

Act 167 Stormwater Management Plans

Frequently Asked Questions (FAQ)

September 16, 2024

Version 1.2

The Department of Environmental Protection (DEP) has developed this FAQ document to assist counties and the public in understanding the requirements of Act 167. This document will be maintained by DEP and may be updated with additional content over time. Questions may be directed to the appropriate DEP regional office or to DEP’s Bureau of Clean Water at (717) 787-5017 or RA-EPPAMS4@pa.gov.

Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

FAQ #1: What is Act 167 and what does it require?

The [Pennsylvania Storm Water Management Act](#) (Act 167) was enacted in 1978 in response to the impacts of accelerated stormwater runoff resulting from land development in the state. The legislature enacted Act 167 to achieve the following goals:

1. Encourage planning and management of stormwater runoff in a manner consistent with sound water and land-use practices;
2. Authorize a comprehensive program of stormwater management to preserve and restore the flood carrying capacity of streams, to preserve to the maximum extent practicable natural stormwater runoff regimes, and to protect and conserve groundwaters and groundwater recharge areas; and
3. Encourage local administration and management of stormwater in a manner consistent with the Commonwealth's duty as trustee of natural resources and the people's constitutional right to the preservation of natural, economic, scenic, aesthetic, recreational and historic values of the environment.

Act 167 requires counties to prepare and adopt a watershed-based stormwater management plan (“Act 167 Plan”) for each watershed within the county, or for the county as a whole, and requires municipalities to adopt and implement local ordinances to regulate land development in a manner that is consistent with the Act 167 Plan.

FAQ #2: How does Act 167 address stormwater management?

Act 167 established a comprehensive and systematic program for counties to use to develop watershed-based stormwater management plans. Act 167 Plans provide counties and municipalities with a framework, including model ordinances and management practices, to control stormwater runoff from development in their watersheds. By completing the required components of an Act 167 Plan (listed in [Section 5 of the Act](#)), the county acquires the information needed to determine the standards for managing post-development stormwater runoff rate, volume, and quality in a way that will replicate pre-development conditions, prevent downstream flooding, and to protect water resources and their uses. These standards are then incorporated into a model ordinance that is adopted by all municipalities within the watershed(s) covered by the Act 167 Plan. When all municipalities in a watershed use the same criteria and standards for the control of stormwater runoff, this ensures that development in one municipality within the watershed will not adversely affect health, safety, and property of other municipalities within the watershed.

FAQ #3: What is the development process for an Act 167 Plan?

Act 167 requires each county to prepare and adopt a watershed stormwater management plan for each watershed within the county, or for the county as a whole, and to review and revise the plan at least every five years. The development and/or update of an Act 167 Plan is a two phased process. The first phase is the preparation and submission of a scope of study to DEP for review and approval. The requirements of the scope of study (listed in [25 Pa. Code § 111.14](#)) include determination of the level of effort and cost that will be required by the county to satisfactorily complete the second phase. The second phase is the preparation and/or update of the detailed Act 167 Plan based on the level of effort approved in the scope of study.

FAQ #4: What must be included in an Act 167 Phase 1 Scope of Study?

A scope of study should be submitted to DEP for approval before the detailed watershed stormwater plan is undertaken. The scope of study should establish plan outcomes that will meet the objectives of the Act; determine the cost-effectiveness of study procedures; provide consistency between county planning efforts; and eliminate duplication of effort when considering outside consulting contracts.

The required components for a Phase 1 scope of study (as listed in [25 Pa. Code § 111.14](#)) include, but may not be limited to, the following:

1. A description of each major task required pursuant to [Section 5 of the Act](#);
2. A time schedule for completion of each watershed stormwater plan, including major tasks;
3. A description of the level of effort required to complete major tasks and goals within each time period. This description will include personnel requirements, whether in-house staff, government agency or consultant;
4. A cost estimate of each task;
5. A narrative of services provided by consultant, if any, and a justification for the use of consulting services; and
6. A listing of outside funding sources and the amounts of the funds.

FAQ #5: What is required to be included in an Act 167 Plan?

Act 167 Plans must include, at a minimum, the requirements of [Section 5 of the Act](#). Each plan must contain such provisions as are reasonably necessary to manage stormwater such that development or activities in each municipality within the watershed do not adversely affect health, safety and property in other municipalities within the watershed and in basins to which the watershed is tributary.

