



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

NOV 1 1993

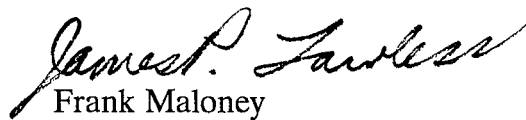
E. James Tabor, Chief
Division of Coastal Programs
Bureau of Land and Water Conservation
Department of Environmental Resources
P.O. Box 8555
Harrisburg, PA 17105-8555

Dear Mr. Tabor:

The Office of Ocean and Coastal Resource Management (OCRM) has reviewed your September 27, 1993 request to incorporate the following changes into the Pennsylvania Coastal Zone Management Program (PCZMP) as a routine program implementation change: (1) regulatory changes affecting the PCZMP's enforceable policies including changes to Chapters 75, 80, 101, 105, and 109; (2) the addition of new authorities to the Program's policies as a result of changes to Chapters 75, 101, and 105; (3) revision of the Program's Wetlands Policy; and (4) the name change of the Division of Coastal Zone Management to the Division of Coastal Programs.

After reviewing this request, OCRM concurs with your finding that this proposed change is a routine program implementation change and should be incorporated into the Pennsylvania Coastal Zone Management Program pursuant to 15 CFR §923.84. Federal consistency will apply when public notice of our approval is published.

Sincerely,


Frank Maloney
Acting Director



RPI VI

RPI VI

**PROPOSED ROUTINE PROGRAM IMPLEMENTATION CHANGES
TO PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM**

SEPTEMBER 1993

**RPI VI
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RPI VI
PROPOSED ROUTINE PROGRAM IMPLEMENTATION CHANGES
TO PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM
SEPTEMBER 1993

INTRODUCTION

The following are proposed Routine Program Implementation (RPI) changes to the Commonwealth of Pennsylvania Coastal Zone Management Program and Final Environmental Impact Statement (FEIS). These changes concern Chapter 2 - Coastal Zone Policy Framework. The changes involve:

- regulatory changes affecting the Pennsylvania Coastal Zone Management (CZM) Program's enforceable policies,
- revision of Wetlands Policy IV-1, and
- the addition of several new authorities/regulations.

In addition, the Division of Coastal Zone Management has changed its name to the Division of Coastal Programs, and has been relocated to the Bureau of Land and Water Conservation.

Under the Federal CZM Act, the Commonwealth of Pennsylvania can make certain changes to its approved CZM Program without going through the formal and lengthy amendment process. First, however, the state is required to demonstrate to the National Oceanic and Atmospheric Administration (NOAA) that these changes are RPI's rather than amendments. An RPI is defined as, "Further detailing of a state's program that is the result of implementing provisions approved as part of the state's approved management program that does not result in (an amendment)."

An amendment is defined as "Substantial changes in, or substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program (i.e., activities in the coastal areas which have a direct and significant impact on coastal waters and so are subject to management);
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

PROPOSED CHANGES

The following changes have occurred in 1991 and 1992. The Commonwealth of Pennsylvania is submitting these proposed changes to the NOAA's Office of Coastal and Resource Management as RPI's and not amendments. The RPI contains a discussion of the regulatory and policy changes, an analysis of the impact that the changes would have on Pennsylvania's CZM Program and justification as to why the changes constitute an RPI and not a Program amendment as defined by the Federal Regulations.

GENERAL REGULATORY CHANGES

CZM's enforceable policies are based on Department of Environmental Resources' (DER) regulations which are incorporated into this Program. These regulations were in effect at the time of original CZM Program approval. However, over time these regulations are amended, and as such change Pennsylvania's originally approved CZM Program. These subsequent changes to the original Program must also be approved by OCRM.

The regulatory amendments which are in effect, have been subjected to public comments and hearings, and have been approved by the Commonwealth's Environmental Quality Board and Independent Regulatory Review Committee.

The regulatory amendments are to:

25 PA CODE CHAPTER 80 - Gas Well Classification

These amendments passed in 1991, modify procedures related to the classification of gas wells under the National Gas Policy Act of 1978 (Act). The classifications under the Act were established to provide price incentives for natural gas production, and to promote consistency in the data in applications received by DER to regulate gas wells.

Pennsylvania's gas well classification process, which is codified at Chapter 80, contains requirements which are designed to implement the requirements of Section 1927-A of the Administrative Code of 1929 and Sections 105, 106b and 190a1 of the Act (15 U.S.C.A. §§3315, 3316(b) and 3319(a)(1) and (3)). Section 1927-A of The Administrative Code of 1929 gives DER the authority to make determinations with respect to natural gas wells. The gas well classification regulations provide the procedures and requirements for submitting an application to DER to qualify an existing well for a specific natural gas category, as established by the Act. Under the Act, DER received delegation from the Federal Energy Regulatory Commission (FERC) for regulatory jurisdiction, since it is the State agency which regulates natural gas production activities. DER determines, based on the application, whether a gas well qualifies as one that allows a well operator to charge the maximum lawful price for gas, as established by FERC.

Finally, the amendments are needed to eliminate duplicative publication processes between federal and state programs. DER has decided to stop publishing in the Pennsylvania Bulletin its determinations that existing gas wells do or do not meet certain requirements of the Act. There is no federal requirement mandating that DER publish their determinations as part of their delegation of this program. Furthermore, determinations made by DER and other jurisdictional agencies are already being published by FERC in their National Gas Policy Act Notices of Determinations by Jurisdictional Agencies.

ANALYSIS OF IMPACT

Chapter 80 is contained in Policy VIII-2: Energy Facilities/Natural Gas found on page II-2-26 of our FEIS. This policy facilitates the production of natural gas supplies in Lake Erie using proper environmental safeguards that are designed to minimize adverse air and water quality impacts associated with resource exploration and development.

As discussed previously, it can be seen that the amendments pertain only to the application process to have wells classified as marginally producing in order to charge a higher price for the gas, and also to eliminate the duplicative publication process.

FERC has noted that there is presently an oversupply of cheaper produced gas on the market, and that higher priced gas from classified marginally producing wells is not selling. As such, FERC has

directed DER to accept no more classification applications after January 1, 1993. Furthermore, as previously discussed, there is no mandate for DER to publish its determinations, and DER's publication is duplicating FERC's actions.

Based on the foregoing discussion, CZM has determined that these regulatory amendments are not substantial changes to this policy.

25 PA CODE CHAPTER 75 - Solid Waste Management

Chapter 75 regulates solid waste in Pennsylvania. In 1992, the final subchapter of 25 Pa. Code, Chapter 75 (Subchapter C) relating to permits and standards for residual waste was deleted because Article IX (relating to residual waste management) replaced this subchapter. Article IX which consists of Pa. Code Chapters 287, 288, 289, 291, 293, 295, 297 and 299, now regulates residual waste in Pennsylvania.

Subchapters A and B dealing with hazardous and municipal waste were deleted from Chapter 75 in previous years because Article VII (relating to hazardous waste) and Article VIII (relating to municipal waste) replaced them. Article VII consists of Chapters 260, 261, 262, 263, 264, 265, 267, 269, and 270. Article VIII consists of Chapters 271, 272, 273, 275, 277, 279, 281, 283, and 285. Presently Chapter 75 contains no regulations, and is "reserved."

Solid waste management is taken very seriously in Pennsylvania. Due to past problems associated with waste management, and the growing need for landfills, the Commonwealth began developing stricter regulations. These new regulations were placed in Chapter 75 or elsewhere in the Pa. Code. Over time, DER decided that the regulations should be consolidated, and that Chapter 75 was too voluminous.

