

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY AND COMMUNICATIONS**

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**TITLE:** IMPLEMENTATION OF THE PENNSYLVANIA STATE HISTORY CODE: POLICY AND PROCEDURES FOR APPLICANTS FOR DEP PERMITS AND PLAN APPROVALS

**AUTHORITY:** 37 Pa. C.S.A., Section 101 *et seq.* and Article 1, Section 27 of the Pennsylvania Constitution

**EFFECTIVE DATE:** March 16, 2002

**POLICY:** The Pennsylvania Department of Environmental Protection (DEP) will cooperate with the Pennsylvania Historical and Museum Commission (PHMC) in the protection of significant archaeological resources and historic structures.

**PURPOSE:** To establish procedures consistent with the Pennsylvania State History Code for DEP plan approvals and permit reviews so that PHMC has the opportunity to review activities undertaken with DEP's approval for their possible impact on significant historical and archaeological resources.

**APPLICABILITY:** To applicants for DEP permits and plan approvals and DEP staff.

**DISCLAIMER:** The policy and the procedures outlined in this guidance document are intended to supplement existing requirements. Nothing in the policy or the procedures shall affect more stringent regulatory requirements.

The policy and the procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in this policy that weight or deference. The policy and the procedures merely announce the policy and establish the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 9 pages (not including appendices)

**LOCATION:** Volume 1, Tab 6

## DEFINITIONS:

1. **“Project applicant.”** *A person who has filed or intends to file an application for a permit, approval, or authorization which DEP is authorized to issue under any of the environmental statutes which DEP implements.*
2. **“Permittee.”** *A person who has a permit, approval, or authorization which DEP is authorized to issue under any of the environmental statutes which DEP implements.*
3. **“Permitted activity.”** *An activity requiring a DEP-issued permit, approval, or authorization.*
4. **“Cultural Resource Notice.”** *A notice given by the project applicant to PHMC regarding the intended activity for which the applicant needs DEP’s permit or plan approval.*
5. **“Determination Letter.”** *A letter given by PHMC to the project applicant indicating PHMC’s determination of the historical or archaeological significance of the site of the project applicant’s intended activity.*
6. **“Historic resource.”** *A building, structure, object, district, place, site, or area significant in the history, architecture, maritime heritage, archaeology, or culture of this Commonwealth, its communities or the nation.*
7. **“Significant archaeological site.”** *An area of land which contains extensive evidence of previous prehistoric or historic human habitation or stratified deposits of animal or plant remains or manmade artifacts or human burials which enhances our understanding of past cultural behavior.*
8. **“Archaeological survey.”** *A visual inspection and limited sampling and excavation of an archaeological site to determine the characteristics and physical extent of a site, also known as phase one or phase two archaeological research.*
9. **“Archaeological field investigation.”** *Extensive controlled excavation of an archaeological site to study the cultural history using professionally accepted means of sampling, removing and excavating archaeological specimens, also known as phase three archaeological research or data recovery.*
10. **“Mitigation Plan.”** *A plan that decreases the severity of adverse effects on the site of historic resources.*

## **IMPLEMENTATION OF THE PENNSYLVANIA STATE HISTORY CODE: POLICY AND PROCEDURES FOR APPLICANTS FOR DEP PERMITS AND PLAN APPROVALS**

### **A. SPECIFIC CONSIDERATIONS FOR INDIVIDUAL DEP BUREAUS**

This policy applies, in general, to most DEP permitted activities. However, the diversity of programs regulated by DEP is wide and the applicable statutes and regulations may differ enough that a single document cannot adequately address the needs of each program.

**In particular, federal financing programs and federal permits establish requirements on applicants that are different from those established in the Pennsylvania History Code.**

To the extent that the statutes and regulations under which individual bureaus operate conflict with the following general procedures, the statutes and regulations will receive precedence over the general procedures.

It is the responsibility of the program staff of each DEP program to, as appropriate, integrate these general procedures into its permitting program.

### **B. EMERGENCIES**

The procedures outlined in this document do not apply for an emergency undertaking. An emergency undertaking is one that requires an essential and immediate response to an imminent threat to public health or safety or damage to property.

DEP will make reasonable efforts to notify PHMC of such emergency undertakings.

### **C. LIST OF EXEMPTIONS**

PHMC and DEP have agreed to exempt some DEP permits and plan approvals from these procedures. (Please refer to a copy of this list in Appendix 1.)

### **D. CULTURAL RESOURCE NOTICE**

The Pennsylvania State History Code (Title 37, §507) indicates that Commonwealth agencies, political subdivisions and municipal authorities shall cooperate fully with PHMC in the preservation, protections and investigation of archaeological resources. Section 507(a) also indicates that Commonwealth agencies shall notify PHMC before undertaking any Commonwealth permitted

project that may affect archaeological sites. The Cultural Resource Notice is a mechanism DEP uses to cooperate with PHMC and notify PHMC before the Commonwealth's permitting of a project to meet its clear statutory obligation under the State History Code.