The required components for an Act 167 Plan include, but may not be limited to, the following:

1. A survey of existing runoff characteristics in small as well as large storms, including the impact of soils, slopes, vegetation and existing development;
2. A survey of existing significant obstructions and their capacities;
3. An assessment of projected and alternative land development patterns in the watershed, and the potential impact of runoff quantity, velocity, and quality;
4. An analysis of present and projected development in the flood hazard areas, and its sensitivity to damages from future flooding or increased runoff;
5. Survey of existing drainage problems and proposed solutions;
6. A review of existing and proposed stormwater collection systems and their impacts;
7. An assessment of alternative runoff control techniques and their efficiency in the particular watershed;
8. An identification of existing and proposed state, federal, and local flood control projects located in the watershed and their design capacities;
9. A designation of those areas to be served by stormwater collection and control facilities within a 10-year period, an estimate of the design capacity and costs of such facilities, a schedule and an identification of the existing or proposed institutional arrangements to implement and operate the facilities;
10. An identification of flood plains within the watershed;
11. Criteria and standards for the control of stormwater runoff from existing and new development which are necessary to minimize dangers to property and life and carry out the purposes of the Act;
12. Priorities for implementation of action within each plan; and
13. Provisions for periodically reviewing, revising and updating the plan.

FAQ #6: How is the public involved in the development of Act 167 Plans?

Public participation in the preparation of watershed stormwater management plans is encouraged throughout the plan development process. A watershed plan advisory committee (WPAC) is required, and its duties are defined in [Section 6 of the Act](#). The WPAC is to be formed by the county at the beginning of the watershed stormwater planning process and is to consist of at least one representative from each municipality within the watershed and a representative of the County Conservation District. Counties may also appoint representatives from relevant interest groups and the public.

The process for county adoption of the Act 167 Plan includes a public hearing. Municipal adoption of ordinances to implement the plan is also an opportunity for public input.

FAQ#7: How does a county approve an Act 167 Plan?

The process for county adoption of the Act 167 Plan includes a public hearing which will allow others, who may not be a part of the WPAC, to voice their opinions and concerns. Draft Act 167 plans are reviewed by each municipality, the county planning commission, and the regional planning agencies for consistency with other planning programs affecting each watershed. The county then holds a public hearing, adopts the plan, and submits the plan for DEP’s final review and approval.

FAQ #8: Must the public hearing be held before the Act 167 Plan is submitted to DEP for review?

Act 167 requires counties to hold a public hearing and to formally adopt their Act 167 Plan. Neither of those actions are required prior to the submittal of the plan to DEP. DEP strongly encourages counties to hold the hearing prior to submission to make interested parties aware of issues earlier in the process. Counties may adopt a plan prior to submittal to DEP at their discretion. If the county has not held the public hearing and/or adopted the plan, the DEP approval letter will advise the county that those actions need to be taken, and when completed, that documentation must be submitted to DEP.

FAQ #9: How does DEP review and approve Act 167 Plans?

DEP, in consultation with the Department of Community and Economic Development (DCED), reviews all Act 167 plans and revisions or amendments thereto. DEP will approve an Act 167 Plan when it is determined that: 1) the plan is consistent with municipal floodplain management plans, state programs which regulate dams, encroachments, and water obstructions, and state and federal flood control programs; and 2) the plan is compatible with other watershed stormwater plans for the basin in which the watershed is located, and is consistent with the policies and purposes of Act 167.

DEP and DCED have 90 calendar days to review and approve or disapprove an Act 167 Plan. If no action is taken on an Act 167 Plan within 90 calendar days, the plan is deemed approved. DEP’s review process is explained in the [Standard Operating Procedure \(SOP\) for Review of Act 167 Stormwater Management Plans](#).

FAQ #10: What should a county expect from DEP during the review process?

If DEP finds that an Act 167 plan is incomplete DEP may contact the county and provide an opportunity for the county to either make the plan complete or to withdraw the plan. The opportunity must however be limited to what can be done within a short period of time (generally two business days) because DEP has a statutory limit on its review time. If the completion/withdrawal is not done within that period of time, DEP will proceed with a disapproval.