As a result Subchapters A, B and C of Chapter 75 were renumbered as the 26 Chapters of Articles VII, VIII and IX.

ANALYSIS OF IMPACT

Chapter 75 is contained in Policy VIII-I: Energy Facility Siting/Permitting found on page II-2-25 of our FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not adversely affected.

The Commonwealth has an energy facility permitting process which has the ability, through the issuance of permits covering air discharges, water discharges and withdrawals, solid waste disposal, shoreline erosion control, wetlands protection and control of water obstructions and encroachments in the bed of Lake Erie and the Delaware River, to ensure that all facilities are sited in an environmentally responsible manner.

These regulatory amendments complete the consolidation and transfer of authority from Chapter 75 to 26 new chapters. As a result, this policy can no longer regulate residual, municipal and hazardous waste until these 26 chapters, which have superseded Chapter 75, are added to it. This RPI will add these 26 new chapters to this policy.

25 PA CODE CHAPTER 101 - Special Water Pollution Regulations

Section 101.4 of this Chapter (relating to impoundments) has been amended by making this Section inapplicable to impoundments that are used for residual waste management. New regulations at 25 Pa. Code Chapters 289 and 299 (previously discussed under Chapter 75 revisions) establish standards

for the design, construction and operation of impoundments that store or dispose of residual waste. However, Section 101.4 still regulates impoundments that store or dispose of other solid waste.

ANALYSIS OF IMPACT

Chapter 101 is contained in the following policies:

- Policy VIII-I: Energy Facility Siting/Permitting found on Page II-2-25 of our FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drillings, and liquification of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not unreasonably adversely affected.
- Policy IV-I: Wetlands found on Page II-2-16 of our FEIS. This policy preserves and protects wetlands within the defined coastal zone boundary, and
- Policy IX-B.1: Intergovernmental Coordination/Water Quality found on Page II-2-29 of our FEIS. This policy adopts by reference, the requirements of the Federal Clean Water Act.

Similar to the transfer of authority previously discussed in the Chapter 75 revisions, this amendment transfers the regulation of residual waste impoundments from Chapter 101 to Chapters 289 and 299. This transfer is part of DER's effort to consolidate residual waste management regulations.

As a result, these three policies can no longer regulate residual waste until Chapters 288 and 289, which have superseded Chapter 101, are added to them. This RPI will add Chapters 288 and 289 to these three policies.

NEW AUTHORITIES/REGULATIONS ADDED RESULTING FROM CHAPTERS 75 AND 101 CHANGES

As discussed previously under Chapters 75 and 101, the authorities to regulate municipal, residual and hazardous waste have been transferred to 26 new chapters. As a result, these new chapters must be added to the three policies affected: Policy VIII-1: Energy Facility Siting, Policy IX-B.1: Intergovernmental Coordination, and Policy IV-1: Wetlands. The addition of these new chapters will be reflected in the AUTHORITY(S) and Regulation(s) sections of each Policy.

Policy VIII-1: Energy Facility Siting

With the revisions (in bold face) these sections of the Energy Facility Siting/Permitting Policy will now read:

AUTHORITY(S)/Policy VIII-1

The Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, P.L. 556, No. 101 (53 P.S. §4000.101-4000.1904; Pennsylvania Constitution, Article I, Section 27. Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97 (35 P.S. §§6018.101-6018.003); The Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, As amended (35 P.S. Sections 4001 et seq.); The Clean Streams Law, Act of June 22, 1937, P.L. 1987 (35 P.S. Sections 691.1 et seq.); The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 et seq.); Conservation District Law, Act of April 30, 1986, P.L. 1125, as amended (3 P.S. Sections 849 et seq.); The Administrative Code, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Section 510-20); Radiation Control, Act of January 28, 1966, P.L. (1965) 1625 (73 P.S. Sections 1301 et seq.); Act of July 1, 1978, P.L. 598 (66 PA C.S. Sections 1101 et seq.).

Regulations: 25 Pa. Code Chapters 75, 91, 92, 93, 95, 97, 101, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260, 261, 262, 263, 264, 265, 267, 269, 270, 271, 272, 273, 275, 277, 279, 281, 283, 285, 287, 288, 289, 291, 293, 295, 297, 299, 6 Pa. Code Chapter V et seq.

The AUTHORITY(S) section of Policy VIII-1 has been revised for the following reasons:

The **Municipal Waste Planning, Recycling and Waste Reduction Act**. This authority has been added as a result of amendments to Chapters 75 and 101. Since the Regulations section of the policy will have 26 Chapters added, this Act from which some of these Chapters are derived, must be cited in the AUTHORITY(S) section.

Solid Waste Management Act, Act of July 7, 1980. This Act was amended in 1980; the same year the CZM Program was gaining federal approval. As a result, the citation of this Act is being updated in this RPI.

Conservation District Law: as reenacted and amended in 1986, the short title and citation of the Law were changed. The updates will be made in this RPI.

The Regulation(s) section of Policy VIII-1 has also been revised by adding 26 new chapters, as a result of the amendments to Chapters 75 and 101.

Policy IX-B.1: Intergovernmental Coordination

With the revisions (in bold face) these sections of the Intergovernmental Coordination/Water Quality Policy will now read:

AUTHORITY(S)/Policy IX-B.1

Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97 (35 P.S. Sections 6018.101-6018.1003). The Sewage Facilities Act of January 24, 1966, P.L. (1965) 1535, as amended (35 P.S. Sections 750.1 et seq.); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended (35 P.S. Sections 691.1 et seq.).

Regulation(s): 25 Pa. Code Chapters 91, 92, 93, 94, 95, 97, 99, 100, 101, 289, 299.

The AUTHORITY(S) and Regulation(s) sections of Policy IX-B.1 have been revised because of the amendments to Chapter 101, which transferred residual waste management authority to Chapters 289 and 299. The Solid Waste Management Act is being added since it is from this Act that Chapters 289 and 299 are derived.

Policy IV-1: Wetlands

The Wetlands Policy IV-1 was also affected as a result of amendments to Chapter 101. The revisions to the AUTHORITY(S) and Regulation(s) sections of the Wetlands Policy, will be made later in this RPI, under Wetlands Policy revisions.

25 PA CODE CHAPTER 109 - Safe Drinking Water; Filtration Rule Interim Deadlines

There have been widespread outbreaks of giardiasis - a gastrointestinal illness - recorded in the Commonwealth since 1979. These outbreaks have been associated with *Giardia* cyst contamination of unfiltered and inadequately treated surface water sources used for drinking water.

Continuing outbreaks of giardiasis and the high incidence of *Giardia* contaminated surface water sources were the driving forces behind the 1989 amendments to Chapter 109, commonly referred to

as the filtration rule, which established treatment technique requirements for public water systems to control pathogenic bacteria, viruses and protozoan cysts. The filtration rule is contained in Section 109.202(3).

The filtration rule requires continuous filtration and disinfection of surface water sources and establishes a phased schedule for existing unfiltered surface water sources to achieve compliance with the rule between 1991 and 1995.

Since the adoption of the filtration rule, some water suppliers have either filtered, or abandoned use of the unfiltered sources and are no longer subject to the rule's deadlines. Therefore, these amendments apply to those water suppliers that have yet to filter or remove from service their surface water source.

