

COMMONWEALTH OF PENNSYLVANIA COASTAL RESOURCES MANAGEMENT PROGRAM

394-0300-001 TECHNICAL GUIDANCE DOCUMENT

(Includes Routine Program Changes to 2003)

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Pennsylvania Coastal Resources Management Program
Pennsylvania Department of Environmental Protection
Harrisburg, Pennsylvania

The Coastal Resources Management Program is partially financed by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (P.L. 92-583) as amended.



**COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection**

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
Coastal Resources Management Program

DOCUMENT NUMBER: 394-0300-001

TITLE: Commonwealth of Pennsylvania Coastal Resources Management Program (CRMP) Guidance Document

EFFECTIVE DATE: March 31, 1999
Minor program changes approved by the Federal Office of Ocean and Coastal Resources Management were added to the document on May 3, 2008.

AUTHORITY: Governor's Executive Order 1980-20
Federal Coastal Zone Management Act (P.L. 92-583), as amended

POLICY: The Department will ensure that all pertinent activities that affect any land or water use or natural resource of Pennsylvania's coastal zones are conducted in a manner consistent with the policies of the Pennsylvania CRMP.

PURPOSE: This document provides technical guidance to all levels of government and the public to ensure that their activities which affect Pennsylvania's coastal zones, are undertaken in a manner consistent with the policies of Pennsylvania's CRMP.

APPLICABILITY: This guidance applies to the general public, all levels of government, and others who submit applications for state permits, federal assistance, federal licenses and permits, or undertake federal development activities or Outer Continental Shelf activities which affect any land or water use or natural resource of Pennsylvania's coastal zones, regardless of project location. Specific counties where this review will occur are Erie, Delaware, Philadelphia, and Bucks counties.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes 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: 145 pages

LOCATION: Volume 31, Tab 1

NOTE TO READERS

In August, 1980 the Pennsylvania Department of Environmental Protection submitted its *Coastal Resources Management Program and Final Environmental Impact Statement (FEIS)* to the federal Office of Ocean and Coastal Resources Management for approval. Shortly thereafter, the Pennsylvania CRMP was approved, and the FEIS became the official Program document, upon which all federal consistency determinations and grant award decisions would be based.

In 1997, it was realized that even though formally approved Routine Program Changes had been incorporated into the “Original FEIS”, the 17 year old document had become obsolete. The “Original FEIS” did not reflect the present character or direction of the Pennsylvania CRMP, and contained a conglomerate of unnecessary FEIS related information and discussions. A major edit was needed!

In 1998, an edited version was prepared from the “Original FEIS”, resulting in this CRMP document called the “Guidance Document”. The “Guidance Document” contains all information relevant to the Pennsylvania CRMP, including up-to-date Routine Program Changes, policies, special management concerns, program authorities and organization, and intergovernmental/public coordination and review mechanisms. Additionally, changes have been made to facilitate the document’s use.

The “Original FEIS”, which also contains up-to-date Routine Program Changes, continues to be the official CRMP Document and is still available only in hard copy, upon request from the Pennsylvania CRMP.

The “Commonwealth of Pennsylvania Coastal Resources Management Program Guidance Document” can be downloaded from the Department’s World Wide Web site located at www.depweb.state.pa.us. The “Commonwealth of Pennsylvania Coastal Resources Management Program Guidance Document” is a Final Document on the Web. It’s Guidance Document number is 394-0300-001.

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PROGRAM SUMMARY

The Pennsylvania Coastal Zone consists of two widely separated coastal areas. At the extreme northwest corner of the state, a largely rural shoreline stretches 63 miles along Lake Erie between the borders of Ohio and New York. The City of Erie, the third largest city in Pennsylvania (1990 population) in the Lake Erie Coastal Zone. Across the state in the extreme southeast corner is the Delaware Estuary Coastal Zone. The Delaware River forms a 57 mile segment of largely urbanized coastal area from the furthest extent of tidal influence near Morrisville to the border with the State of Delaware. This segment contains the City of Philadelphia, the fifth largest city in the United States (1996), and the largest city in Pennsylvania (1990). Both coastal areas share common concerns, but there are also coastal issues which are of more significance to one area than the other. Pennsylvania is just one of two Coastal states nationally with coastal boundaries in two distinctly different coastal management regions. Both Pennsylvania and New York have boundaries in the Great Lakes and the North Atlantic regions.

Issues

The Pennsylvania CRMP, in addressing the major coastal resource management issues of state, federal, and local concern, has developed policies in 11 areas to guide state decision-making in the coastal zones. These areas are:

1. Coastal Hazards
2. Dredging and Spoil Disposal
3. Fisheries Management
4. Wetlands
5. Public Access for Recreation
6. Historic Sites and Structures
7. Port Activities
8. Energy Facility Siting
9. Intergovernmental Coordination
10. Public Involvement
11. Ocean Resources

Management Techniques

Pennsylvania CRMP combines multiple authorities and programs of the Commonwealth into a set of regulatory and nonregulatory policies. These policies are applied in a uniform fashion to address the 11 coastal issues throughout the Lake Erie and Delaware Estuary Coastal Zones. All state agencies are directed to comply with the enforceable policies of the management program through an Executive Order. The Commonwealth agencies responsible for carrying out the nonregulatory policies included in the management program have entered into memoranda of understanding with the Department of Environmental Protection. These Memoranda of Understanding establish operating procedures between these agencies and the Department. The memoranda of understanding are not required for purposes of establishing and maintaining program approval.

The regulatory aspect of the program is centered on the following state authorities:

1. Dam Safety and Encroachment Act (controls obstructions and encroachments in wetlands and in the beds of Lake Erie and the Delaware River);
2. Floodplain Management Act;
3. Bluff Recession and Setback Act
4. Clean Streams Act, as amended; and
5. Air Pollution Control Act, as amended.

All activities proposed for areas within the coastal zone which are subject to the Dam Safety and Encroachments Act, the Floodplain Management Act, and the Bluff Recession and Setback Act subject to the management program. Activities throughout the coastal zone which are subject to the Clean Streams Law and Air Pollution Control Act are also be subject to the management program. These and other regulatory authorities which are incorporated into the management program are discussed in Appendix A.

The program authorities which are delegated for local administration based on state standards, are the Floodplain Management Act, administered by the Department of Community and Economic Development and the Department of Environmental Protection, and the Bluff Recession and Setback Act, administered by the Department of Environmental Protection. A third program authority which has a provision for delegation for local administration based on state standards is the Dam Safety and Waterway Management Act, administered by the Department of Environmental Protection.

Planning and technical assistance is a large component of the nonregulatory aspects of the Pennsylvania CRMP. Major activities undertaken include:

1. Grants to local governments for updating comprehensive plans, zoning ordinances, and regulations.
2. Grants to local/regional agencies to encourage additional public access at specific sites along the shorelines of Lake Erie and the Delaware River.
3. Technical assistance to property owners to provide advice on the best techniques for preventing shoreline erosion/bluff recession and protecting shoreline property.
4. Planning assistance to the Ports of Erie, Philadelphia, and Chester.
5. Financial assistance to the Pennsylvania Fish Commission to develop a comprehensive coastal fisheries management plan for the Delaware Estuary and Lake Erie.
6. Development of a process to streamline and simplify regulatory processes in the coastal areas.
7. Acquisition of wetlands and coastal access sites through the application of various grant programs.
8. Small scale preservation and restoration projects of recreation and historic sites.

Program Monitoring and Evaluation

The CRMP monitors the activities of the state agencies through:

1. Individual review of state permits in the coastal area.

2. Periodic review of locally administered state authorities.
3. Various project review committees such as the Coastal Zone Advisory Committee, UWAG, the Environmental Review Committee, and the Agency Coordination Meetings.
4. Federal Consistency Reviews
5. Review of the *Pennsylvania Bulletin* which provides official notice of actions of the Commonwealth.

Implementation of the program is accomplished through the statutory provisions networked into the program and reliance upon the Executive Order. In the case of the Bluff Recession and Setback Act and the Floodplain Management Act which are administered by local governments, the Department can bring judicial action against a municipality which it finds has failed to comply with the provisions of the acts or the regulations. Enforcement of the program is facilitated by the fact that all of the five major regulatory authorities are administered by the Department of Environmental Protection, the lead CRMP agency.

The state agencies subject to the Executive Order are:

1. Department of Community and Economic Development
2. Department of Environmental Protection
3. Department of Conservation and Natural Resources
4. Department of Transportation

State Agencies bound to comply with the management program by a Memorandum of Understanding are:

1. Fish and Boat Commission
2. Historical and Museum Commission
3. Public Utility Commission

In addition, navigable waters, air, wetlands, and all other public trust resources of the Commonwealth are protected by Article I, Section 27, of the Pennsylvania Constitution. The constitutional provision mandates that all state agencies, independent boards and commissions, and executive departments conduct their activities in a manner which protects these public trust resources of the Commonwealth.

Conflict Resolution

Most conflicts which arise during implementation of the program are resolved through informal staff level discussions. In those instances where conflicts cannot be resolved informally, a number of legal and administrative mechanisms are available to resolve the conflict. The legal mechanisms available to agencies, groups, and individuals are the legislative process, the Environmental Quality Board, the Environmental Hearing Board, citizen suits under Article I, Section 27 of the Pennsylvania Constitution, Mediation services provided by the Department and other judicial processes. Administrative mechanisms include intradepartmental processes within the Department of Environmental Protection and interdepartmental processes between state agencies which are networked into the program. These processes involve the Governor, the Governor's cabinet, the coastal zone advisory committee, as well as informal staff level discussion.

Coastal Boundary

The boundary of the Lake Erie Coastal Zone is as follows:

1. Extends to the international boundary with Canada in Lake Erie.
2. Extends from 900' to over three miles inland from the shoreline. This area includes erosion hazard areas, wetlands, and floodplains in which the state can manage activities with direct and significant impacts on coastal waters.
3. Extends on land and water to the borders with Ohio and New York.

The boundary of the Delaware Estuary Coastal Zone is as follows:

1. Extends to the boundary with New Jersey in the Delaware River.
2. Extends from 1/8 to over 3-1/2 miles inland from the banks of the Delaware. This area includes wetlands and floodplains in which the state can manage activities with direct and significant impacts on coastal waters.
3. Extends on land and in water from the upper extent of tidal influence near Morrisville, Pennsylvania, including all tidal tributaries to the border with Delaware.

In both areas the boundary excludes lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents.

Program Funding

The Pennsylvania CRMP is financed through funds provided by annual grants from the National Oceanic and Atmospheric Administration (NOAA) pursuant to Sections 306A and 309 of the Coastal Zone Management Act, as amended, and state funds used to match the federal funds. Up to 50% of the costs of program implementation can be funded with federal monies, except for Section 309 (Enhancement Grants Program) which is 100% federally funded. Approximately \$1.3 million will be available annually in federal funds to assist the Commonwealth in carrying out its management program. In addition, the state is eligible for funding from the Coastal Nonpoint Pollution Control Programs. This is a mandatory Program requiring states to develop a Program to address Coastal Nonpoint Source Pollution. Limited federal funds are available, but require a 50% non federal match. As a result of implementing the CRMP, institutional, environmental, social, and economic changes have occurred in the two coastal areas.

The following institutional changes have occurred as a result of the CRMP:

1. The Executive Order and Memoranda of Understanding serve to focus the efforts of state agencies, independent commissions, and executive departments on the policies of the management program. This has resulted in an increased level of coordination and information exchange between state agencies and the CRMP.
2. Uses and resources that are in the national interest are considered in state decision-making.
3. Measures to simplify coastal regulatory procedures and improve intergovernmental coordination in the management of coastal resources have been implemented.
4. Procedures to ensure the consistency of federal actions in the CRMP have been instituted.

Environmental changes have occurred with the Commonwealth's implementation of its floodplain, wetlands, and erosion hazard setback authorities. Management of floodplain areas have required local participation in the National Flood Insurance Program, prohibitions against construction of certain special hazards in floodplains, and regulation of:

1. Any obstruction otherwise regulated under the Dam Safety and Encroachments Act.
2. Any flood control project constructed, owned, or maintained by a governmental unit.
3. Any highway or other obstruction, constructed, owned, or maintained by the Commonwealth or a political subdivision thereof.
4. Any obstruction owned or maintained by a person engaged in the rendering of a public utility service.

The Dam Safety and Encroachments Act gives the state authority to protect wetlands. Dams, water obstructions and encroachments proposed in or otherwise affecting wetlands will meet performance standards as stated in Chapter 105 of the Pennsylvania Code of Regulations. These standards require that the maintenance of the character and function of coastal wetlands be a primary consideration for the permitting of any action occurring in those wetlands.

Provisions of the Bluff Recession and Setback Act requires structural setbacks in erosion hazard areas. This will help to slow the rate of bluff erosion caused by construction and land clearing activities too near the bluff crest and the additional overland runoff they induce. It prevents structures, septic tanks, public infrastructure such as sewer and water lines and other materials from falling into Lake Erie, thereby reducing a potentially hazardous situation in the near-shore areas of the lake. Ultimately, it safeguards the public from hazardous development.

Social changes have occurred as a result of increased efforts to provide recreational access to the waters of Lake Erie for sightseers, pier fishermen and boaters. Additional access sites for pedestrians coupled with the present efforts at stocking salmonids in Lake Erie, and improving water quality in the Lake Erie and Delaware Estuary have increased recreational opportunities to millions of people in the Commonwealth.

Economic changes resulting from program implementation are as follows:

1. Decrease public cost for disaster assistance as a result of inappropriate activities in flood and erosion hazard areas.
2. Decrease the cost to individuals and corporations of securing permits for coastal activities as a result of faster, more streamlined permitting systems and improved intrastate coordination and state/federal coordination.
3. Provide increased opportunities for water dependent industry along both waterfronts.
4. Provide incentive for expanding economic development in port areas.
5. Decrease in the value of some property that is subject to the regulatory aspects of the management program. This decrease, however, is most often offset by the public values provided by the natural function of wetlands and floodplains, and decrease of public payments for victims subject to flooding and erosion losses and reduction of costs of replacing facilities constructed with public funds.

6. Increase recreational business opportunities as more people take advantage of increased recreational opportunities provided by the program.

In addition to these major improvements to the overall management structure, the CRMP also has made a number of other improvements to the management system. These improvements include the following:

1. Selection of geographic areas within the coastal boundary that are of particular concern to the state, and implementation of special management techniques for these areas.
2. Implementation of special planning procedures to work toward the resolution of specific problems in the following four areas:
 - Shoreline erosion and bluff stabilization
 - Shorefront access and protection
 - Energy facilities
 - Wetlands protection
3. Implementation of measures to improve public awareness of coastal issues and increase public participation in coastal decision-making processes.
4. Implementation of up to date data storage programs to allow for effective and efficient coastal management.

What The Program Does Not Do

The CRMP is designed to provide solutions to coastal problems and issues that have a direct and significant impact on the coastal zone. However, it is not designed to:

1. Substantially alter the respective governmental jurisdiction over coastal resources, activities or land uses. Agencies currently having responsibility for management of these resources and activities continue to exercise their authorities in accordance with the policies, standards, and evaluation procedures established by the CRMP. Three exceptions to this are: a) the local administration of state erosion setback regulations along the Lake Erie shoreline; b) the City of Philadelphia's administration of their air quality regulations; and c) state control over water obstructions and encroachments in the Delaware River within the City of Philadelphia (formerly these were under the control of the City of Philadelphia).
2. Control all development in or near the coastal zone. Development is permissible and encouraged in the coastal zone as long as it meets certain performance standards in wetlands and floodplains in both coastal zones, and erosion hazard areas along Lake Erie, and air and water quality regulations throughout the coastal zone.
3. Change the existing patterns of public and private shorefront ownership, except that additional public recreational access is encouraged through acquisition of suitable properties, when they are available, by traditional acquisition programs.

Areas of Controversy

Throughout the process of program development, some agencies and individuals have raised issues of concern regarding certain aspects of the program.

