

RPII



UNITED STATES DEPARTMENT OF COMMERCE

Office of Ocean and Coastal Resource Management

Washington, D.C. 20235

Office of Ocean and Coastal Resource Management

February 28, 1983

R. Timothy Weston
Associate Deputy Secretary
for Resources Management
Commonwealth of Pennsylvania
Department of Environmental Resources
P.O. Box 1467
Harrisburg, Pennsylvania 17120

Dear Mr. Weston:

We have received your letter to Patricia Scott of February 3, 1983 in which you provided a copy of the new public notice and supplemental materials concerning the Routine Program Implementation (RPI) for the proposed amendment to the variance section of the rules and regulations for the Pennsylvania Bluff Recession and Setback Act (BR&SA).

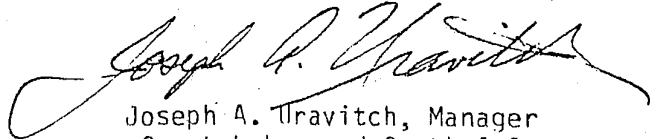
The Office of Ocean and Coastal Resource Management (OCRM) has completed its review of the proposed revision pursuant to 15 CFR 923.80(c) and has found that the revision does not substantially change enforceable policy or authority relating to the criteria listed under that subsection. Therefore, the revision does not constitute an amendment to the Pennsylvania Coastal Zone Management Program (PCZMP). Furthermore, we have not received any negative comments from public or private agencies or other interested parties concerning this revision. However, several comments were received (see enclosed copies). While they do not change the substance of the revisions, they should be considered by you for incorporation into the final amendment.

In accordance with these findings and a notice given by the Division of Coastal Zone Management pursuant to 15 CFR Section 923.84(b)(2), we concur that the proposed changes constitute an RPI. Upon the date of publication by the DCZM of the notice required by 15 CFR Section 923.(b)(4), Federal consistency shall apply to the above referenced revisions.



We appreciate the time you and your staff have taken to respond to the concerns expressed in our December 16, 1982, letter regarding your initial submission of the RPI. The analysis was thorough and well put together. This made our task of reviewing the revision, an easy one. Thank you for your cooperation in this effort.

Sincerely,

A handwritten signature in cursive script, reading "Joseph A. Travitch". The signature is written in dark ink and is positioned above the typed name.

Joseph A. Travitch, Manager  
Great Lakes and South Atlantic Regions

Enclosures

Post Office Box 1467  
Harrisburg, Pennsylvania 17120  
February 3, 1983

(717) 783-9500

In reply refer to  
RM-WR  
CZ6:RB ✓

Patricia Scott, Assistant Great Lakes  
Region Manager  
Office of Ocean and Coastal Resource Management  
U.S. Department of Commerce  
3300 Whitehaven Street, N.W.  
Washington, DC 20235

Dear Pat:

In response to your letter of December 16, 1982, concerning the Program's Routine Program Implementation change (RPI), I have enclosed a copy of the new public notice to be published in the Erie Daily Times (local newspaper) (see Attachment #1) by February 8, 1983; and a copy of a new letter personally notifying specific interest groups (State legislators, county and township officials, Coastal Zone Advisory Committee members, and Coastal Zone Steering Committees' members) of the proposed amendment to the regulations (see Attachment #2). The letter states that the State believes this action is an RPI as defined by Federal regulations and that comments on the amendment and whether or not the change constitutes an RPI are to be forwarded to Miss Debra Walker, Secretary to the Director of C.P.O., Federal Office of Ocean and Coastal Resource Management, U.S. Department of Commerce, 3300 Whitehaven Street, N.W., Washington, DC 20235, by March 1, 1983.

I have also enclosed the requested analysis of the regulatory amendment. This analysis explains the nature of the amendment, the impact it has on the program, and why we believe it constitutes an RPI and not a program amendment as defined by the appropriate Federal regulations. I have also enclosed another copy of the amendment.

I trust this information will satisfy OCRM's requirements and enable continued processing of our request. Please contact me if you require any further clarification on this material.