DER has discovered in the three years since promulgation of the filtration rule that the absence of established interim deadlines allows even well-intentioned systems to fall behind reasonable schedules which would lead to compliance and also makes it difficult for DER to monitor progress towards ultimate compliance. As a consequence of this uncertainty, DER may unnecessarily institute enforcement action too early or, worse, commence it too late. In the latter instance, compliance with the filtration deadline is delayed and the public is exposed to an unreasonable and avoidable health risk. Establishment of the interim deadlines notifies systems of their obligation and of DER's expectations about compliance with it.

The amendment does not change the existing regulatory requirements or deadlines for systems required to comply with the treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts contained in Chapter 109 which took effect in March 1989. The amendment merely establishes interim deadlines so that compliance with already established regulatory deadlines can be achieved in the most efficient manner in order to protect the public health and safety by reducing exposure to potentially contaminated unfiltered surface water sources.

A brief description of the regulatory changes to Chapter 109 is provided as follows:

1. §109.202(3)(i)(D)(I).

The regulation is amended to require the submission for DER approval of a feasibility study specifying the means chosen by the affected water supplier to meet the filtration rule. The study must identify the alternative which best assures the long-term viability of the public water system to meet drinking water standards. The study must include a proposed schedule for completion of work on the chosen alternative. The alternatives include filtered water treatment facilities or abandonment of the unfiltered surface water source in favor of ground water treatment facilities, a permanent interconnection with another water supplier or provision for adequate supply from an existing source.

2. §109.202(3)(i)(D)(II).

The regulation is amended to require the submission of the feasibility study by a certain date.

3. §109.202(3)(k)(D)(III).

The regulation is amended to require submission of a complete permit application for the approved alternative identified in the feasibility study by a certain date.

4. §109.202(3)(i)(D)(IV).

The regulation is amended to require initiation of construction of the approved alternative identified in the feasibility study by a certain date.

5. §109.202(3)(i)(D)(V).

The regulation is amended to reassert the requirement to complete construction and commence operation of the approved treatment facilities no later than the dates specified in the existing filtration rule.

6. §109.202(3)(i)(E).

The regulation is amended to state that schedules or deadlines established in a preexisting compliance order, consent order and agreement, consent adjudication, court order or consent decree are not affected by the provisions of new subclause (D).

ANALYSIS OF IMPACT

Chapter 109 is contained in Policy IV-1: Wetlands, found on Page II-2-16 of our FEIS. This policy preserves, protects, enhances and restores coastal wetlands. It ensures the protection of wetlands' functions and values, and protects the habitat of federal and state threatened and endangered species. In addition, the policy requires that any wetlands which are impacted in the coastal zone area will be replaced and/or mitigated within the coastal zone area. As discussed previously, it can be seen that the amendments to Chapter 109 concern public water suppliers, and establish a phased schedule for existing unfiltered water sources to achieve compliance with the filtration rule, between 1991 and 1995.

Based on the foregoing discussion, CZM has determined that these regulatory amendments are not substantial changes to this policy.

SUMMARY AND CONCLUSION OF CHAPTERS 80, 75, 101 AND 109 REGULATORY AMENDMENTS

The regulatory amendments to Chapters 80, 75, 101, and 109 are changes to the Pennsylvania Code and clarify, simplify or strengthen the Code. The amendments are currently in use throughout the Commonwealth. Since these regulations were incorporated into the original Pennsylvania CZM Program, their amendments will also serve to strengthen the Program. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The federal regulations at 15 CFR 923.80(c) require evaluation of program changes to determine if they result in "substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

The amendments to Chapters 75, 80, 101, and 109 further detail Pennsylvania's CZM Program and are not substantial changes to uses subject to the management (CZM) program. The amendments do not

make any changes to boundaries, areas of particular concern criteria or procedures, or consideration of the national interest.

Therefore, the Pennsylvania CZM Program has determined that these regulatory changes constitute an RPI and are not program amendments because they are not substantial changes in or substantial changes to enforceable policies or authorities related to the aforementioned four criteria.

25 PA CODE CHAPTER 105 - Dam Safety and Waterway Management

Chapter 105 governs the construction and maintenance of dams, encroachments, and water obstructions in wetlands and other regulated waters of this Commonwealth. The previous 105 Regulations offered limited protection to wetlands by including special criteria for projects affecting wetlands. In recent years, DER has recognized the need to both reevaluate the existing wetland program and streamline the permitting process. In 1992 Chapter 105 was amended.

The amendments allow DER to more adequately protect wetlands in Pennsylvania by establishing more specific permit information requirements, clear standards for permit review and specific replacement criteria.

Normally DER has a 30-day public comment period for proposed rulemaking, and at its discretion may hold a public hearing if it feels that additional information can be gathered. However, since the Chapter 105 regulations were several years in the making and essentially develop the Commonwealth's wetland regulations, a 90-day public comment period was held. During this period, DER conducted five public informational meetings and five public hearings.

The following discussion of these regulatory amendments are taken in part from the Pennsylvania Bulletin. In an effort to better explain the revisions, many of the commentators' comments have been included.

Specifically, the revised regulations:

- Establish an "exceptional value" category to provide additional protection for the most environmentally significant wetlands.

The existing regulations contain special permitting criteria for projects affecting "important" wetlands. At proposed rulemaking, DER recommended that all wetlands would be more adequately protected through the division of all wetlands into two wetlands categories: exceptional value wetlands and all other wetlands. Although all wetlands are valuable and subject to the requirements of this Chapter, exceptional value wetlands are special wetlands having any one or more of the functions or values listed in §105.17. Most of the characteristics listed in this section were based on wetland functions and values; however, one criteria was based on government ownership. Several commentators questioned the desirability of determining that all wetlands owned by the federal, state or local government were exceptional value wetlands. In response to these concerns, §105.17 has been revised to delete this criterion. The Department has instead included only characteristics of wetlands that are important to the maintenance of the wetlands functions and values, rather than characteristics related to ownership or location.

- Contain criteria for replacing damaged or destroyed wetlands, including requiring the creation of two acres of wetlands for every acre affected by activities constructed without a DER permit.

Section 105.20 requires that any wetlands that are adversely impacted be replaced. Such replacement shall be determined in accordance with guidance provided in the Department's Manual, "Design Criteria for Wetland Replacement."

Many commentators argued that the relative youth of wetland science necessitates that adversely impacted wetlands be replaced at a ratio of greater than 1:1 (replacement areas: affected areas). DER maintains that the establishment of a minimum ratio allows the Department the latitude to require higher ratios for resources that are less easily replaced, such as forested wetlands. However, for structures or activities constructed without a permit, wetland replacement will be required at a ratio of 2:1 (replacement areas: affected areas) or greater.

Other commentators requested that the design criteria guidelines be placed in the regulations. However, DER finds that wetlands replacement is an evolving science which is based on the latest technologies. The inclusion of these guidelines in the regulation would not allow DER to review and accept new and innovative designs and utilization of best available technology. Accordingly, the "Design Criteria for Wetland Replacement Manual," which is intended to serve as a guidance to applicants and DER, is referenced in the regulations.

- Require that the wetlands be replaced within the same watershed or within the designated boundaries of the Pennsylvania Coastal Zone area where the loss occurs.

Section 105.20a(3) reads:

"Replacement shall be located adjacent to the impacted wetland unless an alternative replacement site is approved by the Department. Alternative replacement sites will generally not be approved unless the replacement site is located within the same watershed as the wetland being replaced or within the designated boundaries of the coastal zone management area where the loss occurs."