The arguments concerning these issues have been that:

1. The program was an effort by the state to exercise comprehensive control over all land use in the coastal zone.

The major goal of the CRMP is to strengthen the capacities of the state and local units of government to manage the coastal resources of the Commonwealth more efficiently, while addressing specific issues of state and local concerns including the encouragement of economic development and the protection of important natural resources. In so doing, the program recognizes the long standing authority vested in local governments to manage local affairs and it is designed to assist them wherever possible in these efforts. The program *does* not create a new layer of government at the federal, state, or local level. The CRMP is not a zoning program. Coastal zone management in the Commonwealth is not based on, and does not advocate, federal or state comprehensive land use regulation. Specific concerns of the CRMP, such as water quality improvement, bluff recession hazards, and floodplain development, can be and are addressed through specific state and local programs without intruding on the fundamental responsibilities of municipalities for land use planning and zoning. At the same time, local governments are encouraged to consider and, if possible, incorporate coastal concerns - both problems and opportunities in carrying out municipal land use planning, subdivision and zoning efforts.

2. The program adds another layer of bureaucracy.

Other state agencies and bureaus within the Department of Environmental Protection had expressed this concern. However, the CRMP has demonstrated that through its review and monitoring of state agency activities within the coastal area, other agencies are apprised of projects and activities concurrently. Formerly, agencies and departments may not have learned of projects outside their purview until late in project development. This effort to improve state agency coordination results in fewer project delays and better decision-making by the responsible state agencies.

3. The CRMP would impede or deny economic growth and development in the coastal areas because of an excessive environmental orientation.

The CRMP does not discourage appropriate economic growth in coastal areas. In fact, the program has designated development opportunity areas as special management areas that are used to accommodate growth and economic development. In addition, several of the state's coastal policies encourage economic development. The state will permit development activities to occur provided they have met any regulatory standards to which the activities may be subject. Finally, the CRMP improves and streamlines the permit decision-making process in order to help encourage appropriate economic development.

CHAPTER 1 - INTRODUCTION AND OVERVIEW

COASTAL ZONE MANAGEMENT IN PENNSYLVANIA

According to the definition in the federal Coastal Zone Management Act, Pennsylvania qualifies as a “coastal state” because of two widely separated areas. The 63-mile long Lake Erie shoreline and the 57-mile segment of the tidal Delaware River in Pennsylvania are both eligible for coastal zone management. Interestingly, Pennsylvania is the only state in the country, other than New York, with two such widely separated coastal zones. **See Figure i-1.**

COASTAL ZONE PROBLEMS AND ISSUES

During the four year period in which the CRMP was being developed, many different problems and issues affecting Lake Erie and the Delaware Estuary were identified, discussed, and researched. Elected officials, governmental agencies, citizens, scientists, shorefront industries, and previously prepared studies were consulted, and a long and comprehensive list of problems and issues was identified.

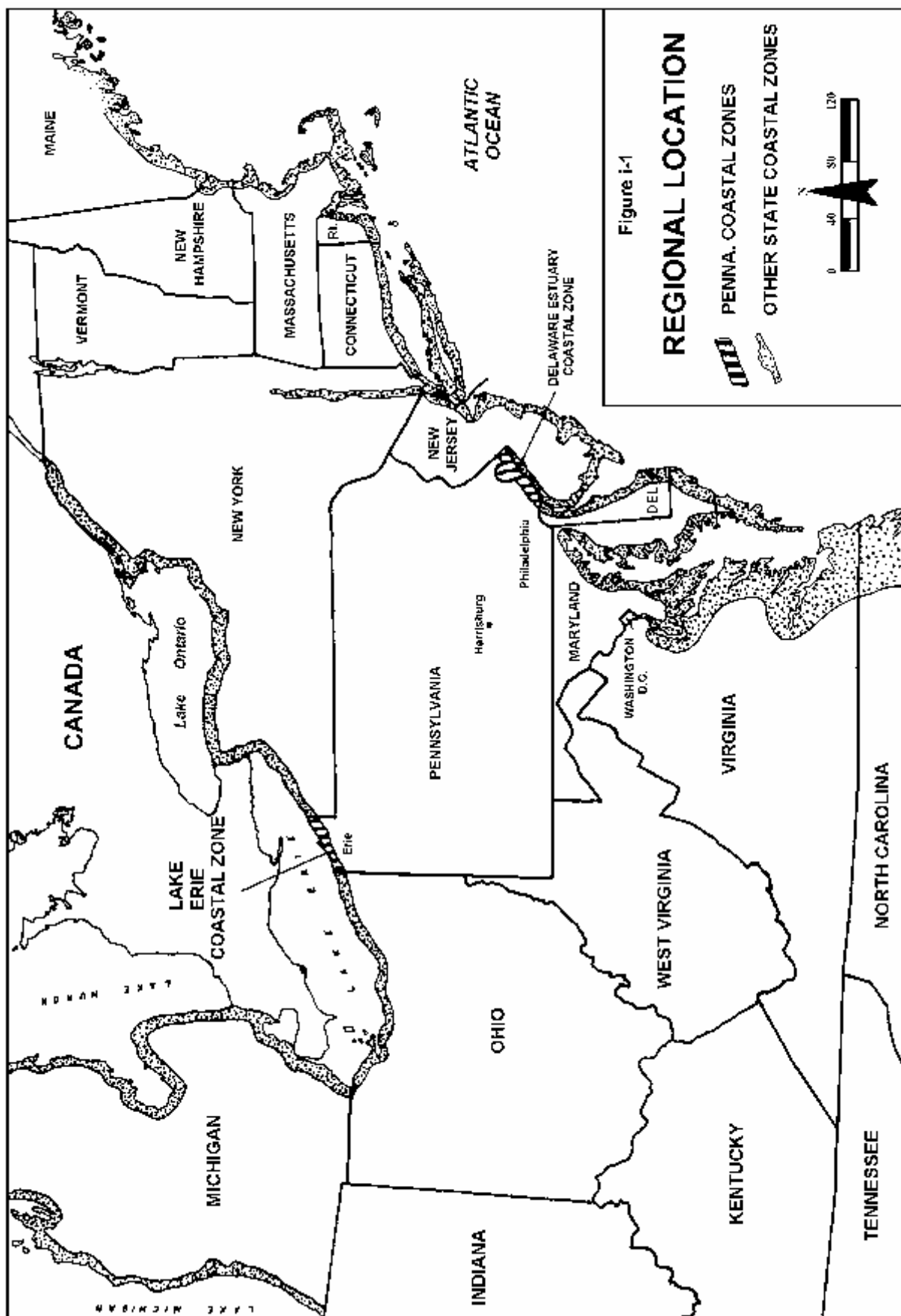
After a good deal of debate and discussion, the large, comprehensive list of problems was selectively narrowed to allow the CRMP to focus on 10 major problem areas. These problems and issues are either concentrated in coastal areas or are so important that it was determined that they must be immediately addressed by the management program.

Other problems, identified and discussed during the planning process, may be addressed at some time in the future if they become major coastal issues and have direct and significant impacts on coastal waters.

The problems and issues briefly identified below are the central focus of the CRMP. Additional detail appears in Chapter 2 which describes the coastal policies and Pennsylvania’s regulatory and administrative authorities.

1. Coastal Hazards: Historically, development that has been permitted to occur too near the edge of the bluffs along Lake Erie has suffered major damage from erosion. Man-made structures constructed at the foot of the bluff to provide protection from erosion often interfere with water currents, thus aggravating shorefront problems. In addition, many of the state’s coastal areas have experienced recurring, predictable flooding problems because of a lack of awareness or concern with the extent of the floodplain.
2. Dredging and Spoil Disposal Activities: Dredging is an activity vital to the economic health of Pennsylvania’s ports. However, areas suitable for disposal of dredged materials are extremely limited and disposal may prohibit other coastal activities.
3. Coastal Fisheries: Both of Pennsylvania’s coastal areas once had significant commercial fisheries. In 1896, the Delaware River produced 20 million pounds of shad and 21 million pounds of oysters. Commercial fishing in Pennsylvania’s portion of the Delaware is practically nonexistent today.

In the early 1900’s, Lake Erie’s commercial fishing industry produced 300,000 pounds per year. The catch declined to less than 90,000 pounds per year in the 1960’s, but has since improved to about 110,000 pounds annually. Recreational fishing in Pennsylvania continues to increase as water quality improves. However, anglers and boaters have limited access to both Lake Erie and the Delaware River.



4. **Wetlands:** Wetlands constitute a critical natural resource of national and statewide significance, providing fish and wildlife habitats, natural flood control, improved water quality, groundwater recharge, and environmental diversity. However, the environmental value of wetlands has not been appreciated until recently. Many coastal wetland areas have been lost to bulkheading, spoil disposal, and development. Thus, effective management and protection of the remaining wetlands is vital.
5. **Public Access for Recreation:** In Pennsylvania, there continues to be a growing demand for access to Lake Erie and the Delaware River to provide both active and passive recreational activities. These demands increase as water quality improves. Along the shores of Lake Erie, many potential access areas are in private ownership, while the state-owned Presque Isle Peninsula is overcrowded on busy summer weekends. Limited public areas exist along the Delaware River, because much of the shorefront is intensively used by industry, port facilities, and utilities.
6. **Historic Sites and Structures:** The Pennsylvania coastal zones possess a large concentration of historic sites; yet, there was little conscious effort to preserve historic resources. Potentially, valuable buildings are lost each year because of lack of interest, insufficient knowledge, and the absence of timely intervention.
7. **Port Activities:** Pennsylvania's ports represent a vital link between water and the inland transportation systems. Changing vessels and cargo handling techniques have made certain existing port facilities obsolete. Some port areas on Lake Erie and along the Delaware River are underutilized and have fallen into disrepair. These areas are no longer economically competitive and are visually unattractive.
8. **Energy Resources:** There is a great deal of interest at the national, state and local levels, in the potential of the Commonwealth's coastal areas to meet future energy needs. Pertinent activities include the siting of energy facilities in both coastal zones, the development of natural gas resources in Lake Erie, and Outer Continental Shelf oil and gas development affecting the Delaware Estuary. However, a major problem hampering the full realization of potential energy development in the coastal areas is the concern of many citizens and special interest groups that energy resources may be developed at the expense of the environment.
9. **Intergovernmental Coordination:** The coastal zones are affected by many regulatory programs administered by various state agencies with differing mandates and regulations. Uniform, enforceable policies were needed to prevent unnecessary delays and resolve potential conflicts. Moreover, it is a requirement of the Federal Coastal Zone Management Act that all coastal management programs adopt, at a minimum, the requirements of the Clean Water and Clean Air Acts. The achievement of these standards is critical to the overall economic and environmental health of the state's two coastal zones. Of particular importance to these areas is the need for clean water. Clean water is important to various manufacturing processes, residential homes, fish and wildlife habitat, and certain recreational activities. Without a continuous supply of clean water, serious problems will develop which may limit manufacturing, cause health problems, reduce or imperil aquatic and terrestrial ecosystems, and prohibit water related recreation.
10. **Public Involvement:** There was a lack of public awareness and understanding of coastal issues and problems. Most people were unaware of recent improvements in the quality of Pennsylvania's waterfront environments or the potential of the coastal zones to accommodate the compatible goals of economic growth, recreation, and aesthetics. There is a need for the provision of adequate information on these issues and opportunities for getting the public involved in seeking solutions.

DEFINING THE COASTAL ZONE BOUNDARY

Methodology

The federal Coastal Zone Management Act defines the coastal zone as; coastal waters and the adjacent shorelands strongly influenced by each other and in proximity to shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends inland from the shoreline only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership.

Pennsylvania determined its original coastal zone boundaries in accordance with the regulations of the federal Coastal Zone Management Act and utilized the expertise of diverse coastal interest groups.

The lateral and “seaward” boundaries were based on obvious criteria such as international and interstate boundaries, and the extent of tidal influence. The inland boundaries were not based on such obvious phenomena, but were developed to include all uses with direct and significant impacts on the coastal waters.

Direct and Significant Impacts

Through meetings with the local Coastal Zone Steering Committees, the CRMP developed a definition of direct and significant impacts.

- The term Direct is defined as a causal relationship in which the consequence of an action or use exerts an impact upon the coastal zone through an identifiable link or process, and
- The term Significant Impact is defined as a result of any activity which has a more than negligible effect on the coast or on coastal resources.

By using this definition and incorporating the needs and desires of the coastal residents, businesses, industries, and interest groups, and realizing the need to address national priorities such as energy development, wetland preservation, and port revitalization, it was determined that the following uses of the coastal areas constitute direct and significant impacts and would, therefore, be subject to management by the coastal zone program.

1. Activities associated with the placement and design of structures in coastal erosion and flood hazard areas, including the expenditure of State funds for public infrastructure in flood hazard areas.
2. Dredging and spoil disposal activities which could negatively impact navigation, flood flow capacity, wetlands, environmental quality, and public interest.
3. Activities which cause both positive and negative impacts upon coastal fishery populations and their aquatic habitat.
4. Activities such as the placement of water obstructions and encroachments that could result in the degradation or destruction of tidal or freshwater wetlands, or impact the beds of Lake Erie or the Delaware River.
5. Activities with the potential for providing public access sites for both passive and active forms of recreation.

6. Activities which enhance the restoration and/or preservation of historic sites and structures.
7. Activities in port areas which affect overall port planning development, enhancement, and revitalization.
8. Activities related to energy production and energy facility siting that have the potential to cause adverse environmental impacts to sensitive ecological areas.
9. Activities which affect air quality and water quality in the coastal zone.

In accordance with the federal Coastal Zone Management Act, the Commonwealth's boundaries were then established to include these uses as they relate to coastal waters. **Figure i-2** is a schematic which graphically depicts the boundary determination.

Excluded Federal Lands

In accordance with an August, 1976, ruling of the United States Department of Justice, all lands owned, leased, held in trust, or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents, are excluded from the coastal zone.

The exclusion of federal lands does not remove federal agencies from the obligation of complying with the consistency provisions of the Act when federal actions on these excluded lands have spillover impacts that directly affect coastal zone areas, uses, or few sources.

An evaluation of federal coastal properties was conducted during the development phase of the management program, and several key sites were identified as important coastal resources. In the event such lands are declared surplus, the Commonwealth would have an interest in helping to determine the future use of these sites. Certain federal properties are currently undergoing changes in ownership. A list of excluded federal lands is found in Chapter 3.

Description of Pennsylvania's Final Coastal Zone Boundary

In each coastal zone, the boundary includes the areas over which the Commonwealth has regulatory control, either directly or through the process of networking described in Chapter 4. These areas include:

1. Floodplains of the Delaware and Schuylkill Rivers and their tidal tributaries, and the floodplains of Lake Erie and tributary streams.
2. Tidal and freshwater wetlands.
3. Erosion hazard areas along Lake Erie.
4. Riparian lands where permits for structures or fill constituting encroachments are required.

For administrative purposes, the original inland boundary in each coastal zone extends to convenient physical and cultural features and public rights-of-way, such as highways, canals, railroads, and municipal boundaries. However, over time it was realized that impacts to hydrologically connected waters and wetlands that are located outside of the original coastal zone boundary, often have a direct and significant impact upon the coastal zone. As such, formal changes have been made to Pennsylvania's coastal zone boundaries in order to include these hydrologically connected waters, wetlands and uplands on a watershed basis.

Delaware Estuary

The coastal zone boundary:

1. Extends eastward to the New Jersey state boundary which is the middle of the Delaware River.
2. Extends southward to the Delaware State boundary.
3. Extends northward to the falls at Morrisville where the tidal influence on the Delaware River ends.
4. Extends westward inland varying in width from 1/8 mile in urban areas like Philadelphia, Bristol and Chester to over 3-1/2 miles in Falls Township, Bucks County, to include floodplains of the Delaware and Schuylkill Rivers and the upper limit of tidal influence on their tributaries and tidal and freshwater coastal wetlands.

