

# *Wetlands and Waterways Permitting in PA*

April 24, 2012



## Regulatory Authority

Chapter 105 of Title 25 of the PA Code –  
*Waterway Engineering and Wetlands Management*

Chapter 93 –  
WATER QUALITY  
STANDARDS



Chapter 106–  
FLOODPLAIN  
MANAGEMENT

Based on:

- The Clean Streams Law
  - Flood Plain Management Act
  - Dams Safety & Encroachments Act
- (Not Section 404 of CWA)**

# Chapter 105

regulates

## Water Obstructions and Encroachments

located in, along or across, or projecting into a watercourse, floodway or body of water, whether temporary or permanent.

[105.3(a)(4)]

*Water Obstruction*—A dike, bridge, culvert, wall, wingwall, fill, pier, wharf, embankment, abutment or other **structure** located in, along or across or projecting into a watercourse, floodway, or body of water.



*Encroachment*—A **structure** or **activity** which changes, expands or diminishes the course, current or cross section of a watercourse, floodway, or body of water.

## Regulated Waters of this Commonwealth - Definitions [105.1]

- **Watercourse** – a channel or conveyance of surface water having defined bed and banks, **whether natural or artificial**, with perennial or intermittent flow.
- **Floodway** – The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood.
- **Body of Water** – A natural or artificial lake, pond, reservoir, swamp, marsh or **wetland**.





## Examples of Water Obstructions & Encroachments

- *Bridges, culverts, fords, etc.*
- *Stream enclosures*
- *Watercourse & wetland fills*
- *Outfalls*
- *Utility lines*
- *Stream relocation*
- *Streambank stabilization*
- *Watercourse & wetland restorations*
- *Temporary crossings & disturbance*
- *Docks & piers*

Dams are regulated under Chapter 105



Dam Safety and Encroachments Act

## Types of Authorizations We Review

- Requests for Waivers and “No Permit”
- Emergency Permits
- General Permits
- Environmental Assessments
- Water Obstruction & Encroachment Permits (“Joint Permits”)
- PASPGP- 4
- SLLAs
- 401 Certification
- Chapter 106



## No Permit

- Debris removal (not including gravel and sediment removal)
- Channel cleaning of bridges and culverts, limited to 50 feet upstream and 50 feet downstream of bridge or culvert
- Mowing and cutting of brush and trees, but no grubbing or excavation

# Waivers

- **105.12(a):** Waivers for structures or activities regardless of when commenced (16 waivers total)
- **105.12(b):** Waivers for structures or activities constructed prior to July 1, 1979. This is the date the Water Obstruction and Encroachment Act went into effect (7 waivers total)

# Emergency Permits

- For immediate remedial action to alleviate an imminent threat to life, property or the environment.
- Typically, following catastrophic event – flood, hurricane, etc.
- May only authorize activity to provide a temporary fix. The permanent fix may need to come through the normal permit process.
- **It is the Department's decision whether an Emergency Permit is appropriate.**

## General Permits

- 11 in total - no fee for GP
- Complete Exhibits and send to DEP or delegated conservation district for acknowledgement of use
- Owner must sign the exhibits NOT consultants or developers
- Make sure you qualify for GP!!!!  
(NOT a Best Fit)

## The “Joint” Water Obstruction & Encroachment



Permit



Most regulated activities require a federal permit.

Most of our authorizations are a joint effort with the Army Corps of Engineers (with input from many other agencies)

PASPGP-4 (*PA State Programmatic General Permit*)

## Water Obstruction & Encroachment ("Joint") Permit Review [105.14 and 105.18a]

During permit review, DEP is required to consider a number of factors, including:

- Impacts on regimen & ecology, stream flow, aquatic habitat, fish & wildlife
- Water Dependency
- Impacts on natural areas, refuges, natural landmarks, parks, etc.
- Impacts on historical sites
- Impact on the wetlands, based on area and functions & values
- Water quality & antidegradation requirements
- Secondary impacts
- Cumulative impacts
- Comments from other agencies & the public
- Practicable alternatives (AA)



## Small Projects

- Intended for projects located in the stream or floodplain which will have an “**insignificant impact**” on safety and the protection of life, health, property and the environment.
- May NOT be used for projects located in wetlands!!