The intent of this section is that the functions and values of the destroyed wetlands play an important role in the watershed. It was the concern of DER that not replacing these wetland functions and values within the same watershed would further degrade that watershed.

Reference to the coastal zone in this section was included at the request of the CZM Program. It was our concern that coastal wetlands destroyed by activities could possibly be mitigated outside of the coastal zone boundaries. This in effect would lead to a net loss of important coastal wetlands.

- Enable DER to deny a wetlands permit to an applicant who is in continuing violation of the state's environmental laws.

Section 105.21, which sets forth the criteria for permit issuance and denial, will now include a review of the applicant's continuing violation history. This provision prevents DER from issuing a permit if an applicant is in continuing violation of the Dam Safety and Encroachments Act, The Clean Streams Law or other environmental statutes. This provision is effective as to the violation of an adjudication and order, agreement, consent order or decree, whether or not the applicant's action resulted in an order or civil penalty assessment.

Many comments were received on both sides of this issue. Several commentators felt DER did not have the authority to deny a permit based on continuing environmental violations. DER derives its authority to deny permits to applicants not in continuing compliance with the Department's environmental statutes and regulations from The Clean Streams Law. Section 609 of The Clean Streams Law (35 P.S. §691.609) authorizes the withholding of permits when the applicant, "has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations." Other commentators felt that an applicant's entire

compliance history should be considered when reviewing a permit. DER disagreed. While it is important to consider past history, there should be room in the system for rehabilitation.

- Require the applicant to submit to DER an environmental assessment for permit applications, unpermitted structures or activities in wetlands and exceptional value waters.

Section 105.15 sets forth the requirements that DER approve an environmental assessment for all applications for a permit and for unpermitted structures or activities in wetlands or exceptional value waters (as defined in Chapter 93) or where a 401 Water Quality Certification is required under Section 401 of the Federal Clean Water Act (33 U.S.C.A. §1341).

Authority to require an environmental assessment has been granted to DER under the Pennsylvania Clean Streams Law.

In addition, Section 105.15 lists those instances in which an environmental assessment has already been performed by DER, and as such do not require one. They are:

- all state general permits,
- categories of structures and activities listed in Section 105.12(a)(1)-(10) and (12)-(15) related to permit waivers,
- those structures or activities listed in Section 105.12(b) if construction was completed prior to July 1, 1979, and
- for those Nationwide Permit regulated structures or activities for which water quality certification has been granted.

In an effort to streamline the permitting process and better focus DER's resources, these regulations also develop a simpler permitting process for small projects, increase the number of categories of projects for which the permitting requirements were waived, and a reduction in application information requirements.

Specifically, the new regulations:

- Allow permit requirements to be waived for additional categories of structures or activities which have an insignificant effect on life, health, property, or the environment. The following waivers were added to Section 105.12:
 1. Structures or activities located in, along, across or projecting into wetlands constructed and maintained for the purpose of treating acid mine drainage, sewage or other waste under DER permit.
 2. Structures or activities located in, along, across, or projecting into manmade stormwater management facilities or manmade erosion and sedimentation pollution control facilities, if the facility was constructed and continues to be maintained, for the designated purposes.
 3. Existing field drainage systems.
 4. Plowing, cultivating, seeding or harvesting for the production of food.
 5. Navigational aids, gages and scientific devices.

6. Fords for private, personal use.
7. Maintenance of ponds and reservoirs.
8. Structures or activities on certain abandoned mine sites.
9. Removal of abandoned dams, encroachments or water obstructions.
10. Restoration activities.

Simplify application procedures and set fees to better reflect the state's costs for processing applications and administering the wetlands program.

Detailed information is needed to review adequately an application for a permit to construct or modify a dam, water obstruction or encroachment. DER is often forced to communicate several times with applicants to request additional information to conduct its engineering review and environmental analyses. Each request for additional information causes permitting delays which can be avoided if all necessary information is provided with the initial permit application.

During proposed rulemaking, an effort was made to streamline the permitting process. However, DER received many comments expressing concern over the extensive information requirements set forth in the proposed rulemaking. These commentators felt DER had complicated rather than streamlined the permitting process. In response to these comments, DER has further revised §105.13. The resulting permit information requirements base the information requirements on the impact of the project. To accomplish this, a new category of projects has been created called "small projects". This category of projects is intended to include minor projects which will have only an insignificant impact on the environment. The projects will require less information and a smaller permit fee. This effort is intended to make it easier for applicants to apply for a permit.

Additional commentators recommended that the exhaustive list of permit information requirements for wetlands be revised. Upon consideration, DER found that much of the information required by the exhaustive list was unnecessary to make a permit decision or the information was already required for all projects. Accordingly, DER has revised the information requirements for projects impacting upon wetlands and has more clearly explained the information requirements for all projects.

Finally, the increase in fees for permit applications received few comments and remains unchanged, except for the inclusion of a \$100 fee for small projects. As stated in the proposed rulemaking, these fees are being increased to more accurately reflect the current costs to the Commonwealth for processing applications and administering the program. The fees have not been revised since the regulations were promulgated in 1980. The increase in fees was made in compliance with Section 5 of the Dam Safety and Encroachments Act (32 P.S. §693.5), which requires DER to include in regulation permit fees to cover the costs of reviewing and acting on permit applications and administering the program. An analysis of the cost expected to be incurred by DER when implementing this amendment was conducted to establish the fees.

ANALYSIS OF IMPACT

Chapter 105 is contained in the following Policies of our FEIS:

- Policy IV 1.1: Wetlands, Page II-2-16. This policy which will be revised and discussed later in this RPI, preserves, protects, enhances and restores the remaining wetlands within the

Commonwealth's coastal areas by regulating through permit: draining, dredging, filling, and other activities that affect water quality as well as the course, current or cross section of any watercourse, floodway, wetland or other body of water. This will ensure the protection of wetlands' functions and values such as: native plant, fish and wildlife habitat including threatened or endangered species as identified in the federal Endangered Species Act of 1973, Pennsylvania's species of special concern classified under the authority of the Wild Resource Conservation Act, The Fish and Boat Code or the Game and Wildlife Code; storage areas for flood waters; buffers against shoreline erosion; groundwater recharge; and water purification areas. Any wetland which is impacted in a coastal zone area is required to be replaced and/or mitigated within the coastal zone areas, in a manner consistent with the regulations of the Department.

- Policy I-A.2: Coastal Hazard Areas Bluff Setback and Erosion Control/Structures, Page II-2-4. This policy regulates the siting of obstructions and encroachments along the Lake Erie shoreline in order to prevent unreasonable interference with littoral laden currents.
- Policy I-B: Coastal Hazard Areas/Floodplains, Page II-2-7. this policy regulates the construction of or substantial improvement to various types of structures and obstructions in the designated floodplains.
- Policy II-1: Dredging and Spoil Disposal/Regulations, Page II-2-10. This policy ensures that dredging and spoil disposal and related activities including the recovery of commercially valuable sand and gravel in the coastal zones will be regulated to protect against obstruction to navigation, reductions in flood flow capacity, and damages to the public interest, as well as minimize harmful impacts to fish and wildlife habitats.
- Policy VIII-1: Energy Facility Siting/Permitting, Page II-2-25. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquification of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are not unreasonably adversely affected.
- Policy VIII-2: Energy Facility Siting/Natural Gas, Page II-2-26. This policy facilitates the production of natural gas supplies in Lake Erie using proper environmental safeguards that are designed to minimize adverse air and water quality impacts associated with resource exploration and development.