The 57-mile long Delaware Estuary coastal zone contains 35,325 acres (96.3 square miles), and encompasses all or parts of the following municipalities:

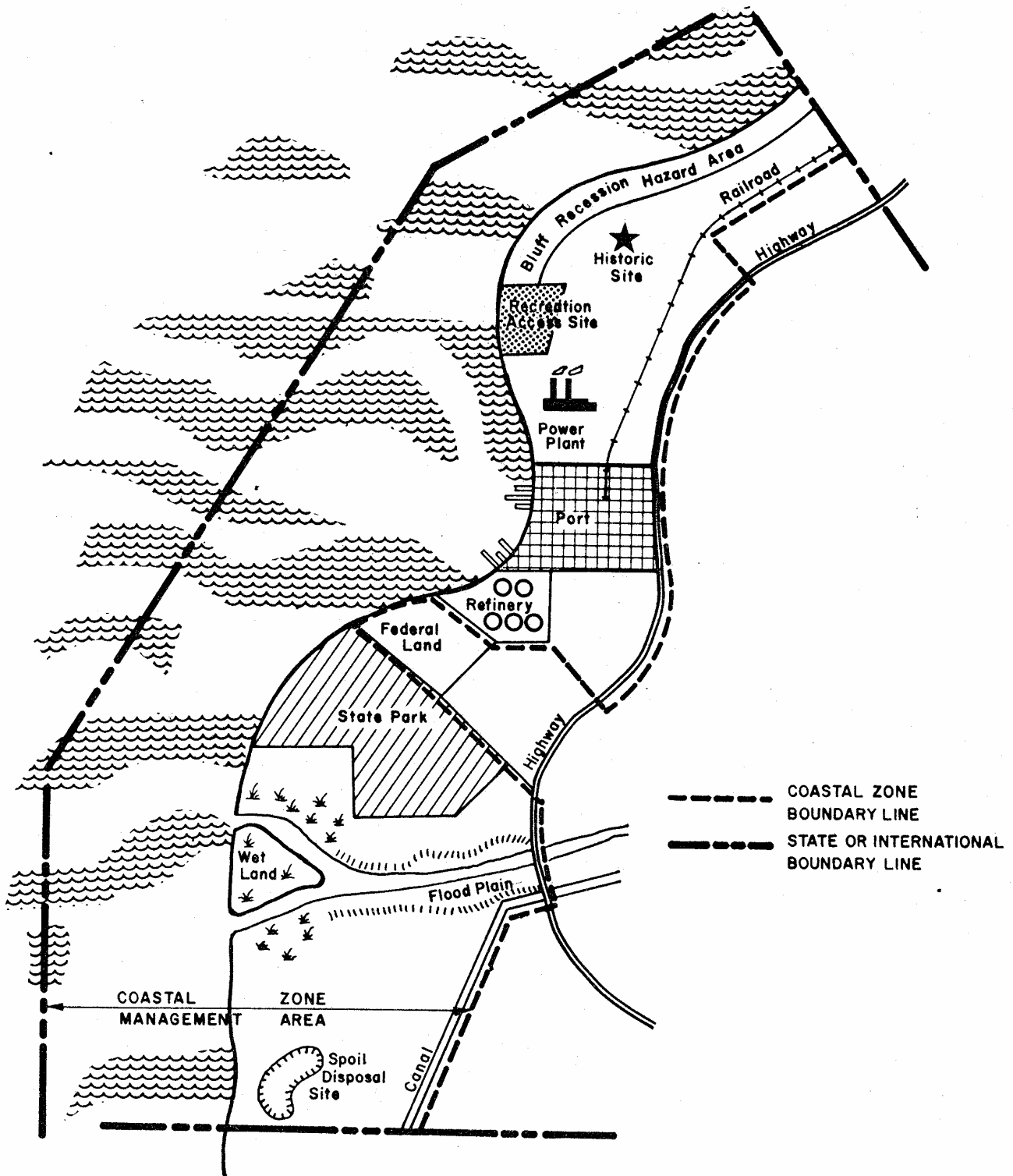
Delaware County:

Upper Chichester Township
Lower Chichester Township
Ridley Township
Tinicum Township
Marcus Hook Borough
Trainer Borough
Eddystone Borough
Ridley Park Borough
Prospect Park Borough
Norwood Borough
Folcroft Borough
Darby Township
Chester City

City of Philadelphia

Bucks County:
Bensalem Township
Bristol Township
Falls Township
Bristol Borough
Tullytown Borough
Morrisville Borough
Hulmeville Borough
Langhorne Borough
Langhorne Manor Borough
Lower Southampton Township
Middletown Township
Penndel Borough

**FIGURE i-2
SCHEMATIC DIAGRAM OF THE
PENNSYLVANIA COASTAL ZONE BOUNDARY**



The coastal counties of Bucks, Delaware and Philadelphia have a total estimated 1995 population of 2,604,760.

Figure i-3 is a map which graphically depicts the Delaware Estuary Coastal Zone.

Lake Erie

The coastal zone boundary:

1. Extends northward in Lake Erie to the international boundary with Canada.
2. Extends eastward to the New York State border.
3. Extends westward to the Ohio State boundary.
4. Extends southward inland varying in width from 900' within places in Erie City to more than three miles in Harborcreek and North East Townships, to include the floodplains of Lake Erie and tributary streams within the coastal zone, bluff hazard recession areas, and coastal wetlands.

The 63-mile long Lake Erie coastal zone contains 59,244 acres and encompasses all or parts of the following municipalities:

Springfield Township	Erie City
Girard Township	Lawrence Park Township
Lake City Borough	Harborcreek Township
Fairview Township	North East Township
Millcreek Township	North East Borough

The coastal county of Erie has a total estimated 1995 population of 280,570.

Figure i-4 is a map which graphically depicts the Lake Erie Coastal Zone.

Process for Future Boundary Change

As previously discussed, for administrative purposes, the original inland boundary in each coastal zone extends to convenient physical and cultural features and public rights-of-way, such as highways, canals, railroads, and municipal boundaries. However, over time it was realized that impacts to hydrologically connected waters and wetlands that are located outside of the original coastal zone boundary, often have a direct and significant impact upon the coastal zone. As such, formal boundary changes/expansions were necessary, and have been made to Pennsylvania's coastal zone boundary in order to include these hydrologically connected waters, wetlands and uplands on a watershed basis. In addition, boundary changes have been made concurrently during the proposal of new GAPCs, which were located outside of the current coastal zone boundary.

Future boundary changes to Pennsylvania's coastal zone can be made by any individual, group, or state agency. Boundary changes proposed by an individual or group will be accepted by each coastal zone steering committee throughout the year. Following discussion, the local coastal zone steering committee will transmit proposed boundary changes along with recommendations and documentation of support or nonsupport, to the CRMP for consideration by the Coastal Zone Advisory Committee.

Boundary changes proposed by a state agency are not sent to the local steering committees, but are sent directly to CRMP for consideration. All proposed boundary changes will be accepted by CRMP throughout the year.

ALL proposed boundary changes will be reviewed by the state Coastal Zone Advisory Committee, and if approved, the proposed boundary change will be added to (or removed from) the CRMP via the annual Routine Program Change process.

All proposed boundary changes sent to the CRMP, must contain the following information:

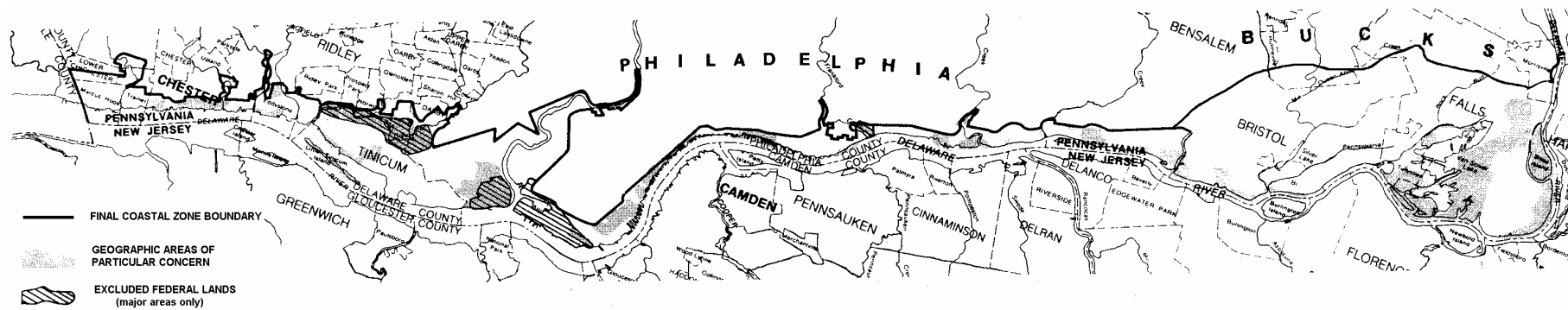
1. Purpose of boundary change,
2. How the proposed boundary was determined (i.e., property lines, watershed, etc.),
3. Names of current and new municipalities involved in the boundary change,
4. Written description of new boundary,
5. Map (preferably CRMP's) showing new boundary, and capable of being legibly reproduced,
6. The approximate area of additional coastal zone in square acres or miles,
7. If watersheds were used in the determination of the boundary, the names of the watersheds, and
8. For boundary changes sent through the local steering committee, a discussion by the steering committee (meeting minutes) voicing support or nonsupport for the change.

Early coordination with CRMP is urged prior to proposing a boundary change, in order to ensure that the change meets the requirements of the federal CZM Act.

Federal Requirements for CRMP Approval

In order to gain federal CZM program approval, the Pennsylvania CRMP was required to contain certain elements of the Federal CZM Act, as amended. The "Index to Requirements for Program Approval under Section 306 of the Federal CZM Act" can be found on the following page (**See Figure i-5**).

**Figure i-3
DELAWARE ESTUARY COASTAL ZONE**



**Figure i-4
LAKE ERIE COASTAL ZONE**

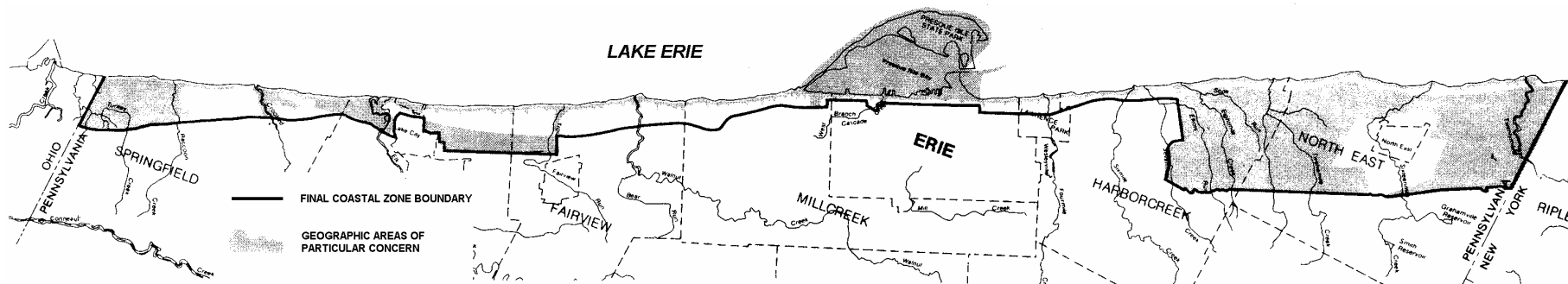


Figure i-5
INDEX TO REQUIREMENTS FOR PROGRAM
APPROVAL UNDER SECTION 306 OF THE
COASTAL ZONE MANAGEMENT ACT

Requirements	Sections of Approval Regulations	Original FEIS Page	Guidance Document Page
Sec. 306 (a) which includes the requirements of Sec. 305: 305 (b)(1) : Boundaries	923.31, 923.32, 923.33, 923.34	II-1-9	1-3
305(b)(2): Uses subject to management	923.11	II-4-2	-
305(b)(3): Areas of particular concern	923.21 923.22, 923.23	II-3-1	3-3
305 (b)(4): Means of control	923.41	II-2-1, II-4-7	2-1, 4-3
305(b)(5): Guidelines on priorities of uses	923.21	II-3-1, II-3-4	3-1, 3-4
305 (b)(6): Organizational structure	923.46	II-4-3, II-4-7	4-1, 4-3
305 (b)(7): Shorefront planning process	923.24	II-3-36	-
305 (b)(8): Energy facility planning process	923.13	II-3-16	-
305(b)(9): Erosion planning process	923.25	II-3-49	-
Sec. 306(c) which includes: 306 (c)(1): Notice; full participation; consistent with Sec. 303	923.51, 923.58, 923.55, 923.3	II-5-1	5-1
306 (c)(2)(A): Plan coordination	923.56	II-5-1	5-1
306 (c)(2)(B): Continuing consultation mechanisms	923.57	II-5-22	5-8
306 (c)(3): Public hearings	923.58	II-5-30	5-30
306 (c)(4): Gubernatorial review and approval	923.48	Note to Readers	-
306 (c)(5): Designation of recipient agency	923.47	II-4-7	4-3
306 (c)(6): Organization	923.46	II-4-3, II-4-7	4-1, 4-3
306 (c)(7): Authorities	923.41	II-2-1, II-4-4, II-A-1, II-B-1	2-1, 4-1, Appendix A
306 (c)(8): Adequate consideration of national interests	923.52	II-5-14	-
306 (c)(9): Areas for preservation/restoration	923.22	II-3-12	3-12
Sec. 306(d) which includes: 306(d)(1): Administer regulations, control development, resolve conflicts	923.41	II-4-1	4-1
306(d)(2): Powers of acquisition, if necessary	923.41	II-2-18, II-3-16	2-18
Sec. 306(e) which includes: 306(e)(1): Technique of control	923.42, 923.43, 923.44		-
306(e)(2): Uses of regional benefit	923.12	II-3-14	-
Sec. 307 which includes: 307(b): Adequate consideration of federal agency views	923.51	II-5-1	-
307 (f): Incorporation of air and water quality requirements	923.45	II-5-14	-

CHAPTER 2 - COASTAL ZONE POLICY FRAMEWORK

INTRODUCTION

The resource and legal inventories, prepared during the early phases of the Pennsylvania CRMP, have provided extensive background information on environmental, social, and economic characteristics; past and present problems; future expectations; and existing legal and institutional arrangements in Pennsylvania's two coastal areas, the Delaware Estuary and Lake Erie. This background information establishes overall state coastal policies and forms the keystone of the CRMP.

The first step in the policy development process was the identification of issues and problems. General concerns and specific local issues and problems were compiled from many sources including local governments, waterfront industries, county planning commissions, interested citizens, members of the Coastal Zone Steering Committees, and state and federal agencies.

The second step involved the formulation of general goal statements as a response to these coastal problems and as a source of guidance for the development of the CRMP. Since these goals are very general and only describe desirable end results or targets, the formulation of policies was necessary to stimulate state and local commitment to effective management of coastal resources.

The third step involved developing very specific policies to guide local and state actions. The program's policies are divided into three classifications based on the method that will be used to execute the policy as follows:

1. Enforceable/Regulatory Policies: These policies are based on enforceable legislative authorities, which regulate specific activities through direct state authorities or locally administered state authorities.
2. Direct Action Policies: These policies are based on legislative authorities, which allow a certain state agency to conduct a specific activity such as the purchase of land for public access. The agency delegated these authorities will utilize them in the attainment of the policies to the maximum extent feasible, dependent on the availability of funds and/or other pertinent resources. In instances where coastal zone management funding is used for the furtherance of these policies, the CRMP entered into inter-agency agreements when it was mutually agreed by both parties that a particular project or activity was necessary to help carry out one or more of the coastal zone management policies.
3. Encouragement Policies: These policies are not based on legislative authorities. Implementing these policies relies on the provision of funding, technical assistance, or other resources of the appropriate agency or entity. An example of an activity undertaken to carry out an encouragement policy is the provision of funds for port planning activities. The policies constitute the keystone of the CRMP and are required to be specific enough to provide:
 - A clear understanding of the program, including the identification of who will be affected and how, and
 - A clear sense of direction and predictability for decision-making.

