

\* \* \* \* \*

**§ 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:

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

**[(b) When the Department receives the completed application, it will review the application based on the criteria for a variance pursuant to § 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 permanent record. If the Department does not take action regarding the application within 45 days, the application will be deemed approved.]**

- (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 structure is 50 years for residential homes, 75 years for commercial structures, and 100 years for light and heavy industrial structures.

**(b) [c)] In no case shall the minimum bluff setback distance be less than [50] 25 feet. When use of the formula identified in subsection (a) would produce a minimum bluff setback distance of less than [50] 25 feet, the formula shall not apply and [50] 25 feet shall be the minimum bluff setback distance.**

**§ 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 the **[Environmental Quality Board] EQB** to amend the designation in accordance with this subchapter concerning the minimum bluff setback distances.

\* \* \* \* \*

**§ 85.25. Variances granted by the Department.**

**(a)** During the period between **[Environmental Quality Board] 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 pursuant to § 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 permanent 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.**

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

(a) Under § 85.15 (relating to Department notification to the [Quality Board] 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) [Designated municipalities and setback distances in feet.] Regardless of any other provision of law or ordinance, the minimum setback distances in the named municipalities shall be in accordance with the following table:**

<i>Municipality (<u>by geographic location</u>)</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'
<b><u>Fairview Township Erie County</u></b>	<b><u>50'</u></b>	<b><u>75'</u></b>	<b><u>100'</u></b>
Millcreek Township Erie County	50'	75'	100'
<b>[Fairview Township Erie County]</b>	<b>[50']</b>	<b>[75']</b>	<b>[100']</b>
<b><u>Erie City Erie County</u></b>	<b><u>25'</u></b>	<b><u>25'</u></b>	<b><u>25'</u></b>