Based on the foregoing analysis of the changes to Chapter 105, and in light of the above listed policies affected, it can be seen that changes to these regulations strengthen some policies by protecting wetlands through the establishment of more specific permit information requirements, clearer standards for permit review and specific wetland replacement criteria. However, in all policies, the regulations facilitate the permitting process and better focus DER's resources by developing a simpler permitting process for small projects, and increase the number of categories of projects for which the permitting requirements were waived.

SUMMARY AND CONCLUSION OF CHAPTER 105 REGULATORY AMENDMENTS

The regulatory amendments are changes to the Pennsylvania Code and clarify, simplify or strengthen the Code. The amendments are currently in use throughout the Commonwealth. Since these regulations were incorporated into the original Pennsylvania CZM Program, their amendments will serve to also strengthen the Program. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The federal regulations at 15 CFR 923.80(c) require evaluation of program changes to determine if they result in "substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

(1) Boundaries.

No change.

(2) Uses subject to the management program.

The following activities pertinent to wetlands or the permitting of encroachments in Commonwealth waters have an impact upon coastal areas, and are subject to management by the Pennsylvania CZM Program:

- Activities such as dredging and spoil disposal which could negatively impact navigation, flood flow capacity, wetlands, environmental quality, and public interest.
- Activities which cause both positive and negative impacts upon coastal fishery populations and their aquatic habitat.
- Activities that would result in the degradation or destruction of tidal or freshwater wetlands.
- Activities in port areas which directly affect overall port planning, development, enhancement, and revitalization.
- Activities related to energy production and energy facility siting that have the potential to cause adverse environmental impacts to sensitive ecological areas.
- Activities associated with the placement and design of structures in coastal hazard areas. Particular attention will be given to the placement of structures in coastal hazard areas where they would be subject to damage by and/or exacerbate the problems associated with flooding and erosion.

These activities were already regulated by Chapter 105, which was incorporated into Pennsylvania's CZM Program in 1980; Chapter 105 is located in several CZM policies which pertain to these activities.

As previously discussed, the amendments to Chapter 105 strengthen several CZM Program policies by protecting wetlands and habitat through the establishment of more specific permit information requirements, clearer standards for permit review, and specific wetland replacement criteria. Chapter 105's reference to the Commonwealth's threatened and endangered species clearly define those wetland habitats that need to be afforded greater protection.

The amendments also facilitate the permitting of encroachments into Commonwealth waters and better focus DER's resources by developing a simpler permitting process for small projects, and increase the number of categories of projects for which the permitting requirements were waived. The waivers do not have any negative impacts upon the CZM Program or the environment as the waived projects are relatively benign in nature.

- (3) Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration.

No change.

- (4) Consideration of the national interest involved in the planning for and the siting of facilities which are necessary to meet requirements which are other than local in nature.

No change.

Chapter 105 regulations have been in Pennsylvania's CZM Program since program approval in 1980. The amendments to Chapter 105 further detail Pennsylvania's CZM Program and are not substantial changes to uses subject to the management (CZM) program. The amendments do not make any changes to boundaries, areas of particular concern criteria or procedures, or consideration of the national interest.

Therefore, the Pennsylvania CZM Program has determined that these regulatory changes constitute an RPI and are not program amendments because they are not substantial changes to or substantial changes in enforceable policies or authorities related to the aforementioned four criteria.

REVISION OF WETLANDS POLICY IV-1

This section deals with a CZM Program Wetlands Policy revision. The purpose of this policy revision is to reflect amendments to 25 PA Code Chapter 105 Regulations (discussed earlier), and to add new authorities. An RPI was used to revise this policy in 1985. For a clearer comparison the current policy is presented first, followed by the revised policy. A justification/reason is presented after each revision.

The original policy read:

POLICY IV-1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL ZONE MANAGEMENT PROGRAM TO PRESERVE, PROTECT AND, WHERE POSSIBLE, ENHANCE OR RESTORE THE REMAINING TIDAL AND FRESHWATER WETLANDS WITHIN THE COMMONWEALTH'S COASTAL AREAS INCLUDING BUT NOT LIMITED TO THOSE WETLANDS IDENTIFIED IN THE NATIONAL WETLAND INVENTORY MAPPING BY REGULATING THROUGH PERMIT: DRAINING, DREDGING, FILLING, AND OTHER ACTIVITIES THAT AFFECT WATER QUALITY COURSE, CURRENT OR CROSS SECTION OF ANY WATER COURSE, FLOODWAY OR BODY OF WATER. THIS INCLUDES REGULATED ACTIVITIES IN OR OTHERWISE AFFECTING ANY IMPORTANT WETLAND. THIS WILL ENSURE THE CONSIDERATION OF THE WETLANDS' PUBLIC VALUES SUCH AS: AREAS OF FISH AND WILDLIFE HABITAT, INCLUDING ENDANGERED SPECIES AS IDENTIFIED IN THE FEDERAL ENDANGERED SPECIES ACT OF 1973, STORAGE AREAS FOR FLOOD WATERS, BUFFERS AGAINST SHORELINE EROSION, AND WATER PURIFICATION AREAS. ANY WETLAND LOSS FROM A COASTAL ZONE AREA WILL BE REPLACED AND/OR MITIGATED IN AN APPROPRIATE MANNER AS

REQUIRED BY THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL RESOURCES, 25 PA. CODE CH. 105.

With the revision this policy will read:

POLICY IV-1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL ZONE MANAGEMENT PROGRAM TO PRESERVE, PROTECT, ENHANCE AND RESTORE THE REMAINING WETLANDS WITHIN THE COMMONWEALTH'S COASTAL AREAS BY REGULATING THROUGH PERMIT: DRAINING, DREDGING, FILLING, AND OTHER ACTIVITIES THAT AFFECT WATER QUALITY AS WELL AS THE COURSE, CURRENT OR CROSS SECTION OF ANY WATERCOURSE, FLOODWAY, WETLAND OR OTHER BODY OF WATER. THIS WILL ENSURE THE PROTECTION OF WETLANDS' FUNCTIONS AND VALUES SUCH AS: NATIVE PLANT, FISH AND WILDLIFE HABITAT INCLUDING THREATENED OR ENDANGERED SPECIES AS IDENTIFIED IN THE FEDERAL ENDANGERED SPECIES ACT OF 1973, PENNSYLVANIA'S SPECIES OF SPECIAL CONCERN CLASSIFIED UNDER THE AUTHORITY OF THE WILD RESOURCE CONSERVATION ACT, THE FISH AND BOAT CODE OR THE GAME AND WILDLIFE CODE; STORAGE AREAS FOR FLOOD WATERS; BUFFERS AGAINST SHORELINE EROSION; GROUNDWATER RECHARGE; AND WATER PURIFICATION AREAS. ANY WETLAND WHICH IS IMPACTED IN A COASTAL ZONE AREA WILL BE REPLACED AND/OR MITIGATED WITHIN THE COASTAL ZONE AREA, IN A MANNER CONSISTENT WITH THE REGULATIONS OF THE DEPARTMENT.

In the first sentence of the revised policy statement, the phrases "WHERE POSSIBLE", "TIDAL AND FRESHWATER", and "INCLUDING BUT NOT LIMITED TO THOSE WETLANDS IDENTIFIED IN THE NATIONAL WETLAND INVENTORY MAPPING" were deleted. It was felt that these phrases were either extraneous or are included within the phrase "WETLANDS WITHIN THE COMMONWEALTH'S COASTAL AREAS."