The Federal Coastal Zone Management Act requires coastal states to identify the means by which the state proposes to manage land and water uses subject to the program, including a listing of relevant constitutional provisions, laws, regulations and judicial decisions. **Appendix A** provides a detail explanation of those authorities which will be utilized in carrying out the policies of the CRMP.

The policy framework is organized under 10 major functional headings. Under each heading there is a general problem statement. In those sections where there is more than one policy, each policy is accompanied by a specific problem statement titled “Problems Addressed”. The format for each policy under a functional heading is as follows:

- The “Policy” section, which describes that policy.
- The “Regulatory Authorities” section, depending on the type of policy, contains either the regulations or the authorities, which are used to implement the policy.
- The “CZM Actions” section, which describes the actions that will be precipitated as a result of the implementation of the specific policy.

These policies are used to guide the implementation of a functional coastal zone management program. The main objective of the CRMP is to implement the goals and policies at the local level, while at the same time ensuring a necessary degree of state involvement in addressing key issues of regional or national concern. As part of this process, the CRMP will use federal and state funds to guide and assist local and state efforts in improving coastal conditions, accommodating planned growth, and wisely utilizing valuable coastal resources.

1. COASTAL HAZARD AREAS (CHA)

Bluff erosion and coastal flooding have caused serious property damage, endangered public safety, and degraded environmental quality in the Nation’s coastal areas. While flooding in Pennsylvania is common to both of Pennsylvania’s coastal areas, bluff erosion is specific only to Lake Erie municipalities.

In Pennsylvania, fiscal constraints and lack of sufficient technical expertise have resulted in the affected municipalities addressing the problems in an uncoordinated and noncomprehensive manner, which has resulted in differing degrees of success.

POLICY 1.1: CHA/Bluff Setback and Erosion Control/Setback

PROBLEMS ADDRESSED - Policy 1.1

The bluff recession problem along Lake Erie has been documented and spatially delineated in a study developed by the CRMP titled “Shoreline Erosion and Flooding - Erie County”. Development in bluff recession hazard areas is subject to damage by bluff recession. Also, construction and land clearing activities associated with development too near the bluff crest may cause or accelerate the rate of recession by increasing the static pressure on the bluffs and increasing surface runoff and groundwater seepage.

POLICY 1.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO REQUIRE MUNICIPALITIES WITH BLUFF RECESSION HAZARD AREAS ALONG THE LAKE ERIE SHORELINE AS DETERMINED IN THE “SHORELINE EROSION AND FLOODING - ERIE COUNTY” REPORT OF 1975 TO ENACT SETBACK ORDINANCES AFFECTING STATIONARY STRUCTURES. THESE ORDINANCES WILL REGULATE CONSTRUCTION WITHIN A SPECIFIED DISTANCE FROM THE EDGE OF THE BLUFF. AT A MINIMUM, THE SETBACK DISTANCE IS COMPUTED AS THE ECONOMIC LIFE OF THE STRUCTURE TIMES THE LOCAL BLUFF RECESSION RATE PER YEAR (IN FEET). IN ADDITION, IT IS THE POLICY OF THE CRMP TO PROVIDE WRITTEN AND VERBAL GUIDANCE TO THE MUNICIPALITIES

TO ASSURE CONSISTENT AND COORDINATED ENFORCEMENT OF THE BRSA. THE CRMP WILL COMPILE ALL FIELD INTERPRETATIONS AND DEPARTMENT GUIDANCE FOR THE BRSA INTO A WRITTEN GUIDANCE DOCUMENT AND PROVIDE THE DOCUMENT TO THE MUNICIPALITIES. THE DOCUMENT SHALL BE AMENDED AND UPDATED AS NEW INTERPRETATIONS OCCUR.

REGULATORY AUTHORITY(S) - Policy 1.1

Bluff Recession and Setback Act, of May 13, 1980, which mandates coastal communities in recession hazard areas to adopt setback ordinances affecting stationary structures.

Regulation(s): Title 25 Chapter 85.1 *et seq.*, which requires certain local municipalities, under Department oversight, to develop and administer a permitting system that regulates construction activities in bluff recession hazard areas. Provisions are also made for actions in mandamus, calculation of erosion rates, interim controls, state/local joint review, and time limits for compliance with the Act and variances to the permit requirements.

CRMP ACTIONS - Policy 1.1

This policy regulates the construction of stationary structures in areas where they will likely be damaged by bluff recession during their projected life time and/or exacerbate the bluff recession problem through increased bluff weight, runoff, groundwater seepage, etc.

Coastal zone management funds are used to assist municipalities in administering setback ordinances.

POLICY 1.2: CHA/Bluff Setback and Erosion Control/Structures

PROBLEMS ADDRESSED - Policy 1.2

Proper design, placement, construction, and maintenance of shoreline protection devices are critical for ensuring that the structure protects the shoreline and do not aggravate the erosion problems. Shoreline protection structures in Pennsylvania have not always been properly designed, located or constructed in a manner that allows the structures to function as intended. Recent analysis indicates that some improperly placed structures have aggravated erosion, and that due to improper design and construction are in the process of failing.

POLICY 1.2: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO REGULATE, THROUGH PERMIT, THE SITING OF ANY WATER OBSTRUCTION OR ENCROACHMENTS ALONG LAKE ERIE, TO ASSURE PROPER PLANNING, DESIGN, CONSTRUCTION, MAINTENANCE, AND MONITORING, IN ORDER TO PREVENT UNREASONABLE INTERFERENCE WITH WATER FLOW (WHICH INCLUDES SEDIMENT LADEN BEACH ENRICHING CURRENTS) AND TO PROTECT NAVIGATION.

REGULATORY AUTHORITY(S) - Policy 1.2

Pennsylvania Constitution, Article I, Section 27. Enforcement authority is found under the provisions of The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 *et seq.*), and Administrative Code, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Sections 194, 510-1, 510-8, 510-17, and 510-20).

Regulation(s): Title 25, Chapter 105, which requires that the proposed project or action be in compliance with the standards and criteria of that chapter and title and with all other laws administered

by the Department, and that the proposed project or action will adequately protect public health, safety, and the environment through the issuance of permits.

CRMP ACTIONS - Policy 1.2

By ensuring that no person engages in activities concerning the construction, operation, maintenance, modification, enlargement, or abandonment of any dam, water obstruction, or encroachment without a written permit from the Department, potential adverse impacts to normal shoreline erosion processes can be mitigated. Also, unwise expenditures of money may be reduced. Technical assistance will be available from the CRMP to local governments and citizens to help ensure that future structures are properly designed, placed, constructed, and maintained in the coastal waters of the Commonwealth.

POLICY 1.3: CHA/Bluff Setback and Erosion Control/Stormwater Management

PROBLEMS ADDRESSED - Policy 1.3

Development occurring along Lake Erie has led to increased stormwater runoff rates through an increase in impervious surfaces, removal of vegetation, and changes in drainage patterns. The resultant increased runoff rate may lead to an acceleration of the bluff recession rate, thereby threatening existing development.

POLICY 1.3: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ASSIST ERIE COUNTY AND AFFECTED COASTAL MUNICIPALITIES IN THE PREPARATION (INDIVIDUALLY OR JOINTLY ON A WATERSHED BASIS) OF STORMWATER MANAGEMENT PLANS, AND IN THE IMPLEMENTATION OF THE PLANS BY ASSISTING THEM IN UPDATING OR AMENDING CODES, REGULATIONS, AND ORDINANCES TO REGULATE DEVELOPMENT IN SUCH A MANNER AS TO MITIGATE THE ADVERSE IMPACTS TO LAKE ERIE BLUFFS DUE TO INCREASED RATES OF STORMWATER RUNOFF (Also see Policies 1.4, 1.5, 4).

NOTE: The Storm Water Management Act of October 4, 1978, P.L. 864 (32 P.S. Sections 680.1 et. seq.) requires local governments to develop storm water management plans pursuant to guidelines promulgated by the Department. However, these local storm water management plans/ordinances are not part of the Pennsylvania CRMP. The Storm Water Management Act contains the enforceable policies that CRMP will use in its review of federal and state actions. These enforceable policies are found in Section 13 of the Act, and require any landowner and person engaged in the alteration of land that may affect storm water runoff to implement measures, which shall include actions necessary to:

- (1) assure that the maximum rate of storm water runoff is not greater after development than prior to development activities; or
- (2) manage the quantity, velocity and direction of resulting storm water runoff in a manner which otherwise adequately protects health and property from possible injury.

REGULATORY AUTHORITY(S) - Policy 1.3

Stormwater Management Act of October 4, 1978, P.L. 864 (32 P.S. Sections 680.1 *et seq.*). Under the provisions of this Act and through technical assistance, the Department will encourage the immediate preparation of stormwater management plans that include, among other things, the development of urban sediment control strategies.

CRMP ACTIONS - Policy 1.3

Erie County and affected Erie coastal communities will be assisted in the development of stormwater management plans in those areas where increased stormwater runoff may aggravate bluff recession problems. Coastal zone management funds and technical assistance will be provided to facilitate the development of stormwater management plans in these areas.

POLICY 1.4: CHA/Bluff Setback and Erosion Control/Technical Assistance

PROBLEMS ADDRESSED - Policy 1.4

The presence of higher fluctuating lake levels has caused severe instability along the bluffs overlooking Lake Erie. As the natural beaches are inundated by the higher lake levels, storm waves reach the base of the bluffs and remove unprotected vegetation and supporting bluff material. The loss of bluff material at the base will create instability and cause the vegetation mat to separate and slide off the bluff face. The denuded soils recede when exposed to the erosive forces of rain, wind, ground water flows, stormwater surface flows and seasonal freezing and thawing. The retreat or recession of the bluffs generate a severe threat to many coastal properties. Solutions to protect these properties have often proved to be extremely costly and usually have had little success in reducing erosion rates. In some instances the placement of shoreline protection or bluff stabilization structures has actually caused an increase in erosion to adjacent areas.

Furthermore, attempts at shoreline protection and bluff stabilization by property owners have revealed that they are not fully informed of the complexities of beach morphology and bluff recession, or the potential adverse effects of the improper installation of protection structures on shoreline and bluff stability.

POLICY 1.4: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO PROVIDE TECHNICAL ASSISTANCE AND ADVICE CONCERNING THE DESIGN OF STRUCTURAL AND NONSTRUCTURAL METHODS FOR SHORE PROTECTION AND BLUFF STABILIZATION.

IN ADDITION, IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO CONTINUE TO SUPPORT SCIENTIFIC RESEARCH ON SHORE PROTECTION, RECESSION RATES, LITTORAL TRANSPORT, AND OTHER ASPECTS OF THE COASTAL ENVIRONMENT OF LAKE ERIE. (Also see Policies 1.1, 1.2, 1.3, 10.2).

REGULATORY AUTHORITY(S) - Policy 1.4

Soil Conservation Law, Act of May 15, 1945, P.L. 547, as amended (3 P.S. Sections 849 *et seq.*). This act provides for the creation of conservation districts in the Commonwealth and provides the districts with the authority to administer technical assistance programs.

CRMP ACTIONS - Policy 1.4

The Erie County Conservation District covering the Erie coastal area has assisted the CRMP in the development of a technical advisory service for coastal property owners. This service will deliver timely, state of the art information to individual property owners on coastal/bluff processes and corrective measures to help stabilize eroding areas. This information will include verbal recommendations, written fact sheets, and, if requested, a detailed report of site conditions and recommended actions.

POLICY 1.5: CHA/Floodplains

PROBLEMS ADDRESSED - Policy 1.5 and 1.6

There is a great deal of national interest in mitigating flood damage. A large percentage of the damage caused by natural disasters in the United States is due to floods, with annual losses averaging about \$1.5 billion. When floods occur human life is endangered; the public must pay for rescue and cleanup efforts, factories and businesses are closed and/or damaged, transportation routes are disrupted, public services curtailed, soils eroded and homes destroyed. Unfortunately, floodplains are popular construction locations because of aesthetic attractiveness and innately level terrain.

Many of the Commonwealth's coastal municipalities have experienced re-occurring, predictable flooding problems because of a lack of awareness or concern with the extent of natural flooding.

POLICY 1.5: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM ACTING THROUGH THE DEPARTMENT AND IN CONCERT WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT TO ACTIVELY ASSIST AND TO HELP ENSURE THAT IDENTIFIED FLOOD PRONE COASTAL MUNICIPALITIES DEVELOP STATE APPROVED FLOODPLAIN MANAGEMENT REGULATIONS WHICH INCORPORATE, AT A MINIMUM, THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM AND THE REQUIREMENTS OF THE STATE FLOODPLAIN MANAGEMENT ACT. IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO REGULATE THE CONSTRUCTION OF OR SUBSTANTIAL IMPROVEMENT TO VARIOUS TYPES OF STRUCTURES AND OBSTRUCTIONS IN THE DESIGNATED FLOODPLAINS IN ORDER TO:

- (i) ENCOURAGE PLANNING AND DEVELOPMENT IN FLOODPLAINS WHICH ARE CONSISTENT WITH SOUND LAND USE PRACTICES,
- (ii) PROTECT PEOPLE AND PROPERTY IN FLOODPLAINS FROM THE DANGERS AND DAMAGE OF FLOODWATERS AND FROM MATERIALS CARRIED BY SUCH FLOODWATERS,
- (iii) PREVENT AND ELIMINATE URBAN AND RURAL BLIGHT WHICH RESULTS FROM THE DAMAGES OF FLOODING,
- (iv) IMPLEMENT A COMPREHENSIVE AND COORDINATED PROGRAM OF FLOODPLAIN MANAGEMENT, BASED UPON THE NATIONAL FLOOD INSURANCE PROGRAM, DESIGNED TO PRESERVE AND RESTORE THE EFFICIENCY AND CARRYING CAPACITY OF THE STREAMS AND FLOODPLAINS OF THE COMMONWEALTH,
- (v) ASSIST MUNICIPALITIES IN QUALIFYING FOR THE NATIONAL FLOOD INSURANCE PROGRAM,
- (vi) PROVIDE FOR AND ENCOURAGE LOCAL ADMINISTRATION AND MANAGEMENT OF FLOODPLAINS, AND
- (vii) MINIMIZE THE EXPENDITURE OF PUBLIC AND PRIVATE FUNDS FOR FLOOD CONTROL PROJECTS AND FOR RELIEF, RESCUE, AND RECOVERY EFFORTS.

POLICY 1.6: Direct Action

FURTHERMORE, IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ASSIST LOCAL MUNICIPALITIES IN THE AMELIORATION OF PERIODIC FLOODING DUE TO INCREASED SURFACE RUNOFF FROM AREAS ADJACENT TO THE FLOODWAY BY ENCOURAGING THE DEVELOPMENT, ON A WATERSHED BASIS, OF COMPREHENSIVE STORMWATER MANAGEMENT PLANS WHICH PREVENT INCREASED RATES OF RUNOFF. (Also see Policies 1.2, 1.4).

REGULATORY AUTHORITY(S) - Policy 1.5

The Floodplain Management Act of October 4, 1978, P.L. 851, No. 1978-166 (32 P.S. Sections 679.101 *et seq.*, provides for the regulation of land and water uses for flood control purposes, and imposes duties and confers powers on the Department of Community and Economic Development, the Department of Environmental Protection, and identified municipalities. The Stormwater Management Act, of October 4, 1978, P.L. 864 (32 P.S. Sections 680.1 *et seq.*). The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended, (32. P.S. Sections 693.1 *et seq.*)

Regulation(s) - Title 12, Chapter 113, which confer powers on the Department of Community and Economic Development, the Department of Environmental Protection, and municipalities to develop floodplain management programs. Title 25, Chapter 105, by which the Department of Environmental Protection regulates dams, waters obstructions, and encroachments in waters of the Commonwealth. 25 PA Code, Chapter 106, Floodplain Management, confers on the Department of Environmental Protection authority to regulate public-infrastructure in floodplains of the Commonwealth that are not already regulated by Chapter 105.