Sincerely,

E. JAMES TABOR, Chief  
Division of Coastal Zone Management  
Bureau of Water Resources Management

Enclosures

C:hb

## PUBLIC ADVERTISEMENT

On November 29, 1982, the Pennsylvania Department of Environmental Resources announced a proposal to amend the variance section of Chapter 85, Rules and Regulations, for the Bluff Recession and Setback Act of May 13, 1980. The purpose of this amendment was to bring the variance requirements of the regulations into closer conformance with the Act and to provide better guidance to municipalities enforcing the regulations through local ordinances.

The announcement indicated that interested persons were invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Environmental Quality Board, P.O. Box 2063, Harrisburg, PA 17120. Additionally, written comments on the amendment and whether or not the action did or did not constitute a Routine Program Implementation change which is defined as an action taken by a state to further detail the implementation of a state's Coastal Zone Management Program, were to be submitted to E. James Tabor, Manager, Coastal Zone Management Office, Department of Environmental Resources, P.O. Box 1467, Harrisburg, PA 17120.

It has come to our attention that the last part of this request, according to the appropriate Federal Coastal Zone Management regulations, was legally incorrect and should have read "comments on the amendment and whether or not the action constitutes a Routine Program Implementation change must be submitted to Ms. Debra Walker, Secretary to the Director of C.F.O., Federal Office of Ocean and Coastal Resource Management, U.S. Department of Commerce, 3300 Whitehaven Street, N.W., Washington, DC 20235, with a copy being sent to Mr. E. James Tabor, Manager, Coastal Zone Management Office, Department of Environmental Resources, P.O. Box 1467, Harrisburg, PA 17120."

In light of this inaccuracy, the comment period concerning this amendment has been extended to March 1, 1983. All persons interested in commenting on this proposed amendment, which is still available for review by contacting the Erie County Department of Planning, Erie County Courthouse, Erie, PA, Telephone (814) 452-3333 (Ext. 336), are invited to do so. All comments must be submitted to Miss Debra Walker at the above listed address no later than the close of business on March 1, 1983. The State believes this action constitutes an Routine Implementation Program and has asked the Federal Office of Oceans and Coastal Resource Management to concur with this determination.

C:hb

cc: File

## RPI I

### PENNSYLVANIA'S ROUTINE PROGRAM IMPLEMENTATION ANALYSIS OF CHANGES TO SECTION 85.37(4) RELATING TO BLUFF RECESSION AND SETBACK

#### Introduction:

The following analysis of the proposed amendment to Chapter 85.37(4) Rules and Regulations relating to the Bluff Recession and Setback Act is submitted to the Office of Ocean and Coastal Resource Management as partial fulfillment of Federal CZM Regulations 923.84 relating to Routine Program Implementation changes (RPI). The analysis is organized in the following manner. The original section of the regulations appear followed by the change to that section. An analysis on the nature of the change and its impact on the regulations is then presented. Finally, after each change has been presented and analyzed, the report concludes with a statement on the impact the changes have to the regulations and on the Program and why the regulatory amendment constitutes an RPI and not a program amendment as defined by Federal regulations.

#### Regulatory Analysis:

The first change is contained in Section 85.37(4)(i). The original regulations read:

"(i) When an established setback distance prevents construction on a parcel of land in a bluff recession hazard area, a variance may be applied for. The variance shall be granted only when the following criteria are met."

Incorporating the change, the section will now read:

"(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:"

This change brings this section of the regulations into conformity with the original Act which states that:

"(1) 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;"

The wording from the Act was used in the preparation of the local ordinances and should have appeared in this portion of the regulations. This change brings the regulations into conformity with the Act and the local ordinances. The next change in this section deletes the words "granted only" and adds the words "authorized" (see last sentence of Paragraph (i)). According to our Attorney the previous language was incorrect; variances are not granted, they are authorized. This change clarifies the regulations.

The second change is contained in Section 85.37(4)(i)(B). The old regulations read:

"(B) The structure shall be designed and constructed to be movable in accordance with proper engineering standards and building moving restrictions applicable to the subject area prior to damage by bluff recession. Structures in