If a plan is to be disapproved by DEP, the issues are relatively minor, and a public hearing was previously held, DEP may allow the county to decide whether a public hearing on the resubmitted plan is necessary. If the county decides another public hearing is not necessary, the county should advertise that the plan will be discussed and potentially adopted at a public meeting. In either case, the plan resubmittal should

include documentation of the subsequent public meeting.

FAQ #11: What is required of counties after DEP approves an Act 167 Plan?

If the Act 167 Plan public hearing and/or adoption were not completed prior to submittal, DEP will instruct the county to complete those actions and notify DEP. The county should also inform municipalities that they have a responsibility to amend their local ordinances to be consistent with the plan within six months of plan adoption or DEP approval (whichever is later). Under Act 167, DEP is required to take enforcement action against municipalities that do not enact ordinances consistent with approved Act 167 plans.

After DEP approves an Act 167 plan and the county adopts it, Act 167 requires that anyone engaged in land development activities is required to implement stormwater management measures consistent with the plan and the requirements of Act 167. In addition, Act 167 requires each municipality in the watershed to adopt or amend ordinances consistent with the plan, including zoning, subdivision and land development, building code, and erosion and sedimentation control requirements.

FAQ #12: How often must Act 167 Plans be updated, and what is the process for updating an Act 167 Plan?

Act 167 requires that plans be periodically reviewed and revised at least every five years. The same two-step process as was used during the original development of the plan should be used during a plan update. Depending on how long it has been since the original plan was developed, there may be portions of the plan that do not require updating. During the preparation of the Phase 1 scope of study, the county should review their existing plan to determine which portions are in need of updating. If there are portions of the plan that do not require an update, those sections should still be listed in the Phase 1 scope of study, but the level of effort and costs associated with the task may be listed as zero. In such cases, the county should provide a statement to justify why those sections of the plan are not in need of an update.

FAQ #13: Does DEP provide technical assistance to counties developing or updating Act 167 Plans?

DEP provides assistance through providing general guidance and training to clarify what is required by Act 167 and explain the review process. DEP staff that will take part in the review of an Act 167 Plan may not participate in the plan development process for individual Act 167 Plans or participate in a WPAC.

FAQ #14: Does DEP provide financial assistance to counties developing or updating Act 167 Plans?

Counties are responsible for the preparation, enactment, implementation, administration, and enforcement of Act 167 plans, and for obtaining the necessary financial support. Under [Section 17 of Act 167](#), DEP is authorized to award grants to municipalities and counties for reimbursement of costs in preparing and revising stormwater management plans and administrative, enforcement and

implementation costs when funds are appropriated by the General Assembly for this purpose. DEP may enter into grant agreements with counties for preparation or revision of Act 167 Plans in accordance with [25 Pa. Code Chapter 111](#). When funding is available, grants awarded are limited so that the total of State and Federal grants to the municipality or county does not exceed 75% of the allowable costs.

Initially after Act 167 was enacted, the General Assembly consistently appropriated funds for the Act 167 Program and DEP was able to provide funding to assist with the development of many plans. This funding ended in 2009; however, recent state budgets have appropriated funding for the Act 167 Program through the Clean Streams Fund. Counties interested in developing or updating an Act 167 Plan should reference the [Act 167 website](#) for information on current funding availability and instructions on how to submit an application to request funding.

FAQ #15: Does DEP provide financial assistance to municipalities that adopt ordinances from Act 167 plans?

When funding is available, municipalities located in watersheds for which Act 167 Plans have been prepared, adopted, and approved by DEP, may request annual reimbursement for eligible expenses incurred while adopting ordinances or regulations to comply with the new or revised Act 167 Plan. The application for municipal reimbursement form (3850-FM-BPNPSM0059) may be used for this purpose and is available in DEP's [eLibrary](#).

FAQ #16: What geographic scale should be used to develop an Act 167 Plan?

The obligation in Act 167 is for each county to prepare and adopt a stormwater management plan for each watershed located in the county as designated by DEP. Many designated watersheds are HUC-10 scale watersheds, but counties may choose to develop an Act 167 Plan using a smaller HUC-12 scale watershed. Counties with multiple watersheds that require Act 167 Plans are encouraged to consider developing a comprehensive county-wide Act 167 plan to address all watersheds rather than multiple individual watershed-scale plans. The development of a county-wide Act 167 plan generally results in a more streamlined model ordinance adoption process in which all municipalities within the county adopt the same ordinance.