CRMP ACTIONS - Policies 1.5 and 1.6

Through the implementation of these two policies, the Commonwealth shall reduce risks of flood loss, minimize the impact of floods on human safety, health, and welfare, and preserve the natural and beneficial values associated with floodplains such as: producers of forest products, and open space, recreation, and wildlife habitat areas.

Flood prone municipalities are required to participate in the National Flood Insurance Program. In addition, the Department of Community and Economic Development has published a list of obstructions which it determined present a special hazard to the health and safety of the public or occupants or which may result in significant pollution, increased flood levels, or flows or debris endangering life and property if such obstructions are located in a designated portion of the floodplain. These obstructions are: hospitals, nursing homes, jails, new mobile home parks, subdivisions, or additions to mobile home parks and subdivisions.

Construction of any structure or commencement of any activity listed as a special hazard by the Department of Community and Economic Development's regulations in a portion of the floodplain designated by the regulations shall be prohibited except in accordance with a special exception issued by the municipality.

In addition, the Department of Environmental Protection has maintained exclusive jurisdiction to regulate:

1. Any obstruction otherwise regulated under the Dam Safety and Encroachments Act;
2. Any flood control project constructed, owned, or maintained by a governmental unit;

3. Any highway or other obstruction, constructed, owned, or maintained by the Commonwealth or a political subdivision thereof; and
4. Any obstruction owned or maintained by a person engaged in the rendering of a public utility service.

No person shall construct, modify, remove, abandon, or destroy any structure or engage in any activity specified in (1) through (4) above in the 100-year floodplain unless such person has first applied for and obtained a permit from Department.

The Department shall regulate those obstructions specified in (1) through (4) above in a manner consistent to the maximum extent possible with the standards and criteria established in municipal floodplain management regulations.

For those obstructions specified in (1) through (4) above, located in floodways or waters of the Commonwealth including wetlands, the Department must evaluate the permit applications pursuant to the requirements of the Dam Safety and Encroachments regulations (Title 25, Chapter 105, or the Pennsylvania Code of Regulations) before construction, operation, maintenance, modification enlargement, or abandonment of the obstruction.

In addition, Executive Order 1978-4 states that:

Any development of new construction of, or substantial improvements to, state-owned properties and facilities in areas designated as special hazard areas by the Federal Insurance Administration (FIA) shall comply with minimum requirements for special hazard areas. These minimum requirements are set forth in the FIA's National Flood Insurance Program.

The Department of Environmental Protection is ordered by the Governor to comply with this Executive Order. In order to comply, the Department of Environmental Protection evaluates all applicable permit applications for compliance with these FIA regulations.

2. DREDGING AND SPOIL DISPOSAL (DSD)

Dredging is an activity that is important to the economic vitality of Pennsylvania's ports and for the recovery of commercially valuable sand and gravel. To attract and encourage the retention of economically viable port industry, it is necessary to maintain an open channel to a depth of 40' in the Delaware Estuary and 29' in the channel entrance of the Erie Harbor area. Nevertheless, improper dredging, spoils disposal, and related activities can adversely impact navigation, flood flow capacity, public interest (public trust lands), and environmental quality.

POLICY 2.1: DSD/Regulation

PROBLEMS ADDRESSED - Policy 2.1

Improper dredging and spoils disposal activities can result in detrimental impacts to public interest (public trust lands), navigation, flood flow capacity, and the environment.

POLICY 2.1: Enforcement/Regulation

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ENSURE 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. (Also see Policies 2.1, 3.1, 4, 9.1, 9.2, 9.4).

REGULATORY AUTHORITY(S) - Policy 2.1

Pennsylvania Constitution, Article I, Section 27. The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 *et seq.*); and Administrative Code, Act of April 9, 1929, P.L. 177 (71 P.S. Sections 194, 510-1, 510-8, 510-17, and 510-20, provide authority to regulate dredging and spoil disposal in the coastal zones. Additional authorities available include Schuylkill River Pollution/Siltation Law, Act of June 4, 1945, P.L. 1383, as amended (32 P.S. Sections 751.1 *et seq.*); 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 16, 92, 93, 96 and 105, which provides for the comprehensive regulation and supervision of the construction, operation, and maintenance of dams, reservoirs, water obstructions, encroachments, and other actions which may affect the course, current, or cross section of any body of water in the Commonwealth.

CRMP ACTIONS - Policy 2.1

This policy protects navigation, the public interest (public trust lands), and the environment in coastal areas from adverse impacts due to commercial and channel maintenance dredging and spoils disposal, by ensuring, through increased monitoring by the CRMP, that all permits issued for these activities meet existing Department criteria. Possible permit conditions include the use of siltation screens and adherence to “dredging windows”. In addition, the CRMP will explore measures to resolve the problem of determining proper means for disposal of spoils resulting from vital channel dredging activities in coastal ports. Dredging activities are subject to all pertinent state and federal (Corps of Engineers Section 404) permits.

POLICY 2.2: DSD/Hydraulic Dredging

PROBLEMS ADDRESSED - Policy 2.2

Mechanical dredging has greater harmful environmental impacts than hydraulic dredging. Hydraulic dredging is not used in all cases, however, because of site location, availability of dredging equipment, options for dredged material disposal, and related economic factors.

POLICY 2.2: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO RECOMMEND THAT HYDRAULIC DREDGING BE USED INSTEAD OF MECHANICAL DREDGING, WHENEVER FEASIBLE. (Also see Policies 2.1, 3.1, 4, 9.1, 9.2, 9.4).

REGULATORY AUTHORITY(S) - Policy 2.2

Pennsylvania Constitution, Article I, Section 27. The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 *et seq.*).

CRMP ACTIONS - Policy 2.2

This policy ensures that in the permitting of dredging in coastal zones, consideration is given to the fact that hydraulic dredging is less environmentally damaging than mechanical dredging; and therefore, when feasible, hydraulic methods will be encouraged. Principally, hydraulic dredging is recommended in the Pennsylvania coastal zones because it generates less turbidity and silt movement than does mechanical dredging. Increased sediment movement in Presque Isle Bay and the Delaware Estuary is a

highly undesirable event. Hydraulic dredging, however, may not be appropriate in all cases. Site location, availability of dredging options for dredged material disposal, biological resources that may be adversely affected, and related economic factors, will be used to recommend the most suitable method of dredging.

3. FISHERIES MANAGEMENT (FM)

Both of Pennsylvania's coastal areas once had significant commercial fisheries. In 1896, the Delaware River system, including the estuary, produced 20 million pounds of shad and 21 million pounds of oysters. Commercial fishing in Pennsylvania's Delaware Estuary waters is practically nonexistent today. Erie's commercial fishing industry reached its peak between 1910 and 1920 with catches averaging 800,000 pounds per year. The catch declined to less than 90,000 pounds per year in the 1960's, but in the 1970's improved to 110,000 pounds annually.

Recreational fishing, meantime, has been increasing at a rapid rate in the past decades. This has led to increased demand for management programs designed to increase native stocks and introduce appropriate species in the coastal waters, as well as for additional access sites.

The waters of Pennsylvania's Lake Erie, except Presque Isle Bay, are most significantly affected by activities outside Pennsylvania's boundaries. The Delaware Estuary is a manifestation of activities throughout the Delaware River drainage basin, not just influences adjacent to or in the estuary. The management of fisheries in Pennsylvania's coastal waters represents a very complex task requiring cooperation and coordination among all the various levels of governments and agencies.

POLICY 3.1: FM/Support Fish Life

PROBLEMS ADDRESSED - Policy 3.1

Historically, the Commonwealth's coastal waters have experienced severe water quality problems. These water problems have been generated from a multitude of sources, which include inadequately treated industrial, municipal, and domestic wastes; increased turbidity due to improper dredging and spoil disposal practices; and water withdrawals for industrial, residential, and electric generation use. These activities have caused severe periodic dissolved oxygen depletion, and have introduced toxic and hazardous wastes into the waters, thereby decreasing the amount of clean water for industrial and domestic purposes. In addition, the lack of dissolved oxygen and the presence of toxic and hazardous substances have decreased the ecological carrying capacity of the coastal waters and severely impaired the opportunities for water dependent activities.

Starting in the 1960s and continuing into today, many water quality initiatives have been undertaken by federal, state and regional agencies to resolve the identified water quality problems of the Lake Erie and Delaware Estuary coastal zones. The CRMP has been involved in this movement, and will continue its involvement.

POLICY 3.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ENSURE THAT, TO THE EXTENT OF INTRASTATE CONTROL, COASTAL WATERS SHALL NOT CONTAIN SUBSTANCES ATTRIBUTABLE TO POINT OR NONPOINT SOURCE WASTE DISCHARGES IN CONCENTRATION OR AMOUNTS SUFFICIENT TO BE INIMICAL OR HARMFUL TO THE WATER USES TO BE PROTECTED OR TO HUMAN, ANIMAL, PLANT, OR AQUATIC LIFE INCLUDING COLD-WATER FISH, WARM-WATER FISH, OR MIGRATORY FISH. (Also see Policies 1.2, 2.1, 4, 9.2).

REGULATORY AUTHORITY(S) - Policy 3.1

Pennsylvania Constitution, Article I, Section 27. The Fish Law of 1959, Act of December 15, 1959, P.L. 1779, as amended (30 P.S. Sections 200 *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 16, 92, 93, and 96.

CRMP ACTIONS - Policy 3.1

This policy ensures that pertinent authorities, funds, and resources will be utilized in a manner to improve fish populations and aquatic habitats in the coastal waters of the Commonwealth.

POLICY 3.2: FM/Stocking

PROBLEMS ADDRESSED - Policy 3.2

Native fish populations in the coastal areas have been depleted by pollution, loss of habitat, overfishing, and other adverse activities. At the same time, greater demand is being placed on the coastal water by recreational anglers to provide diversified, unique, and bountiful catches.

POLICY 3.2: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO MANAGE THE COMMONWEALTH'S COASTAL WATERS IN SUCH A MANNER TO AUGMENT NATIVE STOCKS AND INTRODUCE APPROPRIATE SPECIES, ONLY AFTER CAREFUL EVALUATION, SUCH AS MUSKELLUNGE IN THE DELAWARE ESTUARY AND SALMONIDS IN LAKE ERIE IN ORDER TO PROVIDE DIVERSE, UNIQUE, AND BOUNTIFUL CATCHES FOR THE COMMONWEALTH'S COASTAL FISHERMEN.

REGULATORY AUTHORITY(S) - Policy 3.2

Fish Laws of 1959, Act of December 15, 1959, P.L. 1779, as amended (30 P.S. Section 2073).

CRMP ACTIONS - Policy 3.2

This policy ensures that stocking will take place in the Commonwealth's coastal waters in such a manner that populations of the native species can be augmented, and when appropriate new species can be introduced to provide increased recreational fishing opportunities.

POLICY 3.3: FM/Access

PROBLEMS ADDRESSED - Policy 3.3

Recreation fishing constitutes a major use of Pennsylvania's coastal waters. Sport fishing generates more dollars per fish harvested than does commercial fishing. Existing access sites in the coastal areas are not sufficient to meet current and anticipated demands of sport anglers and boaters.

POLICY 3.3: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO IMPROVE ACCESS TO THE DELAWARE ESTUARY AND THE LAKE ERIE WATERFRONTS THROUGH THE ACQUISITION OF NEW SITES AND/OR THE EXPANSION OF EXISTING SITES. (Also see Policies 5.1, 5.2, 9.1, 10.1).

REGULATORY AUTHORITY(S) - Policy 3.3:

The Fish Law of 1959, Act of December 15, 1959, P.L. 1779, as amended (30 P.S. Sections 292-295); Open Space Lands, Act of January 19, 1968, P.L. (1967) 992, (32 P.S. Sections 5001 *et seq.*).

CRMP ACTIONS - Policy 3.3

This policy focuses state agencies' attention and resources on the problem of limited boating and fishing access in the Commonwealth's coastal areas. Funding from the CRMP, and other sources available to the Pennsylvania Fish and Boat Commission may be used to help meet current and future demands for access sites for fishing and boating activities in the Commonwealth's coastal waters.

POLICY 3.4: FM/Studies

PROBLEMS ADDRESSED - Policy 3.4

Coastal fisheries management decisions require baseline data and effective methods to monitor the stability of the fish stocks. The lack of adequate information result in proposals and decision-making that have adverse impacts on fish populations and recreational and commercial fishermen. Technical information is needed concerning dredging impacts upon fishery habitat, long-term and short-term effects of dissolved oxygen depletion on fishes, impacts from the introduction of exotic species, effects of toxic wastes on fish stocks, the effects on humans who consume these fishes, commercial and recreational harvest data, and additional information to aid in determining the optimum harvest that can be permitted in coastal waters while ensuring the continued reproductive viability of the fish stocks.

POLICY 3.4: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO UNDERTAKE DETAILED TECHNICAL STUDIES OF COASTAL FISHERIES, THEIR AQUATIC HABITATS, AND ASSOCIATED ISSUES THAT IMPACT THEIR MANAGEMENT.

REGULATORY AUTHORITY(S) - Policy 3.4:

No authority required.

CRMP ACTIONS - Policy 3.4

This policy provides encouragement and will make CRMP funds available for the purpose of developing monitoring capabilities to acquire baseline information for making effective management decisions and to monitor stability of coastal fishing stocks.

4. WETLANDS

Wetlands represent a vital national resource of critical importance to the coastal areas of the Nation. In addition to providing habitat areas for fish and wildlife, wetlands provide natural flood control, improved water quality, flow stabilization, and environmental diversity. In the past, Pennsylvania has lost tremendous amounts of tidal and freshwater wetlands to draining, filling, bulkheading, and development. Additionally, the remaining wetlands are being threatened by the cumulative impacts of development that is occurring in adjacent areas.

POLICIES 4.1 and 4.2: Wetlands

POLICY 4.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES 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.

POLICY 4.2: Direct Action

FURTHERMORE, IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO PROTECT WETLANDS FROM CUMULATIVE IMPACTS ASSOCIATED WITH INCREASED RUNOFF FROM DEVELOPMENT AND OTHER ACTIVITIES OCCURRING IN ADJACENT AREAS BY ENCOURAGING THE DEVELOPMENT OF COMPREHENSIVE STORMWATER MANAGEMENT PLANS, THAT REGULATE SURFACE RUNOFF AND THE RESULTANT INTRODUCTION OF SEDIMENT, PESTICIDES, SALTS, AND TOXIC MATERIALS INTO WETLANDS. (Also see Policies 1.3, 2.1, 3.1, 9.1, 9.2, 10.3).

REGULATORY AUTHORITY(S) - Policies 4.1 and 4.2

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 I, 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.*), The 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.*), Pennsylvania Sewage Facilities Act, Act of January 24, 1966 P.L. 1535, as amended (35 P.S. Sections 750.1 *et seq.*).

Regulation(s): 25 Pa. Code, Chapters 16, 71, 91, 92, 93, 94, 95, 96, 99, 100, 102, 105, 106, 107, 109, 289, and 299.

17 Pa. Code, Chapters 45 and 47

58 Pa. Code, Chapters 75 and 133

CRMP ACTIONS – Policy 4.2

This policy ensures through regulations, permit requirements, and financial assistance from the CRMP that wetlands in the Commonwealth's coastal areas will be regulated in a manner to protect them from adverse impacts. Furthermore, the policy may protect wetlands from cumulative impacts in adjacent areas, by providing encouragement and CRMP funding for the development of comprehensive stormwater management plans that help protect wetlands from damage due to increased amounts of sediments, salts, pesticides, and other toxic materials. Any activity impacting wetlands must receive all pertinent State and Federal Corps of Engineers Section 404 permits before it may occur.