## Wetlands



- Determined using 1987 Army Corps of Engineers Wetland Delineation Manual
- *Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.*

Criteria for a wetland:

Hydrology

Vegetation

Soils

## Regional Supplements to the 1987 Wetland Delineation Manual

### Two Regional Supplements in SE PA

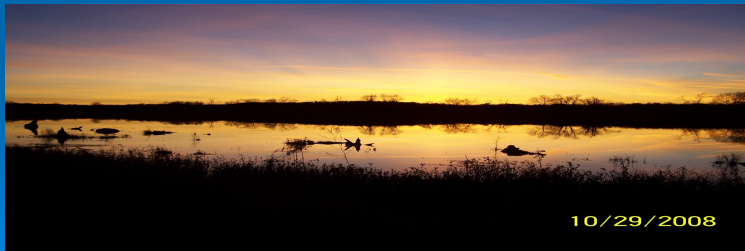
- ❖ Atlantic and Gulf Coastal Plain Region
- ❖ Eastern Mountains and Piedmont Region





## Chapter 105 specifically regulates two types of wetlands:

- EV
- OTHER (not EV)



## “Exceptional Value” Wetland

### In accordance with 105.17, wetlands are EV IF:

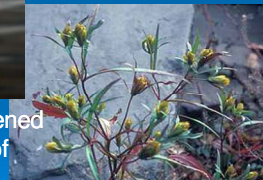
- In an EV watershed
- In or along the floodplain of a wild trout stream and the floodplain of its tributaries
- Are within a designated National or State wild or scenic river corridor
- Along a drinking water supply and maintain the quality & quantity of the supply
- T&E species are present
- Are hydrologically connected to OR located within 1/2 mi. of wetlands that are habitat for flora or fauna AND maintain the habitat of the threatened and endangered species

# Threatened & Endangered Species



Pennsylvania Natural Heritage Program

information for the conservation of biodiversity



Applications need to be screened possible impacts to species of special concern.

## Clear PNHP (aka PNDI), no problem?

In SE PA counties, if wetlands *might* be impacted, a bog turtle survey is also needed



Be sure your project has clearance(s)!

# AVOIDANCE & MINIMIZATION!

???



## Can impacts to the wetlands from the project be AVOIDED??

- The **Alternatives Analysis** includes alternate location, routings or designs to avoid or minimize impacts.
- An alternative is practicable if it is available and capable of being carried out after considering construction cost, existing technology and logistics.

## Wetland Mitigation

- **Avoidance and minimization** measures must be exhausted first
- Wetland replacement is required if **>0.05-ac** impacts (cumulative).
- **Replacement ratios** – will be at least 1:1 and may be higher (forested wetlands min. 2:1 ratio)
- Wetland replacement must replace **functions and values** of impacted wetlands
- **Plantings** should be locally native species
- Generally, replacement is **on-site**
- **5-yr minimum monitoring period** Monitoring should not be discontinued until the site is successful
- “Design Criteria – Wetland Replacement/Monitoring”

## Common Wetland Mitigation Problems

- Inappropriate hydrology (too much OR too little)
- Invasive plants (nonnative species)
- Herbivory (deer & geese)
- Disturbance (mowing & dumping) by adjacent homeowners & businesses
- Poor soils



## NPDES and 105 Permits



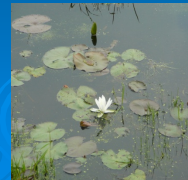
- Untreated stormwater **cannot** be discharged to wetlands or mitigated wetlands
- Constructed wetlands for stormwater **cannot** be used for wetland mitigation



- Both programs consider water quality impacts. SWM can have significant impacts on wetland hydrology.
- No disturbance buffers protecting wetlands could be a possible “credit”

## Common Neglected Items

- Complete application (follow the checklist and comments from preapplication meeting)
- PHMC – historic/archaeological considerations
- SPGP-4 Project Screening Form
- Threatened and Endangered Species
  - PNDI
  - Bog Turtle Screening for GPs
  - Bog Turtle Counties in SERO,
    - Bucks
    - Chester
    - Delaware
    - Montgomery



## Needed in Joint Permit Application

- Delineate resources (map wetland boundaries and waterways)
- Jurisdictional Determinations may be needed for large sites, especially with impacts (good for 5 years, DEP abides by Army Corps letter)
- Avoid/Minimize/Mitigate Impacts – alternatives analysis must be environmentally based, include no action alternative.
- Determine FEMA floodway boundaries
- Determine if project is on submerged lands of the Commonwealth (Delaware River, Schuylkill River, Navigable tribs)

## Common Mistakes

- Not allowing enough **time** for permit processing.
- Impacting resources before signed permit is received.
- Not notifying DEP prior to starting work.
- Not reading permit and special conditions. (seasonal restrictions, etc.)
- Make sure permit is always on site
- Lax construction oversight
- Make sure to have (and follow) approved erosion and sedimentation control plan on site
- Failure to extend permit when deadline approaches

## Questions?



For general questions regarding Wetlands, Waterbodies, Waterways, and Floodways... call the Regulator of the Day at 484-250-5970