The second sentence was deleted because the term "IMPORTANT WETLAND" was replaced in the Chapter 105 Regulations with the terms "exceptional value wetlands" and "other wetlands." CZM determined that replacing the term "IMPORTANT WETLANDS" with these two terms would serve no purpose as the terms "exceptional value wetlands" and "other wetlands" are also included within the phrase "WETLANDS WITHIN THE COMMONWEALTH'S COASTAL AREAS."

In the third sentence the phrase "THIS WILL ENSURE THE CONSIDERATION OF THE WETLAND'S PUBLIC VALUES SUCH AS", was replaced with "THIS WILL ENSURE THE PROTECTION OF WETLAND'S FUNCTIONS AND VALUES SUCH AS". Within this phrase the word "CONSIDERATION" was replaced with "PROTECTION" as this term better reflects the CZM Program's actions on wetlands. Furthermore, the term "WETLANDS' FUNCTIONS" was added, and "PUBLIC" was deleted from the term "PUBLIC VALUES". These revisions were made because in the course of determining impacts to wetlands, DER is first required to look at the functions of a wetland, as defined in the amended 105 Regulations. Only after wetland functions have been identified, can DER assess a wetland's value. This value is not only a public value, but also includes the value from a flora and fauna perspective; hence the term "PUBLIC" was deleted.

Also added to the third sentence was the term "NATIVE PLANT". The original Wetlands Policy did not provide protection to Pennsylvania's native plants. With its inclusion, the CZM Program will now be able to protect these native plants' habitat.

The final additions to the third sentence were the term "THREATENED" and the phrase "PENNSYLVANIA'S SPECIES OF SPECIAL CONCERN CLASSIFIED UNDER THE AUTHORITY OF THE WILD RESOURCE CONSERVATION ACT, THE FISH AND BOAT CODE OR THE GAME AND WILDLIFE CODE." In the original policy "THREATENED" was omitted due to a Program oversight. It has been added at this time as a correction, and also because this term is now included in the amended 105 Regulations. The

phrase "PENNSYLVANIA'S SPECIES OF SPECIAL CONCERN CLASSIFIED UNDER THE AUTHORITY OF THE WILD RESOURCE CONSERVATION ACT, THE FISH AND BOAT CODE, OR THE GAME AND WILDLIFE CODE" has been added because these authorities are now referenced in the amended 105 Regulations, and also help to further define Pennsylvania listed threatened and endangered species. Inclusion of these Pennsylvania species would extend CZM protection to them.

Also, the term 'GROUNDWATER RECHARGE' was added to further define the function of wetlands.

In the last sentence of the policy the phrase "ANY WETLAND LOSS" has been replaced with "ANY WETLAND WHICH IS IMPACTED". The original policy only allowed CZM to require mitigation for wetlands that are lost. With the revision, mitigation will be required for all wetland impacts. This revision reflects DER's position on wetland impacts, and coincides with revisions to the 105 regulations. Also in the last sentence the phrase "IN AN APPROPRIATE MANNER AS REQUIRED BY THE DEPARTMENT OF ENVIRONMENTAL RESOURCES, 25 PA CODE CH 105," was replaced with the phrase "IN A MANNER CONSISTENT WITH THE REGULATIONS OF THE DEPARTMENT." The original policy required that wetland mitigation be consistent with only Chapter 105 Regulations. With the revisions, wetland mitigation will now be required to be consistent with all DER regulations. It should be noted that the requirement for mitigation for coastal zone wetlands was incorporated into this Program's Wetlands Policy in 1985. The 1991 amendments have now made this a regulatory requirement under the revised 105 Regulations.

SUMMARY AND CONCLUSION OF WETLANDS POLICY REVISION

The CZM Program's Wetland Policy is being revised as a result of amendments to Chapter 105, and the addition of new regulatory authorities. The Chapter 105 amendments provide better direction to DER regarding their role in protecting Pennsylvania's wetlands. Chapter 105's reference to the Commonwealth's threatened and endangered species will clearly define those wetland habitats that need to be afforded greater protection.

The addition of new authorities (which will be discussed next) to the Wetlands Policy will enable the CZM Program to also protect Pennsylvania's threatened and endangered species.

The inclusion of these regulatory amendments and new statutes into CZM's Wetland Policy will strengthen the policy and help the Program to better protect Pennsylvania's coastal wetlands. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The federal regulations at 15 CFR 923.80(c) require evaluation of program changes to determine if they result in "substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

The revision of the Wetlands Policy further details Pennsylvania's CZM Program and is not a substantial change to uses subject to the management (CZM) program. The Policy revision does not make any changes to boundaries, areas of particular concern criteria or procedures, or consideration of the national interest.

Therefore, the Pennsylvania CZM Program has determined that the Wetland Policy's revision constitutes an RPI and is not a program amendment because it is not a substantial change to or substantial change in enforceable policies or authorities related to the aforementioned four criteria.

NEW AUTHORITIES/REGULATIONS ADDED AS A RESULT OF WETLANDS POLICY REVISION

As a result of the addition of new authorities, regulatory amendments, and subsequent proposed revisions to CZM Program's Wetlands Policy, the CZM Program is also revising the AUTHORITY(S) and Regulation(s) sections, of its Wetlands Policy.

The original AUTHORITY(S) section read:

AUTHORITY(S)/Policy IV-1, IV-1.1

- Pennsylvania Constitution, Article 1, Section 27. The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 et seq.); Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended (35 P.S. Sections 691.1 et seq.); Storm Water Management Act, Act of October 4, 1978, P. 864 (32 P.S. Sections 680.1 et seq.); Soil Conservation Law, Act of May 15, 1945, P.L. 547, as amended (3 P.S. Sections 849 et seq.);
- With the revisions (in bold face), this section will now read:

AUTHORITY(S)/Policy IV-1, IV-1.1

- Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97 (35 P.S. Sections 6018.10-6018.1003). Pennsylvania Constitution, Article 1, Section 27. The Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 et seq.); Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended (35 P.S. Sections 691.1 et seq.); Storm Water Management Act, Act of October 4, 1978, P.L. 864, as amended (32 P.S. Sections 680.1 et seq.); Conservation District Law, Act of April 30, 1986, P.L. 1125, as amended (3 P.S. Sections 849 et seq.); The Wild Resource Conservation Act, Act of June 23, 1982, P.L. 597, as amended (32 P.S. Sections 5301-et seq.); Fish and Boat Code, Act of October 16, 1980, P.L. 996, as amended (30 Pa. C.S.A. Sections 101 et seq.), The Game and Wildlife Code, Act of July 8, 1986, P.L. 442 as amended (34 Pa C.S.A. Sections 101 et seq.) and Pennsylvania Sewage Facilities Act, Act of January 24, 1966 P.L. 1535, as amended, (35 P.S. Sections 750.1 et seq.).

The AUTHORITY(S) section has been revised for the following reasons:

Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97 (35 P.S. Sections 6018.101-6018.1003). This statute will be added to CZM's Wetland Policy. As discussed previously under the General Regulatory Changes section of this RPI, those sections of Chapter 101 which regulate residual waste impoundments were transferred to Chapters 289 and 299. Chapters 289 and 299 will be added to this Policy. The Solid Waste Management Act is being added as an AUTHORITY, since it is from this Act that Chapters 289 and 299 are derived.

The Dam Safety and Encroachments Act: due to Program oversight "and Encroachments" was omitted from the original citation. It will be corrected with this RPI.