5. PUBLIC ACCESS FOR RECREATION (PAR)

There is a significant demand for access to the waterfront and shoreline of both Lake Erie and the waterfront of the Delaware River. People seek access not only for boating and fishing, but also for sight-seeing, strolling or just relaxing near the water. On both the Erie and the Philadelphia urbanized waterfronts, visitors are interested in observing "busy, working" ports. Due to physical, fiscal, and legal constraints, the demand for recreational access to the Commonwealth's coastal areas is not being fully accommodated.

POLICY 5.1: PAR/Additional Access

PROBLEMS ADDRESSED - Policy 5.1

Coastal Municipalities and the public desire additional recreation opportunities in both coastal zones. In the Lake Erie area, private ownership of lakefront property and the physical constraints presented by the bluffs, are the principal impediments to public access. In the Delaware Estuary, intensive waterfront development and private ownership constitute the major constraints.

In addition, increasing costs of land acquisition, require consideration of alternative methods of providing public access such as using funding for other than fee simple acquisition or utilizing existing public easements to the waters edge.

POLICY 5.1: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO PROVIDE ADDITIONAL PUBLIC ACCESS OPPORTUNITIES ALONG THE WATERFRONTS OF LAKE ERIE AND THE DELAWARE RIVER FOR ACTIVE RECREATION SUCH AS SWIMMING, FISHING, AND BOAT LAUNCHING, AS WELL AS FOR MORE PASSIVE ACTIVITIES SUCH AS SIGHTSEEING AND PICNICKING. (Also see Policies 3.3, 5.2, 9.1).

REGULATORY AUTHORITY(S) - Policy 5.1

Pennsylvania Constitution, Article J, Section 27. Interagency agreement through a Memorandum of Understanding between the Department and the Department of Community and Economic Development, places high priority on the development of access areas within the Commonwealth's two coastal zones. Agency authority to acquire land through purchase, gift, lease, or condemnation is conferred on the Department and the Department of Community and Economic Development respectively, through the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Sections 510-1, 510-2, 510-4, 510-5, 510-6); and the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, (71 P.S. Section 670.101).

Additionally, authority is conferred on the state through the Open Space Lands, Act of January 19, 1968, (1967) 992 (32 P.S. Sections 5001 *et seq.*).

CRMP ACTIONS - Policy 5.1

Access sites will be acquired both through the utilization of fee simple purchase, and less than fee simple arrangements. Traditional sources of funds will be utilized and supplemented whenever possible with funds from such other sources as may be available. Additionally, CRMP funds may be utilized for the design and improvement of recreational facilities.

The CRMP will attempt to provide access sites during its review of state legislation aimed at selling or transferring state lands to non-state agencies. The CRMP participation in the amendment process of departmental and state regulations may also provide opportunities to provide for additional public access.

Through its consistency review of federal development projects involving the disposal of federally owned properties, the CRMP will also attempt to provide public access sites.

When appropriate, efforts will be made to coordinate the CRMP efforts with other programs that may lead to improved recreational opportunities.

POLICY 5.2: PAR/Geographic Areas of Particular Concern (GAPC'S)

PROBLEMS ADDRESSED - Policy 5.2

There are two types of Geographic Areas of Particular Concern (GAPC) identified for the Lake Erie and Delaware Estuary coastal zones: designated GAPC and nominated GAPC. Designated GAPC are those over which the Commonwealth has control through ownership, regulation or contractual arrangements. Nominated GAPC includes areas of significant natural value; development opportunity areas; areas of significant recreational, historic, or cultural value; and overlap areas. Although they are considered under the same general heading (GAPC), these areas exhibit different characteristics, represent different concerns, and are suited for different types of activities.

Those GAPC nominated as having significant natural value or significant recreational, historic, or cultural value have been determined by the CRMP as having high potential for offering active and/or passive forms of recreation. Efforts should be made to develop these areas in a manner that enhances this innate potential.

POLICY 5.2: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO GIVE HIGH PRIORITY TO ACQUISITION AND/OR DEVELOPMENT OF GAPC'S, NOMINATED AS AREAS OF SIGNIFICANT NATURAL VALUE AND AREAS OF HISTORICAL, CULTURAL, OR RECREATIONAL SIGNIFICANCE, TO PROVIDE PUBLIC ACCESS OPPORTUNITIES FOR ACTIVE AND/OR PASSIVE FORMS OF RECREATION. (Also see Policies 3.1, 5.1, 9.5).

REGULATORY AUTHORITY(S) - Policy 5.2

Pennsylvania Constitution, Article I, Section 27. Authorities providing acquisitory powers to the Department and the authorities providing power to the Department of Community and Economic Development to make grants to municipalities for the purpose of developing recreational sites are reviewed in the authority section for Policy 5.1: PAR/Additional Access.

CRMP ACTIONS - Policy 5.2

As a result of this policy, pertinent state and federal program funds will be actively solicited to promote and encourage the development of public recreation opportunities in GAPC's designated as Areas of Significant Natural Value and Areas of Historic, Cultural, or Recreational Significance.

6. HISTORIC SITES AND STRUCTURES (HSS)

Historic preservation is a concern at the national, state, and local level. There are many reasons that justify historic preservation, including economic, cultural, aesthetic, and educational benefits. Yet, attempts to preserve valuable reminders and monuments of the past have been sporadic and unpredictable. By making history more real and less abstract, historic buildings, sights and structures foster an appreciation and understanding of the past. Techniques of construction and popular architectural styles can be observed first hand.

In many cases, valuable historic resources have not been consciously preserved, but instead have been spared only through benign, temporary neglect. Unless government and private citizens begin to plan immediately for preservation and protection of significant sites and structures, they may eventually come to be viewed as "stumbling blocks" in the way of "progress" or in the case of ship wrecks off the Lake Erie shoreline, salvaged clean of historic artifacts.

Potentially valuable buildings, sights and structures are lost each year in Pennsylvania through lack of interest, insufficient knowledge, the absence of timely intervention or insufficient regulatory protection.

The Commonwealth's coastal areas contain some of the state's oldest communities, with large concentrations of historic sites. Unfortunately, many of these structures are sited in such a manner as to be extremely vulnerable to future development. Local governments and historical societies find it difficult to raise the 50% "local share" required for federal aid programs. In addition, maintenance of historic properties becomes expensive and is the responsibility of the government or historical society if sites are purchased for preservation.

There is a limit to the number of "home museums" that any area, no matter how historic, can support. Over-reliance on public purchase removes valuable properties from the tax roles. For this reason, the concept of "adaptive reuse" of historic structures is now well known and widely utilized. The idea involves "recycling" old buildings that are no longer suited to their original purpose. Through the use of this technique mills, barns, churches, and industrial buildings are converted to stores and shops, residences, offices, art galleries, antique centers, and community buildings.

POLICY 6.1: Historic Preservation

POLICY 6.1: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ASSIST THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION IN THE IDENTIFICATION, RESTORATION, AND PRESERVATION OF ARCHAEOLOGICALLY, ARCHITECTURALLY AND HISTORICALLY SIGNIFICANT SITES AND STRUCTURES IN THE COMMONWEALTH'S COASTAL ZONES. (Also see Policies 4, 10.2).

REGULATORY AUTHORITY(S) - Policy 6.1

Pennsylvania Constitution, Article I, Section 27. Historic Preservation Act, the Act of November 22, 1978, P.L. 1160 (71 P.S. Sections 1047.1(a) *et seq.*), imposing powers and duties on the Pennsylvania

Historical and Museum Commission; and requiring interagency and interdepartmental coordination with the Commission. Executive Order, Number 1975-6, Preservation of Historic Resources, May 6, 1975.

CRMP ACTIONS - Policy 6.1

This policy provides focus to and resources for the implementation of the State Historic Preservation Plan in the Commonwealth's coastal zones. Actions which will be undertaken by the Coastal Zone Management Program are: the provision of funding, dissemination of information, technical assistance, and other actions deemed appropriate to ensure that the historic resources of the coastal zones are preserved and maintained for this and future generations.

7. PORT ACTIVITIES

Pennsylvania's ports represent a vital link between the water and the inland transportation systems and constitute a national as well as a regional resource.

The ports in the Delaware Estuary coastal zone are particularly well equipped to handle bulk cargo, with the petroleum industry accounting for much of the port's import tonnage. The port and petroleum industries, in turn, support related activities such as warehousing, trucking, chemical industries, and primary metals. The Port of Erie is one of the finest natural harbors on the Great Lakes because it provides excellent storm protection and winter layover areas. The port's marine terminal boasts the largest capacity crane facilities on the U.S. side of the Great Lakes.

While the coastal ports do have their strong points, both are marked by underutilized areas which have fallen into disrepair and are uneconomic as well as visually unattractive. Changing vessels and cargo handling technology have made and will continue to make various port facilities obsolete, necessitating the provision of modern port facilities served by adequate support activities and an adequately dredged channel. Marine terminals for the handling of "containerized" cargo require vast amounts of land and superior rail and highway linkages.

POLICY 7.1: Port Activities/Development

PROBLEMS ADDRESSED - Policy 7.1

Pennsylvania's port facilities along Lake Erie and the Delaware Estuary are marked by underutilized areas which have fallen into disrepair - areas that are uneconomic as well as visually unattractive. Failure to adapt to changing port technologies, natural competitive advantages held by neighboring ports, and poor inland transportation networks are part of the reason for the decline of some areas of Pennsylvania's ports.

Port unification efforts on the Delaware Estuary, active roles by regional port authorities, public/private partnerships in technological change and capital investment, and conversion of waterfronts into tourism destinations and departure points are creating opportunities for port revitalization on both coasts.

POLICY 7.1: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ACTIVELY ATTRACT AND ENCOURAGE THE SITING OF PORT DEPENDENT ECONOMIC ACTIVITIES IN THE COMMONWEALTH'S COASTAL PORTS. (Also see Policies-9.1, 10.3).

REGULATORY AUTHORITY(S) - Policy 7.1

No specific authorities required.

CRMP ACTIONS - Policy 7.1

This policy focuses the ongoing attention and resources of pertinent state agencies toward the problems of preserving and enhancing the economic viability of the Commonwealth's coastal ports.

POLICY 7.2: Port Activities/Planning

PROBLEMS ADDRESSED - Policy 7.2

Comprehensive planning for the upgrading of port facilities is extremely important in support of the efforts of regional port authorities working on each of Pennsylvania's coasts to help resolve ongoing institutional, financial, and political problems.

POLICY 7.2: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO UTILIZE ITS FISCAL AND OTHER PERTINENT RESOURCES TO SUPPORT LONG-RANGE, COMPREHENSIVE PLANNING FOR THE FUTURE DEVELOPMENT AND GROWTH OF THE PORT OF ERIE AND THE PENNSYLVANIA PORTS OF THE DELAWARE ESTUARY, WHICH ENCOURAGES THE ATTRACTION, ENHANCEMENT, AND DEVELOPMENT OF WATER DEPENDENT ECONOMIC ACTIVITIES. (Also see Policy 2.1, 5.1, 9.1, 9.4).

REGULATORY AUTHORITY(S) - Policy 7.2

No specific authorities required.

CRMP ACTIONS - Policy 7.2

This policy commits CRMP funds and other pertinent resources which may become available to support long-range, comprehensive planning on an ongoing basis for the future development and growth of the Port of Erie and the Pennsylvania ports of the Delaware Estuary. Upon completion and favorable review of these plans and studies by the CRMP, the findings and goals of these studies will be incorporated into the CRMP. In addition, the CRMP will work more closely with the port interests and engage in further studies aimed at improving permitting and coordinating activities. The CRMP will continue to fund the Urban Waterfront Action Group (UWAG) pre-permit meeting in the Delaware Estuary Coastal Zone.

POLICY 7.3: Port Activities/Urban Base Enhancement

PROBLEMS ADDRESSED - Policy 7.3

Urbanized areas of the Commonwealth's coastal zones serve as valuable residential, commercial, and industrial centers. The economic base in many of these areas is weakening due to aging of facilities, changing technology, and lack of modern infrastructure. This situation has created both economic and social problems which, in turn, contribute to the general deterioration of the Commonwealth's urban coastal environment.

In order to stem and reverse such deterioration, it is imperative that existing viable economic activities be aided and enhanced, new economic activities adaptable to new technologies and changing needs be encouraged and aided in locating in these areas, and improvements be made to the infrastructure (i.e., roads, terminals, etc.) to facilitate these activities.

POLICY 7.3: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO UTILIZE FISCAL AND OTHER AVAILABLE MANAGEMENT RESOURCES TO: ENCOURAGE THE ENHANCEMENT OF CURRENT VIABLE ECONOMIC ACTIVITIES, ENCOURAGE THE ATTRACTION OF NEW ECONOMIC ACTIVITIES WHICH ADAPT TO THE AREAS' CHANGING NEEDS, AND ENCOURAGE IMPROVEMENTS IN THE AREAS' INFRASTRUCTURE TO PROVIDE A STRONG ECONOMIC BASE FOR THE URBANIZED SECTIONS OF THE COMMONWEALTH'S COASTAL ZONES.

REGULATORY AUTHORITY(S) - Policy 7.3

No specific authorities required.

CRMP ACTIONS - Policy 7.3

The CRMP will provide funds, stimulate coordination, and utilize management expertise for the development of plans and programs designed to enhance current economic activities in, attract new economic activities to, and improve the infrastructure of the Commonwealth's urbanized coastal areas.

The CRMP will encourage and support the City of Philadelphia's efforts to reuse the former Philadelphia Naval Shipyard, and the attraction and development of the "Fast Ships" industry.

8. ENERGY FACILITY SITING (EFS)

Energy production is a problem of national as well as state and regional significance. Pennsylvania's coastal zones are no exception. The increasing demand for energy coupled with the inherent location advantages the coastal zones offer to the siting of many energy facilities, makes it inevitable that additional facilities will be located in the Commonwealth's coastal areas in the future. Although these facilities are vital to the coastal areas, as well as the Commonwealth's continued economic viability, improper siting of facilities can damage fragile coastal ecosystems.

POLICY 8.1: EFS/Permitting

PROBLEMS ADDRESSED - Policy 8.1

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.

POLICY 8.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ENSURE 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. (Also see Policies-1.5, 2.1, 4.1, 8.2, 9.1, 9.2, 9.3).

REGULATORY AUTHORITY(S) – Policy 8.1

The Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, P.L. 566, 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.*).

Regulation(s): 25 Pa. Code Chapters 16, 75, 91, 92, 93, 95, 96, 102, 105, 121, 123, 124, 127, 129, 131, 133, 135, 260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 268a, 269a, 270a, 271, 272, 273, 275, 277, 279, 281, 283, 284, 285, 287, 288, 289, 291, 293, 295, 297, 298, 299, 6 Pa. Code Chapter V *et seq.*

CRMP ACTIONS - Policy 8.1

The CRMP will monitor permit applications for the development of energy facilities in the Commonwealth's coastal areas to ensure these facilities are sited in an environmentally responsible manner. Additionally, coastal zone management funds and expertise will be utilized in developing studies and siting procedures designed to improve the current site selection process.

POLICY 8.2: Energy Facilities/Natural Gas

PROBLEMS ADDRESSED - Policy 8.2

The increasing dependence on foreign energy supplies is a problem of national concern. The coastal areas of Pennsylvania contain supplies of natural gas that could address this problem at the local level. To date however, the development of these supplies has been delayed.

POLICY 8.2: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO FACILITATE 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. (Also see Policies 2.1, 4, 8.1, 9.1, 9.2, 9.3).

REGULATORY AUTHORITY(S) - Policy 8.2

Pennsylvania Constitution, Article I, Section 27. The Administrative Code, the Act of April 9, 1929, P.L. 177, as amended, (71 P.S. Sections 510-2); These acts provide the Department with the authority to regulate oil and gas exploration and development. 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.*); Act of July 1, 1978, P.L. 598 (66 P. C.S. Sections 1101 *et seq.*).