DEP programs include the Cultural Resource Notice form with their permit or plan approval application package. (Please refer to the copy of this Notice in Appendix 2.) The Notice asks for the following information:

- name, address and telephone number of the project applicant,
- project title and location,
- DEP permit or plan approval requested,
- DEP regional office, DEP district mining office or County Conservation District responsible for review of the permit or plan approval application, and
- name, address and telephone number of the consulting engineer, if any.

Attachments required by PHMC:

- total acres of property and, of these, total acres of earth disturbance,
- 7.5' United States Geological Survey (U.S.G.S.) Map indicating the boundary of the proposed activity,
- photographs of any building over 40 years old and indication of what is to be done to all buildings in the project area, and
- narrative description of the proposed activity.

Attachment requested by PHMC and supplied at the applicant's discretion:

- construction drawings of the proposed activity, if available.

The project applicant completes the form and sends it to PHMC by certified mail, return receipt requested. Once the project applicant receives the return receipt, the project applicant attaches it to a copy of the completed Cultural Resource Notice and submits this information to DEP as part of the permit application. The project applicant should attach the PHMC review letter when a PHMC review is required.

## **E. DEP PERMIT PROCESSING AND PHMC REVIEW DEADLINES**

Part of the program's check for application completeness will include a check for the completed Cultural Resource Notice, PHMC review letter and the attached return receipt. The permit application or plan approval may be considered complete when the return receipt shows that PHMC has had the notice for 15 days. When the permit application is complete, the permit review may begin.

**1. No Archaeological Resources Present**

If PHMC determines that the proposed activity does not affect a significant archaeological site, PHMC may notify the permit applicant of this in writing. This notification should occur within 15 days of PHMC's receipt of the applicant's Cultural Resource Notice.

**2. Significant Archaeological Sites**

If PHMC determines that the proposed activity does affect a significant archaeological site, PHMC will notify, in writing, the project applicant and the DEP reviewing office. This notification shall occur within 15 days of PHMC's receipt of the applicant's Cultural Resource Notice.

When the project applicant applies for a DEP permit, the application should include PHMC's review letter, stating that the project involves a significant archaeological site.

DEP will immediately notify PHMC of receipt of a permit application which may affect a significant archaeological site.

Within 15 days of the Department's notification, PHMC must determine if an archaeological survey is necessary. [History code – Section 507(b)(1)]

If an archaeological survey is not deemed necessary by PHMC, DEP may issue the permit.

If an archaeological survey is deemed necessary by PHMC, PHMC must complete this survey within 60 days of the determination, except that an additional 30 days may be required when the determination is made during the months of December, January and February. [History Code – Section 507(b)(2)]

Within 15 days of completion of the archaeological survey, PHMC must determine if an archaeological field investigation is necessary to recover archaeological data. If this archaeological field investigation, often referred to as a "Phase 3 study," is needed, PHMC must complete it within 90 days of the determination that an archaeological field investigation was needed, except that an additional 30 days may be required when this determination was made during the months of December, January and February. [History Code – Section 507(b)(3)]

PLEASE NOTE: These time frames are requirements under the Pennsylvania State History Code. Federal requirements are different and these time frames do not apply.

## **F. LIMITS OF AUTHORITY**

Pennsylvania's History Code (37 Pa. C.S. Section 101 *et seq.*) establishes the duties and responsibilities of the PHMC, as they relate to DEP's permitting activities. The History Code establishes authority, as it relates to DEP's permitting process, in four ways:

1. PHMC may not require, conduct or cause to be conducted ... an archaeological survey or field investigation on private property without the consent of the property owner. [History Code – Section 507(b)(7)]
2. PHMC does not have the authority to delay, deny, condition or limit or cause to be delayed, denied, conditioned or limited any permits which would otherwise be issued by DEP beyond those time frames specified in Section 507 (outlined above), unless the applicant agrees in writing to such condition, limit or time extension. [History Code – Section 508(a)(4)]
3. The applicant may not utilize a permit or license in any manner that would impair or interfere with the performance of an archaeological survey or field investigation until the expiration of the time frames in Section 507 or until receiving written notification from PHMC that its archaeological survey or investigation is completed, whichever is sooner. [History Code – Section 508(a)(4)]
4. DEP, in the absence of specific statutory language in DEP's enabling or regulatory statutes, may not stop processing a permit or deny a permit solely because of the possible or actual presence of archaeological resources. [History Code – Section 508(a)(4)]

## **G. PAYMENT FOR ARCHAEOLOGICAL SURVEYS OR INVESTIGATIONS**

**For projects that require no federal permits or funds:**

The History Code (Section 507(b)(5)) states that PHMC shall conduct or cause to be conducted through an agent, subcontractor or other person and pay any costs associated with an archaeological survey or field investigations except for the following situations:

1. Projects of other State agencies or instrumentalities.
2. Projects on Commonwealth lands.
3. Projects of publicly regulated utilities.
4. Archaeological surveys and field investigations required under Federal law.

