must ascertain the market value of the structure prior to the first improvement and document subsequent improvements to the structure to ensure that they do not exceed 50% of the market value for a consecutive 5-year period. At the request of the municipality, the Department will provide assistance to the municipality in developing this procedure.

(4) The municipality must provide a variance to its bluff setback ordinance and regulations only in the following cases:

(i) When a parcel established prior to a bluff recession hazard area designation does not have adequate depth considering the minimum bluff setback requirements to provide for any reasonable use of the land, a variance may be applied for. The variance shall be authorized when the following standards and criteria are met:

(A) The structure and all associated structures and utility facilities shall be located on the property as far landward of the bluff line as allowed by other municipal ordinances.

(B) The structure shall be designed and constructed to be movable. Construction activities must meet the minimum erosion and sediment control practices established by Chapter 102 (relating to erosion and sediment control) and reflect guidance contained in municipal stormwater ordinances or county watershed stormwater management plans. As part of the moving operation, all construction materials, including foundations, shall be removed and disposed of in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereto. Access to and from the structure must be of sufficient width and acceptable grade to allow for moving of the structure.

(ii) When a proposed structure or utility facility requires access to the body of water and there is no feasible alternative for obtaining access, a variance may be applied for. The variance will be authorized only when the following standards and criteria are met:

(A) The variance may be granted only for bluff recession control devices designed to reduce bluff recession; water withdrawal lines or discharge lines; power cables; natural gas or oil pipelines; or communication cables; or other public service lines which require access through the bluff recession hazard area to the body of water.

(B) To achieve adequate protection of the bluff, the construction activity must occur in a manner that minimizes potential short-term and long-term disruption of the bluff recession hazard area, must be in conformance with Chapter 102 and reflect guidance contained in municipal stormwater ordinances or county watershed stormwater management plans.

(C) To help ensure that increased turbidity levels on the lake are not caused, all construction activities must comply with the erosion and sedimentation control practices established under Chapter 102.

(D) The area of the construction site shall be reestablished to ensure that subsequent erosion will not damage the structure or harm the environment or adjacent properties.

(5) The municipality must provide a procedure to amend municipal setback ordinances. The Department will, at the request of the affected municipality, provide assistance in incorporating revisions to this chapter into the municipal ordinance and regulations.

(6) The municipality must provide an administrative procedure for maintaining records of all correspondence, applications for permits, and issuance and denial of the permits. The Department will assist if requested. On February 28 of each year, a copy of the records from the preceding calendar year shall be submitted to the Department for its review and permanent record. This pro-

cedure must require that necessary records include the name and address of the applicant and the location and description for the following activities:

(i) Construction, installation or engagement in any substantial improvement to structures affected by the minimum bluff setback distance including the information collected as a result of the monitoring procedure established in paragraph (3).

(ii) Improvement projects for an existing structure located within the minimum bluff setback distance.

(iii) Variances granted by the municipality in bluff recession hazard areas.

(7) When an applicant submits an application for a permit for any construction or development activities in areas subject to bluff recession hazards, the municipality shall alert the applicant of the minimum bluff setback prescribed in § 85.26(c) (relating to designated municipalities and minimum bluff setback distances for identified categories of structures).

Authority

The provisions of the § 85.37 issued under section 5 of the Bluff Recession and Setback Act (32 P. S. § 5205).

Source

The provisions of this § 85.37 amended March 30, 1984, effective March 31, 1984, 14 Pa.B. 1080; amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (266205) to (266206) and (234487).

Cross References

This section cited in 25 Pa. Code § 85.22 (relating to methods of determining minimum bluff setback distances); 25 Pa. Code § 85.24 (relating to activities within a bluff recession hazard area); 25 Pa. Code § 85.32 (relating to time limit for municipal adoption of bluff setback ordinance and regulations); 25 Pa. Code § 85.37 (relating to contents of ordinance and regulations submitted by municipality); and 25 Pa. Code § 85.42 (relating to Department review and approval of a municipality setback ordinance and regulations).

Subchapter E. DEPARTMENT OVERSIGHT OF MUNICIPAL COMPLIANCE

- Sec.
 85.41. [Reserved].
 85.42. Department review and approval of a municipality setback ordinance and regulations.
 85.43. Department review of implementation and administration of municipal setback ordinance and regulations.
 85.44. Coordination with environmental protection programs.

§ 85.41. [Reserved].**Source**

The provisions of this § 85.41 reserved September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234488).

§ 85.42. Department review and approval of a municipality setback ordinance and regulations.

(a) The Department will, within 90 days of receiving a written request to approve a bluff setback ordinance and regulations of a municipality, review the proposal pursuant to § 85.37 (relating to contents of ordinance and regulation submitted by municipality).

(b) The Department will, upon ascertaining that the proposed bluff setback ordinance and regulations meet the minimum requirements in § 85.37, notify the municipality of the approval of the ordinance and regulations.

(c) If the Department fails to respond within the allotted 90-day time limit, the ordinance and regulations will be deemed to be approved, and the municipality shall use the ordinance and regulations to enforce the act.

(d) If the Department, during the review of the proposed ordinance and regulations, finds that the ordinance and regulations do not meet the minimum requirements of this chapter, the Department will disapprove the ordinance and regulations and will notify the municipality. The letter will contain the reasons for disapproval and suggestions for correcting the problem. Upon receipt of this letter, the municipality shall have 30 days to correct the problem and resubmit the proposed ordinance and regulations. If the municipality disagrees with the findings of the Department, the municipality may appeal the decision of the Department under the procedures in § 85.61 (relating to appeals).