Regulation(s): 25 Pa. Code Chapters 79, 105; 66 Pa. Code Chapter 1 *et seq.*

CRMP ACTIONS - Policy 8.2

This policy focuses coastal zone management funds and resources on addressing the problems currently existing in the development of energy resources in the Commonwealth's coastal areas. In addition to improving the monitoring of the current permitting system, efforts will be made to educate the public as to the ramifications of developing these energy resources in the coastal zones.

POLICY 8.3: EFS/Site Selection

PROBLEMS ADDRESSED - Policy 8.3

Currently, the Commonwealth's coastal municipalities' comprehensive plans do not contain any recommendations as to appropriate sites or a site selection process, to accommodate new energy facility development. Therefore, a key step, necessary for ensuring that energy facility siting is done in a timely and responsible manner, is missing from the site selection process.

POLICY 8.3: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO UTILIZE COASTAL RESOURCES MANAGEMENT FUNDS AND PROVIDE OTHER PERTINENT ASSISTANCE TO ENCOURAGE COASTAL MUNICIPALITIES TO AMEND THEIR COMPREHENSIVE PLANS TO REFLECT THE RECOMMENDATIONS CONTAINED IN THE ENERGY FACILITY SITING PLANNING PROCESS DEVELOPED BY THE COASTAL RESOURCES MANAGEMENT PROGRAM, WHICH AMONG OTHER THINGS RECOMMENDS THAT WHENEVER FEASIBLE, NEW ENERGY FACILITIES ARE LOCATED ADJACENT TO EXISTING ONES. (Also see Policy 10.2).

REGULATORY AUTHORITY(S) - Policy 8.3

No specific authority is required.

CRMP ACTIONS - Policy 8.3

This policy improves the energy facility site selection process in coast areas by providing a rationale for accommodating potential energy facilities development. Local municipalities will be encouraged to incorporate the findings of the CRMP's energy facility planning process into their comprehensive plans. Coastal Resources Management funds and technical advice will be available to assist in incorporating the planning process into the comprehensive plans.

POLICY 8.4: EFS/Energy Resources/Outer Continental Shelf

PROBLEMS ADDRESSED - Policy 8.4

Significant economic benefits may accrue to the Commonwealth, particularly the southeastern portion, if gas and oil reserves in the Baltimore Canyon prove significant and are developed. However, unless this development occurs in an environmentally responsible manner, the environment could be seriously degraded.

POLICY 8.4: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO SUPPORT THE DEVELOPMENT OF OUTER CONTINENTAL SHELF OIL AND GAS RESOURCES THROUGH ALL AVAILABLE MEANS, PROVIDED THAT THE NECESSARY ENVIRONMENTAL SAFEGUARDS ARE ENFORCED THROUGH REGULATION BY THE

APPROPRIATE FEDERAL AND STATE AGENCIES TO ENSURE THAT THE INTEGRITY OF THE ADJACENT FISH AND WILDLIFE HABITAT IS NOT IRREPARABLY DAMAGED DUE TO DRILLING AND OTHER DEVELOPMENT ACTIVITIES. (Also see Policies 3.1, 9.2, 9.3).

REGULATORY AUTHORITY(S) - Policy 8.4

No specific authority is required.

CRMP ACTIONS - Policy 8.4

Utilizing the “direct contact” review process and the procedure explained in Chapter 5 for ensuring federal consistency for OCS activities, the CRMP will support all Outer Continental Shelf oil and gas development that observes pertinent environmental standards.

9. INTERGOVERNMENTAL COORDINATION (IC)

The CRMP is based on a networking principle. Therefore, it is vitally important that mechanisms are developed that ensure that all departments, commissions, and other agencies which administer programs or issue permits in the Commonwealth’s coastal zones do so in a clear, concise, and coordinated manner to ensure program consistency. Additionally, two areas of national importance, air and water quality standards, need to be adopted by the program and administered in a manner consistent with national goals.

POLICY 9.1: IC/Consistency

PROBLEMS ADDRESSED - Policy 9.1

Presently, actions within the coastal zones are regulated by a variety of state agencies with varying mandates. Mechanisms need to be developed to ensure that all state actions in the coastal zones are consistent with the CRMP enforceable policies.

POLICY 9.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO INITIATE A PROGRAM OF “STATE CONSISTENCY” TO ENSURE THAT ALL STATE ADMINISTRATIVE DEPARTMENTS AND INDEPENDENT ADMINISTRATIVE BOARDS AND COMMISSIONS AND OTHER STATE AGENCIES SHALL ENFORCE AND ACT CONSISTENTLY WITH THE ENFORCEABLE POLICIES OF THE PENNSYLVANIA COASTAL RESOURCES MANAGEMENT PROGRAM.

REGULATORY AUTHORITY(S) - Policy 9.1

Pennsylvania Constitution, Article I, Section 27. Pennsylvania Constitution Article IV, Section 2; Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Sections 510-20, 241, 181). Executive Order 1980-20 of September 22, 1980.

CRMP ACTIONS - Policy 9.1

All administrative departments and independent administrative boards and commissions and other state agencies shall enforce and act consistently with the enforceable policies of the CRMP. These actions are achieved by using an Executive Order and Memoranda of Understanding to ensure state consistency of activities affecting the Commonwealth’s coastal areas covered by the CRMP policies.

POLICY 9.2: IC/Water Quality

PROBLEMS ADDRESSED - Policy 9.2

Improvement of water quality is a prime concern in the Commonwealth's coastal areas. Specific water quality problems include poorly or inadequately treated waste discharges from municipal, non-municipal, and industrial sewage treatment plants, failure of on-site disposal systems, leachate from solid waste and sanitary land fills, runoff from agricultural land and animal feed lots, poor stormwater management, and salt water intrusion into groundwater and surface water.

POLICY 9.2: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ADOPT BY REFERENCE, THE REQUIREMENTS OF THE FEDERAL CLEAN WATER ACT (P.L. 95-217, AS AMENDED) AND TO INCORPORATE THESE REQUIREMENTS INTO THE COMMONWEALTH'S COASTAL RESOURCES MANAGEMENT PROGRAM.

REGULATORY AUTHORITY(S) - Policy 9.2

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, (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.*).

Regulations: 25 Pa. Code Chapters 16, 91, 92, 93, 94, 95, 96, 99, 100, 289, and 299.

CRMP ACTIONS - Policy 9.2

By adopting the goals of the Clean Water Act (which incorporates the Federal National Pollution Discharge Elimination System Program delegated to the Commonwealth), the Commonwealth agrees to monitor present stream, river, and coastal water quality; and set standards and objectives for future water quality; regulate present and future point source discharges through issuance of permits which establish a compliance schedule based on effluent limitations and receiving water standards plan for future waste treatment needs; and construct or upgrade municipal sewer systems and treatment plants to attain a level of treatment equivalent to secondary treatment. It also agrees to identify waste treatment facility needs, priorities and schedules; establish a regulatory program to provide for waste treatment management on an area-wide basis, the creation of new discharges, and pretreatment of industrial and commercial wastes; identify other means necessary to carry out the above activities; and establish a process to identify and control nonpoint sources of pollution, disposal of wastes, and the salt water intrusion of groundwater and fresh surface water. The Commonwealth is actively promoting pollution prevention and green technology to improve both water and air quality.

POLICY 9.3: IC/Air Quality

PROBLEMS ADDRESSED - Policy 9.3

Improvement of air quality is a prime concern in the Commonwealth's coastal areas. The major air quality problems in EPA air quality regions, Northwest Pennsylvania, Youngstown Interstate, and Metropolitan Philadelphia Interstate Control Regions, are that both experience periodic violations of the National Ambient Air Quality Standards for carbon monoxide and photochemical oxidants: violation of the National Ambient Air Quality Standards are experienced for carbon monoxide and photochemical oxidants in the Delaware Estuary coastal zone; and violation of the standards for particulates and oxidants in the Lake Erie coastal zone.

Pennsylvania's State Implementation Plan (SIP) prepared for metropolitan areas of more than 200,000 population, is consistent with the CRMP because the state plan was adopted by the program. In addition, the SIP indicates that reduced emissions from existing industries, coupled with "offsets" required by EPA, will allow room for new industries consistent with coastal zone goals and policies.

Stationary sources of pollution such as power plants, steel mills, and manufacturing and painting facilities currently require state permits. In areas that currently meet standards, permits are required to prevent significant deterioration (PSD) of air quality. The CRMP will not alter this existing regulatory authority. Agencies involved in air quality planning for mobile sources of pollution will continue to examine opportunities for emission reduction both inside and outside of the coastal zones.

Transportation facilities and improvement which reduce traffic volumes or decrease emission, will be supported and endorsed by the CRMP.

POLICY 9.3: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ADOPT BY REFERENCE, THE REQUIREMENTS OF THE FEDERAL CLEAN AIR ACT AND TO INCORPORATE THESE REQUIREMENTS INTO THE COMMONWEALTH'S COASTAL RESOURCES MANAGEMENT PROGRAM.

REGULATORY AUTHORITY(S) - Policy 9.3

Air Pollution Control Act of January 8, 1960, (1959) 2119, as amended (35 P.S. Sections 4001 *et seq.*); The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Section 510-1).

Regulation(s): 25 Pa. Code Chapters 121, 123, 124, 127, 129, 131, 133, 135, 137, 141.

CRMP ACTIONS - Policy 9.3

The CRMP will support, with funds and technical expertise, the State Air Quality Implementation Plan (SIP) for stationary and mobile sources of pollution in the Commonwealth's coastal areas as the means by which to achieve the goals of the Clean Air Act.

POLICY 9.4: IC/Permit Improvement

PROBLEMS ADDRESSED - Policy 9.4

The Commonwealth's regulatory permitting system is continually changing in order to meet new regulatory demands, and at the same time, to facilitate the permitting process for permitting agencies, and the public. DEP permitting has been decentralized; permitting review and issuance is now performed by the regional offices. DEP has developed various general permits to cover minor activities. In addition, the federal Corps of Engineers has developed a Section 404 State Programmatic General Permit, processing of which has been delegated to DEP. Furthermore, the Corps has developed approximately 40 nationwide permits.

POLICY 9.4: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO PERIODICALLY INITIATE, COORDINATE, AND PARTICIPATE IN COMPREHENSIVE STUDIES AIMED AT IMPROVING THE REGULATORY PERMITTING PROCESS IN THE COMMONWEALTH'S COASTAL ZONES. (Also see Policies 9.1, 10.3).

REGULATORY AUTHORITY(S) - Policy 9.4

Pennsylvania Constitution, Article I, Section 27. No other specific authority needed.

CRMP ACTIONS - Policy 9.4

This policy commits coastal zone management funds and resources to the development of recommendations aimed at correcting problems in the permitting systems operating in the coastal zones. The CRMP will participate in discussions involving changes to the permitting system, as well as the development of state general permits, and federal nationwide, programmatic and regional permits. Furthermore, affected agencies and their staff will be encouraged to participate in the studies and assist in making recommended changes to their permitting procedures.

POLICY 9.5: IC/Choices for Pennsylvanians

PROBLEMS ADDRESSED - Policy 9.5

In the past, problems facing the Commonwealth such as a deteriorating economic base, a deteriorating housing stock, urban decay, aging infrastructure, unwise utilization of natural resources, destruction or degradation of key natural resources, and at times cumbersome permitting systems, were being addressed for the most part unilaterally by individual state agencies. In the past, the Commonwealth recognized the need to address these interrelated problems in a comprehensive and coordinated manner and developed a unified strategy to accomplish this as presented in “Choices for Pennsylvanians” (Toward an Economic Development and Community Conservation Strategy). More recently, The Governor’s 21st Century Commission has outlined environmental priorities for the next century.

POLICY 9.5: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO EMBRACE THE CONCEPTS SET FORTH BY “CHOICES” AND TO PROMOTE THE POLICY OBJECTIVES AND POLICIES OF “CHOICES” IN THE COMMONWEALTH’S COASTAL ZONES, TO THE EXTENT PERMITTED BY THE COASTAL RESOURCES MANAGEMENT PROGRAM’S COORDINATIVE MECHANISMS AND IMPLEMENTATION

REGULATORY AUTHORITY(S) - Policy 9.5

No authority required.

CRMP ACTIONS - Policy 9.5

Commonwealth agencies’ actions will be coordinated and integrated (as advocated by “Choices”) in the Commonwealth’s coastal zones via the Coastal Zone Advisory Committee and the Coastal Zone Steering Committees. Coastal zone management funds will be utilized to promote permit simplification, to promote wise local planning which embraces the concepts of “Choices” and to assist in the development of local economic and natural resource oriented studies which reflect the policies of “Choices”. CRMP funds will not be utilized for any project or activity which is contrary to the policies of “Choices”.

10. PUBLIC INVOLVEMENT (PI)

POLICY 10.1: PI/Pennsylvania Open Meeting Law

PROBLEMS ADDRESSED - Policy 10.1

The fair and adequate representation of the public interest in all decision-making activities affecting the public is in the best interests of the Commonwealth. When formal decisions are to be undertaken, the public must have adequate opportunity to receive information on proposed actions-

POLICY 10.1: Direct Action

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ENSURE THAT ALL MEETINGS, WHERE FORMAL ACTION IS TO BE TAKEN, BE OPEN TO THE PUBLIC, PRECEDED BY PUBLIC NOTICE AND HELD IN REASONABLY ACCESSIBLE LOCATIONS.

REGULATORY AUTHORITY(S) - Policy 10.1

Open Meeting Law, Act of July 19, 1974, P.L. 486 (65 P.S. Sections 261 *et seq.*).

CRMP ACTIONS - Policy 10.1

This policy requires the CRMP to provide public notice and hold meetings in accessible places when “formal action” is to be taken. The Act defines “formal action” as the “taking of any vote on any resolution, rule, order, motion, regulation, or ordinance, or the setting of any official policy”. , 65 P.S. Section 261.

POLICY 10.2: PI/Participation

PROBLEMS ADDRESSED - Policy 10.2

If the public is not made aware of and persuaded of the significance of coastal issues, then a valuable resource will not be utilized and the CRMP will not function as effectively as it otherwise might.

POLICY 10.2: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO PROVIDE CITIZENS, SPECIAL INTEREST GROUPS, AND ALL OTHER SEGMENTS OF THE PUBLIC WITH OPPORTUNITIES FOR EARLY AND CONTINUOUS INVOLVEMENT AND PARTICIPATION IN THE COMMONWEALTH’S COASTAL RESOURCES MANAGEMENT PROGRAM, THROUGH THE DEVELOPMENT OF EFFECTIVE COMMUNICATION AND PARTICIPATION MEASURES. (Also see Policy 10.1).

REGULATORY AUTHORITY(S) - Policy 10.2

No specific authority is needed.

CRMP ACTIONS - Policy 10.2

This policy encourages the development and use of appropriate mechanisms to involve and educate citizens regarding issues and programs which have a significant impact on coastal resources inform them of environmental matters and encourage stewardship.

Such measures may include the publication of pamphlets, brochures or newsletters; production of audio and visual presentations; utilization of mass media; training and discussion forums; and demonstration projects or other appropriate means.

POLICY 10.3: PI/Coastal Zone Advisory Committee

PROBLEMS ADDRESSED - Policy 10.3

A formal mechanism is required at the state level to address coastal issues, to review the CRMP and to consider the effectiveness of other such efforts pertaining to the management of coastal resources.

POLICY 10.3: Encouragement

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO ESTABLISH A COASTAL ZONE ADVISORY COMMITTEE WHOSE PURPOSE WILL BE TO: PROVIDE A FORUM FROM WHICH TO ADDRESS STATE AND LOCAL COORDINATION ON COASTAL ISSUES, PERIODICALLY REVIEW THE COASTAL RESOURCES MANAGEMENT PROGRAM WITH RESPECT TO PUBLIC RESPONSIVENESS AND MEETING THE NEEDS OF THE COMMONWEALTH, AND TO ADVISE THE ENVIRONMENTAL QUALITY BOARD ON REGULATIONS AFFECTING COASTAL RESOURCES.