DEP will implement this section of the History Code on a case-by-case basis.

**For projects that require federal permits or will use federal funds:**

The History Code (Section 507(b)(5)) does not require that PHMC conduct or pay for archaeological surveys and field investigations required under federal law.

**H. ALERTING THE PROJECT APPLICANT THAT PHMC DESIRES NOTIFICATION SHOULD HUMAN REMAINS BE DISCOVERED DURING EARTH DISTURBANCE**

If human remains are discovered during earth disturbance, the Pennsylvania State Police recommends the applicant call local authorities (i.e., Police, District Attorney, Coroner). Emergency dispatch personnel will notify the appropriate person or persons. The Pennsylvania State Police also recommends that human remains not be touched or moved until the appropriate person or persons have been to the site.

PHMC also desires to be notified if human remains are discovered during earth disturbance. PHMC will alert the project applicant to its interest by including this information in a Fact Sheet, which PHMC plans to develop. At PHMC's request and when PHMC completes its Fact Sheet, DEP will include it in DEP's appropriate application packages.

There are DEP programs where the project applicant will be conducting ground disturbance activities long before the project applicant applies to DEP for a permit. To the extent possible, DEP will work with PHMC to inform the public not to disturb archaeological resources before notifying PHMC.

**I. HISTORIC STRUCTURES**

When PHMC receives the Cultural Resource Notice from the project applicant, it may determine that:

1. The proposed activity affects a structure that is an historic resource listed on the National Register of Historic Places, or
2. It considers a structure on the site of the proposed activity to be eligible for listing on this Register. In making this judgment, PHMC uses criteria A-D of the National Register of Historic Places determinants of significance (36 CFR 60.4).

It is DEP's responsibility to require its applicants to notify PHMC. Once DEP is assured that PHMC has been notified, DEP will proceed to review and grant or deny the permit or plan approval, based on DEP's requirements.

It is PHMC's responsibility to make its determination and, where the applicant's proposed activity could impact a historic structure, work with the applicant in the creation of a mitigation plan to protect the structure.

## **J. ADDITIONAL INFORMATION REQUESTED BY PHMC**

### **1. Photographs**

*The National Register of Historic Places designates 50 years and older as the cutoff age for evaluating historic properties. However the PHMC requests that applicants submit information and photographs of all structures over 40 year age. This policy is in place for several reasons:*

- a. Applicants are sometimes uncertain as to the age of the buildings within their project area. By notifying the PHMC of all buildings over 40 years of age, the applicant is more likely to include potentially historic resources in their submissions. The staff at the PHMC is trained in dating the ages of historic resources.
- b. Buildings constructed within the past 50 years are not usually evaluated for their eligibility, except in certain cases. For example, properties achieving exceptional importance within the past 50 years may be considered eligible for National Register. Therefore, by reviewing properties 40 years of age and older, the PHMC is afforded a slightly greater opportunity to evaluate such historic resources.
- c. Finally, development projects are often constructed over a period of several years, especially if the project is phased. A building in the project area that was 45 years old at the time of permit approval, may become 50 years old during the construction period. In such cases, the effects on the building must be taken into account long after the development plans have been approved. By notifying the PHMC of the existence all buildings over 40 years of age, long term project effects on the potentially historic resources can be considered during the planning process.

### **2. Construction Drawings**

PHMC requests that project applicants include construction drawings with their Cultural Resource Notice. Such drawings assist PHMC in making a better determination than the narrative alone.

On the other hand, in particular for activities involving a lot of demolition and construction, providing many construction drawings may become



costly and burdensome. Moreover, not all construction is equally important. It may be useful for the applicant to check with PHMC to clarify what is actually needed.

DEP includes this request on the Cultural Resource Notice. The applicant may respond to this request at the applicant's discretion.

#### **K. NATIONAL REGISTER OF HISTORIC PLACES**

National Register Criteria is included in this policy only so that DEP staff can inform project applicants, when asked. It is PHMC's responsibility to apply these criteria when making its determinations.

According to the U.S. Department of the Interior, National Park Service, National Register Bulletin No. 15: "How to Apply the National Register Criteria for Evaluation," there are four criteria to consider.

- Criterion A: Event: Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.
- Criterion B: Person: Properties may be eligible for the National Register if they are associated with the lives of persons significant in our past.
- Criterion C: Design/Construction: Properties may be eligible for the National Register if they embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.
- Criterion D: Information Potential: Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.

PHMC will indicate its determination in a written response to the project applicant. PHMC will respond within 30 days from the date it receives the Notice (as indicated by the return receipt).

#### **L. CONFLICT RESOLUTION**

When bureaus and programs become aware of disagreements between the project applicant and PHMC, they should notify their program counsel and the DEP Policy Office.