(e) If the municipality fails to adopt or submit a bluff setback ordinance and regulations to the Department, the Department may institute an action in mandamus to compel the municipality to comply with the act and this chapter.

Source

The provisions of this § 85.42 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234488).

§ 85.43. Department review of implementation and administration of municipal setback ordinance and regulations.

(a) The Department will review the implementation and administration of the municipal bluff setback ordinance and regulations at least once a year to assure coordinated and consistent enforcement of its bluff setback ordinance and regulations. The review will occur on a date and location mutually agreed upon by the representative of the Department and the appropriate municipal officials.

(b) If the Department finds that a municipality has failed to implement and enforce in a consistent and effective manner the bluff setback ordinance and regulations required by the act and this chapter, then the municipality shall be subject to the sanctions provided in the act. The municipality will be deemed to have implemented and enforced in a consistent and effective manner the bluff setback ordinance and regulations when in any area designated as having a bluff recession hazard no person shall have constructed, installed, or engaged in a substantial improvement to any structure, or any utility facility in violation of the bluff setback requirements established under the act and this chapter.

(c) When the Department finds that a municipality has failed to implement and enforce the bluff setback ordinance and regulations as required by subsection (b), the Department will, as it deems necessary, conduct additional reviews of the implementation and enforcement of the bluff setback ordinance and regulations of the municipality to ensure that the appropriate changes have been made which assure coordinated, consistent, and effective enforcement of the municipal ordinance and regulations.

§ 85.44. Coordination with environmental protection programs.

The Department and all municipalities designated as having a bluff recession hazard area are still subject to requirements of other environmental protection programs. These programs include but are not limited to erosion and sedimentation control, water obstruction, clean water, sewage treatment facilities, gas well drilling, stormwater management and floodplain management.

Subchapter F. GRANTS AND REIMBURSEMENTS TO MUNICIPALITIES

- Sec.
85.51. General requirements.
85.52. Limitation of grants and reimbursements.
85.53. Application for grants and reimbursements.
85.54. Disclaimer for grants and reimbursements.
85.55. Records and audits.

§ 85.51. General requirements.

The Department is authorized by section 11 of the act (32 P. S. § 5211) to administer grants to municipalities to assist or reimburse them for costs incurred in complying with the act. Grants and reimbursements shall be made available from and to the extent of Federal funding augmentation under 16 U.S.C.A. §§ 1451—1464, as appropriated by the General Assembly for such purposes.

§ 85.52. Limitation of grants and reimbursements.

Grants will be available from the Department to municipalities to reimburse them for allowable costs incurred in complying with the act. Grants will be limited to:

- (1) Seventy-five percent of the costs incurred for the development and implementation of a bluff setback ordinance and regulations required under this chapter as well as 75% for the costs incurred by a municipality in revising a setback ordinance and regulations established prior to the act to comply with this chapter.
- (2) Fifty percent of the allowable costs for the ongoing administration of an ordinance incurred by a municipality. Allowable costs for administration of a bluff setback ordinance do not include those costs that are offset by reasonable permit fees imposed by the municipality.

Source

The provisions of this § 85.52 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234490).

Cross References

This section cited in 25 Pa. Code § 85.55 (relating to records and audits).

§ 85.53. Applications for grants and reimbursements.

(a) All applications for grants shall be made on forms provided by and in a manner prescribed by the Department and shall contain and be supplemented with such information as may be required by the Department.

(b) Applications will only be accepted by the Department during the first quarter of the fiscal year of the Commonwealth. The Department will notify the municipality, during the fourth quarter of the preceding fiscal year that grant funds for the upcoming fiscal year will be available for the administration of their bluff setback ordinance and regulations.

§ 85.54. Disclaimer for grants and reimbursements.

Nothing in this section shall be construed to impair or limit application of this act to any municipality or person or to relieve any municipality or person of duties imposed under this act.

§ 85.55. Records and audits.

(a) Municipalities shall maintain books, records, documents, correspondence and other evidence pertaining to the costs and expenses incurred under § 85.52 (relating to limitation of grants and reimbursements) to the extent and in detail that will properly reflect the costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for

which funding has been provided under the grant. The records shall be maintained in accordance with generally accepted accounting principles.

(b) A municipality shall maintain accounting records and supporting documentation which identify the revenue and costs from the effective date to expiration date of the grant. The accounting records shall be maintained in accordance with generally accepted accounting practices.

Source

The provisions of this § 85.55 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial pages (234490) to (234491).

Subchapter G. APPEALS

Sec.

85.61. Appeals.

§ 85.61. Appeals.

(a) A person or municipality aggrieved by an action of the Department shall have the right within 30 days of the receipt of the notice of the action to appeal the action to the Environmental Hearing Board (EHB), under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(b) An appeal of an action under the act does not act as a supersedeas. A supersedeas may be granted by the EHB upon a showing by the petitioner that:

- (1) Irreparable harm to the petitioner or other interested parties will result if supersedeas is denied.
- (2) There is a likelihood of the success of the petitioner on the merits.
- (3) The grant of a supersedeas will not result in irreparable harm to the Commonwealth.

Source

The provisions of this § 85.61 amended September 18, 2009, effective September 19, 2009, 39 Pa.B. 5415. Immediately preceding text appears at serial page (234491).

[Next page is 86-1.]

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