FAQ #17: What entity should take the lead in developing an Act 167 Plan?

Any entity can be authorized by the county to prepare the Act 167 Plan. Common choices for lead entities include the County Planning Commission Department, Planning and Zoning Commission, or Regional Planning Commission (names and roles vary across the state). County commissioners should formally submit the plan to DEP.

FAQ #18: Can a county develop a joint Act 167 Plan with a neighboring county?

Yes, in some cases, it makes sense for counties to develop joint plans where a watershed includes land in

more than one county.

FAQ #19: Does Act 167 require pollutant load reductions?

Act 167 requires that stormwater management plans provide “criteria and standards for the control of stormwater runoff from existing and new development which are necessary to minimize dangers to property and life...” and include an “assessment of projected and alternative land development patterns in the watershed, and the potential impact of runoff quantity, velocity and quality.” There is no explicit requirement for pollutant load reductions but consideration must be given to controlling pollutant loads from new land development.

FAQ #20: Does Act 167 regulate land use?

No, Act 167 Plans are not intended to regulate land use. Municipalities control land use through zoning and subdivision and land development ordinances. Act 167 Plans should be consistent with those ordinances.

FAQ #21: What is Act 15 and how does it affect Act 167 Plans?

Act 15 amended Act 167 to include a definition for the term high tunnel, exempted some high tunnels from the provisions of Act 167, defined the characteristics of high tunnels exempt from the provisions of Act 167, and required any municipality with an ordinance in conflict with the provisions of Act 15 to amend that ordinance. Each Act 167 Plan should be reviewed to ensure that it does not regulate or endorse the regulation of “High Tunnels” in a manner contrary to Act 15 of 2018 ([Act of April 15, 2018, P.L. 91, No. 15](#)). DEP does not provide legal advice on municipal ordinances, so municipalities are encouraged to contact their legal counsel to review their ordinance in relation to Act 15.

FAQ #22: Why is it advantageous for a county to have a current Act 167 Plan?

Virtually every municipality has local flooding issues that need attention. The short- and long-term solutions to those issues are not necessarily obvious, nor is a collective consensus of solutions assured. The development of an Act 167 Plan can identify current and future stormwater management problem areas, their solutions, and support applications for funding the implementation of those solutions. The Act 167 Plan development process includes analyzing current and future hydrologic, hydraulic, flooding, and drainage characteristics of the watershed. With this data, counties have the information necessary to both identify sound management measures to help address stormwater problems caused by existing development, and to understand where future development needs may call for stormwater controls that exceed DEP regulatory minimums, so that flooding issues are not created or made worse. As watersheds commonly cross municipal boundaries, having one county model stormwater ordinance promotes uniformity of stormwater ordinances among neighboring municipalities.

Additionally, some grant programs, such as Growing Greener Plus, incorporate current Act 167 Plans in

their grant evaluation criteria, which can result in projects located within counties or watersheds with current plans scoring higher than projects located in counties without current plans.

FAQ #23: How do Act 167 Plans impact the requirements for construction stormwater permit applications?

Standards contained in an Act 167 Plan (including ordinances consistent with that plan) may be used for the stormwater analysis required by 25 Pa. Code § 102.8(g) for a post-construction stormwater management (PCSM) Plan if the Act 167 Plan has been approved by DEP and is current (i.e., the plan, either original or revised, has been approved by DEP within the past five years). If the Act 167 Plan is not current (i.e., has not been approved by DEP within the past 5 years), standards contained in an Act 167 Plan may be proposed as an alternative design standard, and the applicant will need to demonstrate that the Act 167 Plan standards provide equal or better protection as compared to the regulatory standards in Chapter 102.

Version History

Date	Version	Revision Reason
9/16/2024	1.2	Reorganized numbering of FAQs; added or significantly revised FAQs #1 – #7, #9, #11 – #16, and #23 to provide more detail on Act 167 Plan requirements.
4/17/2023	1.1	Updated FAQ #5 to modify the recommendation for geographic scale of Act 167 Plans; updated FAQ #8 to include reference to DEP’s Act 167 SOP; revised FAQ #14 to clarify that DEP does not provide technical assistance for individual Act 167 Plan development; modified FAQ #15 to reflect funding availability starting in FY 2022-23; and other minor clarifications made throughout.
6/17/2021	1.0	Original