Storm Water Management Act as amended: this Act was amended in 1984. This corrected citing will be reflected in this RPI.

Conservation District Law, Act of April 30, 1986, P.L. 1125: as reenacted and amended in 1986, the short title and citation of this law were changed. These updates will be made in this RPI.

The Wild Resource Conservation Act: this statute will be added as a new authority to CZM's Wetland Policy. DER was given responsibility for the management and protection of Pennsylvania native wild plants when the Act of June 23, 1982, known as the Wild Resource Conservation Act, was passed. The Bureau of Forestry has administered the plant program according to provisions of the Act since 1983. Regulations titled, "The Conservation of Pennsylvania Native Wild Plants" were approved by the Environmental Quality Board and became finalized on January 1, 1988.

The plant regulations are officially referred to as 25 Pa. Code Chapter 82 and outline various programs designed to manage plant species which occur naturally within the Commonwealth. Wild plant management permits are required by persons who wish to collect, remove, or transplant wild plants classified by DER as Endangered or Threatened within Pennsylvania. Although permits are not required by the owners of lands which support endangered and threatened species, information gained through the permit system will provide the plant program with data necessary to develop proper management practices for each individual species.

The Wild Resource Conservation Act also provides that, "the Department of Environmental Resources may, when deemed necessary, protect wild plant species which are in jeopardy of population decline by acquiring areas or designating areas previously acquired as Public Plant Sanctuaries."

One of the most significant sections of the regulations is the chapter which documents and lists plant species by status classifications. Classified plants include extirpated, endangered, threatened, rare, vulnerable, and species considered to be tentatively undetermined.

The existence of these DER classified plants within a wetland, elevates that wetland to a category known as "exceptional value wetlands," and requires the applicant to submit for DER review an environmental assessment of the project's impacts upon the flora's habitat.

The addition of this statute will now allow the CZM Program to protect DER classified endangered or threatened plants of the Commonwealth. The original Wetlands Policy/Authority only provided for the protection of federal endangered species as identified in the Federal Endangered Species Act of 1973.

Fish and Boat Code: this statute (58 Pa. Code, Chapter 133) will be added as a new authority to CZM's Wetlands Policy. The Pennsylvania Fish and Boat Commission (FBC) is charged with enforcement of this code's regulations. The statutes regulate all aspects of fishing and boating in Pennsylvania. However, with regard to CZM's Wetland Policy, Chapter 133 established a Pennsylvania Threatened Species List and a Pennsylvania Endangered Species List, which includes fish, amphibians, reptiles and other aquatic organisms of Pennsylvania. The existence of this FBC classified fauna within a wetland, elevates that wetland to a category known as "exceptional value wetlands", and requires the applicant to submit for DER review an environmental assessment of the project's impacts upon the fauna's habitat.

Game and Wildlife Code: this statute (58 Pa. Code, Chapter 75) will be added as a new authority to CZM's Wetlands Policy. The Pennsylvania Game Commission (PGC) is charged with enforcement of this code's regulations. The statutes regulate the hunting, trapping, taking, possession, transportation, shipping, exportation or importation of Pennsylvania's game and wildlife. Similar to the Fish and Boat Code, Chapter 75 established a Pennsylvania Threatened Species List and a Pennsylvania Endangered Species List, which includes birds and mammals of Pennsylvania. The existence of these PGC classified birds and mammals within a wetland, elevates that wetland to a category known as "exceptional value wetlands," and requires the applicant to submit for DER review an environmental assessment of the project's impacts upon the fauna's habitat.

The incorporation of the Wild Resource Conservation Act, the Fish and Boat Code, and the Game and Wildlife Code into CZM's Wetland Policy will enable the Program to assist the Commonwealth in the protection of Pennsylvania's listed threatened and endangered plants, fish, amphibians, reptiles, other aquatic organisms, birds and mammals, and their habitat. Many of Pennsylvania's threatened and endangered species are also on the Federal Threatened and Endangered Species list.

Sewage Facilities Act: this statute (25 Pa. Code, Chapter 71) will be added as a new authority to CZM's Wetland Policy. The Act provides for the planning and regulation of community and individual sewage systems; requires municipalities to submit plans for systems in their jurisdiction; authorizes grants; requires permits for persons installing such systems; requires disclosure statements in certain land sale contracts; creates an advisory committee; provides remedies and prescribes penalties; and authorizes DER to adopt and administer rules, regulations, standards and procedures.

Of importance to CZM's Wetlands Policy is the promulgation of Chapter 71 under this Act. Chapter 71 requires a municipality during preparation of their sewage facility plans, to identify wetlands as defined in Chapter 105. Furthermore each municipality is required to evaluate the different sewage facility alternatives in order to protect wetlands.

With the incorporation of Chapter 71 into CZM's Wetlands Policy, the Program can now require adherence to these regulations, during our review of various projects.

The Regulation(s) section has been revised in order to reflect the addition of these new authorities. The original section read:

Regulation(s): 25 Pa. Code, Chapters 91, 92, 93, 94, 95, 97, 99, 100, 101, 102, 105, 106, 107 and 109.

With the revisions (in bold face), this section will now read:

Regulation(s): 25 Pa. Code, Chapters **71,82**, 91, 92, 93, 94, 95, 97, 99, 100, 101, 102, 105, 106, 107, 109, 289, and 299.

58 Pa. Code, Chapters 75 and 133

SUMMARY AND CONCLUSION OF NEW AUTHORITIES ADDED TO WETLANDS POLICY

Authorities, which are in effect throughout the Commonwealth and influence the protection of wetlands are the Solid Waste Management Act, Wild Resource Conservation Act, Fish and Boat Code, Game and Wildlife Code, and Pennsylvania Sewage Facilities Act. Through this RPI, CZM is formally incorporating these new authorities into its Wetlands Policy. The inclusion of these new statutes into CZM's Wetlands Policy will strengthen the policy and help the Program better protect Pennsylvania's coastal wetlands, and its threatened and endangered species. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The federal regulations at 15 CFR 923.80(c) require evaluation of program changes to determine if they result in "substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and

4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

The addition of these new authorities further details Pennsylvania's CZM Program, and are not substantial changes to uses subject to the management (CZM) program. These additions do not make any changes to boundaries, area of particular concern criteria or procedures, or consideration of the national interest.

Therefore, the Pennsylvania CZM Program has determined that addition of these amendments constitutes an RPI and is not a program amendment.

REGULATORY CHANGES REQUIRED UNDER THE FEDERAL CLEAN AIR AND CLEAN WATER ACTS

Section 307(f) of the federal Coastal Zone Management Act (CZMA) provides:

Nothing in [the CZMA] shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to [the CZMA] and shall be the water pollution control and air pollution control requirements applicable to such program.

As a result, states are not required to submit these requirements to OCRM as program changes. However, states must notify OCRM, federal, state, and local agencies, and other interested parties, of the incorporation of the requirements into the state coastal management programs. As such, we are taking this opportunity to provide the required notice.

25 PA CODE CHAPTERS 121 AND 129 - Reduced Sulfur and Volatile Organic Compounds (VOC) Emissions and Control of VOCs from Gasoline Storage Tank Filling (Stage I)

These two Chapters were amended twice in 1991. The first amendments impose Stage I gasoline vapor control requirements which restrict release of gasoline vapors when gasoline is unloaded from a tanker truck to a storage tank throughout this Commonwealth. The amendments will also expand the applicability of existing emission control strategies and impose recordkeeping requirements on graphic arts and surface coating facilities. In addition, the amendments will correct minor errors in regulations establishing kraft pulp mill reduced sulfur compound emission limitations at Section 129.17.

The amendments are needed to comply with the Environmental Protection Agency's (EPA) finding that the State Implementation Plans for ozone in the Philadelphia, Pittsburgh and Allentown/Bethlehem/Easton metropolitan areas were inadequate to attain the National Ambient Air Quality Standards (NAAQS) for ozone. These amendments will help the Commonwealth to address the continued ozone problems which exist in the aforementioned areas.

In addition, the imposition of the Stage I gasoline vapor control requirements (Section 129.61) throughout the state is intended to assist the Commonwealth in its efforts to address the continued ozone nonattainment problems.

The recordkeeping requirement will enable the DER to monitor compliance with applicability and emission limitation requirements in Section 129.52. Finally, the amendments are needed to correct an erroneous oxygen correction factor requirement in regulations governing kraft pulp mills at Section 129.17.

25 PA CODE CHAPTERS 121 AND 129 - Control of VOC Emissions from Marine Vessel Loading and Ballasting

The second amendment of 1991 established emission limits and compliance schedules for barge and tanker loading and ballasting operations. The requirement will be imposed only in Delaware and Philadelphia Counties, of Pennsylvania's Delaware Estuary Coastal Zone.

The amendment is required by EPA as part of the Commonwealth's program for the attainment and maintenance of the NAAQS for ozone, as previously discussed.

25 PA CODE CHAPTERS 121 AND 129 - Stage II VOC Controls for Gasoline Dispensary Facilities

These Chapters were amended three times in 1992. The first amendment (Section 129.75) imposes certain gasoline vapor control requirements in specific areas of this Commonwealth. The amendments will require that certain gasoline dispensing facilities, such as gas stations, install and use approved systems to control gasoline vapors during vehicle refueling. This type of control is commonly referred to as Stage II controls.

Section 121.1 adds a definition of "gasoline dispensing facility".

The amendments are required by EPA in order for the Commonwealth to attain the NAAQS standards for ozone in the Philadelphia, Pittsburgh, and Allentown-Bethlehem-Easton metropolitan areas.

25 PA CODE CHAPTERS 121 AND 129 - Control of VOCs from Surface Coating, Pneumatic Rubber Tire Manufacturing, Graphic Arts and Organic Chemical Manufacturing Equipment Leaks.

The second amendments to these Chapters in 1992:

- Revise the geographical regions of DER to reflect the present organizational structure (Section 121.4),
- Extend the applicability of existing emission limitations relating to surface coating and pneumatic rubber tire manufacturing (Section 129.69),
- Revise the leak check requirements for synthetic organic chemical and polymer manufacturing and clarify the emission control system efficiency requirement for surface active agent manufacturing facilities (Section 129.71),
- Clarifies that "clean up" solvent use will be considered in determining the applicability of the graphic arts regulatory requirements (Section 129.67), and
- Add a record keeping requirement for regulated sources of VOCs (Section 121.4).

These amendments are required by EPA in order for the Commonwealth to attain NAAQS standards for ozone in numerous small urban areas of Pennsylvania.

25 PA CODE CHAPTER 121 - Oxygen Content of Gasoline for Carbon Monoxide Nonattainment Areas

This is the third amendment of Chapter 121 in 1992.

The regulations specify oxygen content standards for gasoline sold in the Pennsylvania portion of the Philadelphia Consolidated Metropolitan Statistical Area during the period of the year for which the area is prone to exceedances of NAAQS standards for carbon monoxide (CO).

The final regulations establish the requirements for Pennsylvania's oxygenated gasoline program. Section 121.1 contains several definitions relating to the implementation of the oxygenated gasoline program. The definitions reflect the terminology used by EPA.

The regulations are required by EPA for those areas of the Commonwealth which exceed NAAQS standards for CO. Pennsylvania must develop and implement an oxygen gasoline program to require an oxygen content of 2.7% by weight in gasoline sold in the nonattainment area during the period for which the area is prone to CO exceedances.

25 PA CODE CHAPTER 135 - Emission Statements - VOCs and Oxides of Nitrogen (NO_x)

These 1992 amendments impose emission reporting requirements on emission sources in this Commonwealth. The amendments will require the submission of emission statements from stationary source owners and operators with volatile organic compound emissions or oxides of nitrogen emissions.

The final regulations establish the requirements for Pennsylvania's emission statement requirements for sources of VOC and NO_x. The final regulations contain four major requirements.

First, the final regulations add the requirement for the submission of emission statements from owners or operators of certain stationary sources of NO_x or VOCs (Section 135.21(a)).

Second §135.21(b) specifies basic emission statement reporting requirements and certain minimum data requirements including the requirement that the emission statement contain a description of the method used to calculate the emissions and the time period over which the calculation is based.

Third, §135.21(c) requires that the emissions statements must be submitted by March 1 of each year for the previous year's emissions or on a more frequent basis in the event DER determines that a more frequent submission is required by the EPA, or is necessary because of a need to analyze the data more frequently than annually.

Finally, §135.21(d) provides an exception for the submission of emission statements from sources emitting less than 25 tons per year of VOCs and NO_x where the EPA accepts inventory information from DER in lieu of the emission statement.

These regulations requiring reporting emission data of VOC and NO_x, are required by EPA under the Federal Clean Air Act.

NOTICE OF INCORPORATION

Chapters 121, 129 and 135 are all contained in the following policies:

- Policy IX-B.2: Intergovernmental Coordination/Air Quality, Page II-2-31
- Policy VIII-1: Energy Facility Siting/Permitting, Page II-2-25.

As a result of Section 307(f) of the CZMA, the Pennsylvania CZM Program is providing this notice that these aforementioned regulatory changes, required by the Federal Clean Air and Clean Water Acts are incorporated into the Pennsylvania CZM Program.

DIVISION AND BUREAU NAME CHANGE

Finally, the Division of Coastal Zone Management has changed its name to the "Division of Coastal Programs". In addition to the Coastal Zone Management Program, the Division administers the

Delaware Estuary Program under the National Estuary Program, and Pennsylvania's Coastal Nonpoint Pollution Control Program. As a result of these additional coastal related programs being managed by the Division of Coastal Zone Management, it was felt that a name change would better reflect the various coastal activities that the Division is now engaged; hence the name change to the Division of Coastal Programs.

With this change, all references to the Division of Coastal Zone Management throughout the document entitled, "Commonwealth of Pennsylvania Coastal Zone Management Program and Final Environmental Impact Statement", will now read the "Division of Coastal Programs"; all references to the Division of Coastal Programs will be abbreviated "DCP".

In addition, Pennsylvania's DER was reorganized. The Division's former Bureau, the Bureau of Water Resources Management was abolished. As a result, the Division of CZM was placed under the Bureau of Land and Water Conservation. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The federal regulations at 15 CFR 923.80(c) require evaluation of program changes to determine if they result in "substantial changes to enforceable policies or authorities related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in the planning for and the siting of, facilities which are necessary to meet requirements which are other than local in nature."

The Division and Bureau name changes further detail Pennsylvania's CZM Program. They are not substantial changes to boundaries, uses subject to management, areas of particular concern criteria or procedures, or consideration of the national interest.

Therefore, the Pennsylvania CZM Program has determined that these name changes constitute an RPI and are not program amendments because they are not substantial changes in enforceable policies or authorities related to the aforementioned four criteria.