REGULATORY AUTHORITY(S) - Policy 10.3

No specific authority is needed.

CRMP ACTIONS - Policy 10.3

Pursuant to this policy, a Coastal Zone Advisory Committee comprised of various affected state agencies and representatives from coastal areas has been established. This committee provides a forum from which to address coastal issues, periodically review the CRMP and, make recommendations for program improvements.

11. OCEAN RESOURCES (OR)

Section 309 of the Coastal Zone Management Act, as amended, (16 U.S.C.A. §1456) encourages states to revise their previous 309 Assessments and develop new strategies to achieve program changes on one or more of the coastal zone enhancement objectives. Ocean Resources was identified as a high priority area for enhancement in 2001, during the Section 309 Assessment of Pennsylvania's CRMP.

The Pennsylvania DEP/CRMP defines ocean (coastal) resources as all living or non-living natural, historical, or cultural resources found in, or migrating through coastal waters and habitats of Lake Erie, the Delaware River, the Schuylkill River, and inland watersheds of Lake Erie, the Delaware Estuary, and their contiguous tidal and freshwater wetlands. In the Lake Erie coastal zone, ocean resources include, but are not limited to: fisheries, native and endangered shellfish, aquatic, riparian and wetland ecosystems, sand and pebble beaches, offshore sand, and submerged shipwrecks. In the Delaware Estuary coastal zone, ocean resources include, but are not limited to fisheries and aquatic, riparian and wetland ecosystems.

Ocean resources provide significant environmental, recreational, and economic benefits to Pennsylvania's coastal communities and the Commonwealth as a whole. Lake Erie's Presque Isle attracts over 4 million visitors annually for swimming, boating, and picnicking. Opportunities for recreational boating, fishing and scuba diving are also abundant throughout other parts of the region, and Erie's industrial port connects this coastal community to the Great Lakes and beyond. The Delaware Estuary, an essential habitat for migratory populations of shad, herring, and striped bass, also boasts the

largest freshwater port in the world. More than 3,000 cargo vessels and an expanding number of cruise ships dock in the international ports of Philadelphia each year. Balancing ocean resource management with competing economic uses, and coordinating these efforts across the ecologically distinct coastal zones of Lake Erie and the Delaware Estuary will require cooperation among state and federal agencies, regional authorities, and local communities.

POLICY 11.1: Ocean Resources/Aquatic Nuisance Species

PROBLEMS ADDRESSED/Policies 11.1 and 11.2

Aquatic nuisance species (ANS) threaten the biodiversity of native plant and animal species, and significantly affect recreation and tourism along Pennsylvania's coasts. Introduced in the Great Lakes via ballast water, zebra mussels, round gobies, and other invasive species rapidly colonized Lake Erie and are competing with native species for food and habitat. Indirectly, they pose a public health risk through trophic transfer of sediment contaminants. In the Delaware and Schuylkill watersheds, flathead catfish have established reproducing populations. Preying on several important species of sport fish, i.e. shad, sunfish, bass, and channel catfish, this non-native catfish may impact the quality of recreational fishing in the Delaware Estuary coastal zone.

Presently, the federal government and the US Coast Guard manage ballast water introductions of ANS pursuant to the National Invasive Species Act of 1996 (NISA). While NISA addresses ANS introductions in the Great Lakes and coastal ports, it does not provide an adequate mechanism to prevent the spread of ANS among Commonwealth watersheds through recreational and other pathways.

POLICY 11.1: Enforcement/Regulations

IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM, ACTING THROUGH THE DEPARTMENT AND IN CONCERT WITH THE DEPARTMENT OF AGRICULTURE, THE FISH AND BOAT COMMISSION, AND OTHER NETWORKED PARTNERS, TO ACTIVELY ASSIST IN PREVENTING AQUATIC NUISANCE SPECIES FROM BEING INTRODUCED INTO, SPREAD WITHIN, OR TRANSFERRED OUT OF THE COASTAL ZONES TO OTHER WATERS/WATERSHEDS OF THE COMMONWEALTH, AND TO FACILITATE THEIR ERADICATION, WHERE ENVIRONMENTALLY APPROPRIATE, WITH BIOLOGICAL, CHEMICAL, AND OTHER MEANS OF CONTROL.

AUTHORITY(S)/Policy 11.1

The Noxious Weeds Control Law, as amended, (3 P.S. Section 255.1 *et seq.*) provides for the regulation of noxious weeds, and imposes duties and confers powers on the Department of Agriculture. The Clean Streams Law, as amended, (35 P.S. Section 691.1 *et seq.*) provides for the protection of water supply for consumption, recreational use, and aquatic life from physical, chemical, and biological pollution, and confers powers on the Department of Environmental Protection. The Dam Safety and Encroachments Act, as amended, (32 P.S. Sections 693.1 *et seq.*) provides for the regulation of dredging and filling activities (as encroachments) through permit, and for the protection of natural resources, environmental rights and values of Pennsylvanians, and confers powers on the Department of Environmental Protection. The provisions of Part II of 30 Pa. C.S.A. relating to Fish and Fishing provide for the regulation of transportation, introduction, or importation of fish into or within the Commonwealth, and confers powers on the Fish and Boat Commission. The Aquacultural Development Law, (3 P.C.S. Sections 4201 *et seq.*) provides for the regulation of aquatic species approved for artificial propagation, or sale by live aquatic animal dealers, and confers powers on the Department of Agriculture. The Environmental Rights Amendment (Pennsylvania Constitution, Article I, Section 27) entitles

Commonwealth citizens to the rights of clean air and pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.

Regulation(s): 7 Pa. Code Chapter 110; 25 Pa. Code Chapters 91, 105;

58 Pa. Code Chapters 71, 73, 77, 137.

7 Pa. Code, Chapter 110, relates to the authority of the Department of Agriculture to issue and amend the list of noxious weeds for which sale, transport, planting, and propagation are prohibited, and to coordinate with state and federal agencies for noxious weed control on Commonwealth lands.

25 Pa. Code, Chapter 91, relates to the authority of the Department of Environmental Protection and the Fish and Boat Commission to jointly approve the use of algacides, herbicides, and fish control chemicals to control aquatic plants in surface waters and manage fish populations, and to the authority of the Department of Environmental Protection to use copper sulfate to control algae in public water supply sources, except when the use of such chemicals violates a specific order or permit.

25 Pa. Code, Chapter 105, relates to the authority of the Department of Environmental Protection to issue permits for encroachments, and to regulate wetlands mitigation through review of wetlands mitigation plans. The applicant must submit a list of the species that will be planted to the Department to ensure that mitigation plans do not contain plant species identified in the noxious weeds control list (7 Pa Code 110.1), or species that are known to be invasive in the region where mitigation will occur.

58 Pa. Code, Chapter 71, relates to the authority of the Fish and Boat Commission to issue a list of approved species for artificial and closed-system propagation, live bait sales, and transport between states or watershed basins within the Commonwealth, to prohibit the introduction of grass carp and tilapia into the waters of the Commonwealth, and to prohibit the escape of fish from registered artificial propagation facilities to escape into Commonwealth waters.

58 Pa. Code, Chapter 71, relates to the authority of the Fish and Boat Commission to refuse to issue permits or licenses that would result in the introduction of a species of fish into a watershed where it is not now present, and to maintain a list of species by watershed for which the Department of Agriculture may issue permits for artificial propagation and live bait operations.

58 Pa. Code, Chapter 73, relates to the authority of the Fish and Boat Commission to regulate the interstate and intrastate transfer of fish species, and to regulate the stocking of farm ponds and licensed fee fishing ponds with non-native species.

58 Pa. Code, Chapter 77, relates to the authority of the Fish and Boat Commission to prohibit the introduction of non-native reptiles and amphibians into the natural environment of the Commonwealth.

58 Pa. Code, Chapter 137, relates to the authority of the Game Commission to prohibit the introduction of certain species of wildlife, i.e. nutria, and species listed as injurious by the Commonwealth or the United States Department of Interior, and to issue permits for the importation of lawfully acquired wildlife for educational or scientific purposes, or for the transfer of lawfully imported wildlife by sale, trade, barter, or gift.

POLICY 11.2: Encouragement

FURTHERMORE, IT IS THE POLICY OF THE COASTAL RESOURCES MANAGEMENT PROGRAM TO LIMIT THE INTRODUCTION AND SPREAD OF AQUATIC NUISANCE SPECIES IN THE COASTAL ZONE BY PROVIDING FUNDING AND TECHNICAL ASSISTANCE TO ENCOURAGE DEVELOPMENT OF RESEARCH AND OUTREACH PROGRAMS THAT WILL

EFFECTIVELY REDUCE THE IMPACT OF AQUATIC NUISANCE SPECIES ON PENNSYLVANIA'S OCEAN RESOURCES, A COORDINATED, MULTI-SPECIES APPROACH TO AQUATIC NUISANCE SPECIES MANAGEMENT, AND A RAPID RESPONSE PLAN FOR UNINTENTIONAL INTRODUCTIONS. (Also see Policies 3.2, 3.4, 4.1, 9.1)

CRMP Actions/Policies 11.1 and 11.2

Through the implementation of these two policies, CRMP shall encourage and require the development and use of appropriate mechanisms to limit the introduction and dispersal of non-indigenous aquatic nuisance species, and to protect Pennsylvania's living ocean resources.

Under the enforceable aspects of this OR Policy, the CRMP will rely mainly on its review of permit applications submitted under Chapter 105 regulations of the Dam Safety and Encroachments Act. Chapter 105 regulates encroachments into Commonwealth waters and wetlands. The activities regulated under this Act are identical to the activities regulated by the federal Rivers and Harbors Act of 1899, and Section 404 of the federal Clean Water Act.

In its review of the Chapter 105 permit applications, and through placement of conditions on permits, CRMP will require that ANS species are not introduced into or spread throughout the coastal zones. The main tool will be through wetland mitigation. Through CRMP's participation in the development and approval of wetland mitigation plans, CRMP will ensure that ANS species listed under 7 Pa. Code Chapter 110, and 58 Pa. Code Chapters 71, 73, 77 and 137 are not included/introduced in wetland mitigation plans. Furthermore, CRMP will recommend the eradication methods under 25 Pa. Code Chapter 91, to control existing ANS species. CRMP actions under this Policy will also be used in its review of federal consistency activities, when a Chapter 105 encroachment permit is required.

Specific encouragement actions of CRMP will include: identifying priority research needs for ANS prevention and control; facilitating intrastate and interstate coordination of ANS management activities; and collaborating with Sea Grant, federal and state agencies, and regional and interstate organizations to develop outreach materials and educational programs to encourage public involvement in limiting the spread of ANS.

CHAPTER 3 - SPECIAL MANAGEMENT CONCERNS

SPECIAL AREA MANAGEMENT PLANS (SAMPs)

Introduction

In Pennsylvania, the coastal zones of two widely separated and diverse areas. Because of this diversity, policies are often difficult to apply in a uniform fashion and management techniques have to be developed or modified to meet a specific problem. Coastal zone issues in Pennsylvania are often multifaceted, complex, and of regional importance. Contributions from many agencies, levels of government and areas of expertise may be necessary for effective management. The CRMP is organized to meet this requirement, but a more systematic, streamlined approach is needed to address multiple issues.

The Special Area Management Plan (SAMP) is a comprehensive process which will enable CRMP to integrate natural resource protection and sustainable land use practices. SAMPs build consensus through issue identification and dispute resolution and provide a basic framework to resolve future conflicts in resource protection. This process lends itself very well to the Commonwealth's distinctly diverse coastal zones and will enable CRMP to enhance management of a variety of unique coastal issues through an institutionalized mechanism leading to program change.

Purpose of Developing Special Area Management Plans

A major purpose for developing Special Area Management Plans is to better focus CRMP grant and staff resources, as well as those of other agencies, on a unique geographic area of regional importance involving multiple coastal issues. SAMPs establish a process which is intended to preserve, protect, enhance or restore the values for which an area is designated. The plan will contain a justification for designation, a description of the issues and activities affecting an identified resource, the reasons why an area should be managed, a discussion of appropriate and inappropriate activities and uses in the area, and the rationale for the designation of those uses. It will also include an identification of existing enforceable policies which can be applied to managing the area, and additional authorities, administrative procedures and projects which may be used to implement the proposed management plan.

Special Area Management Plans are authorized by the Federal Coastal Zone Management Act, as amended by the Coastal Zone Protection Act of 1996 (P.L. 104-540), which outlines programmatic objectives for Coastal Zone Enhancement Grants in Section 309. Unless multiple management issues of regional importance exist that require a SAMP, enhancement activities are better addressed through the other appropriate categories:

1. Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.
2. Preventing or significantly reducing threats of life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.
3. Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.
4. Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities which contribute to the entry of such debris.

5. Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.
6. Preparing and implementing special area management plans for important coastal areas.
7. Planning for the use of (coastal) resources.
8. Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.
9. Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, enabling States of formulate, administer and implement strategic plans for marine aquaculture.

Criteria for Special Area Management Plans in Pennsylvania

Federal Coastal Zone Management Program Regulations (15 CFR Part 923.23) further express that a coastal state management program may designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. As a means of enhancing coastal resource management in Pennsylvania, the following sections establish a process for identifying and designating areas for special management planning.

1. As general criteria, special management areas will:
 - a. Be of identifiable regional interest.
 - b. Involve multiple coastal issues and objectives as defined by the CRMP in Chapter 2, Coastal Zone Policy Framework
 - c. Include several areas and activities which would demonstrably benefit from enhanced management.
2. Among the specific criteria which will be considered in selecting areas for special management planning are:
 - a. Areas where coastal resources are being severely affected by cumulative or secondary impacts of development.
 - b. Areas involving multiple management authorities or use conflicts where resource management could be enhanced, particularly where resource protection competes with economic development.
 - c. Areas where there is a strong commitment at all levels of government to enter into a comprehensive planning process.
 - d. Areas where there is a state or regional authority willing and capable of formulating the necessary management policies and techniques, who will provide for maximum participation by all affected parties.
 - e. Areas where hazardous conditions may affect public health and safety.
 - f. Areas where there exist resources of special scientific or research value.

- g. Areas which could provide for enhanced public access for recreation or lack a clear definition of public trust resources.

Process for Nomination and Designation of SAMPs

Because of the multi-faceted nature of the issues affecting areas designated for special management planning, federal procedural updates and the time and resource requirements involved, Special Area Management Plans will be designated through the periodic 309 Assessment and Strategy process. Nominations may be made CRMP at the time of public comment on the Assessment document, through the related 309 public involvement process. The purpose of 309 Program Enhancement Grants is to generate programmatic improvements in state coastal zone management programs, so the actual designation of areas requiring special management planning will of necessity be made by the Pennsylvania CRMP. The endorsement of areas designated for SAMPs will take place as part of the Strategy review process identified by the relevant 309 guidance.

GEOGRAPHIC AREAS OF PARTICULAR CONCERN (GAPC)

Purpose of Designated and Nominated GAPC

The Federal Coastal Zone Management Act, while noting the importance of the entire coastal zone, declares that certain areas are of greater significance. As a requirement for program approval, the act requires “an inventory and designation of areas of particular concern within the coastal zone” (Section 305(b)(3)).

There are two types of Geographic Areas of Particular Concern (GAPC) identified for the Lake Erie and Delaware Estuary coastal zones. These are designated GAPC and nominated GAPC. High and low priorities of use for both types of GAPC have been recommended by the CZMP.

Designated GAPC

Designated GAPC - GAPC may be designated by virtue of:

1. State ownership of GAPC
2. State regulation of GAPC
3. Contractual agreement with the agency or entity responsible for management of GAPC

Priorities for Uses in Designated GAPC

High priorities for these designated GAPC will be activities advocated by the respective management agency, and low priority uses would be activities which conflict with or exclude the high priority uses. State agencies will consider the priorities and guidelines as they carry out their administrative responsibilities and exercise authorities throughout the coastal zone.

Designated GAPC and the guidelines on priorities of use, including uses of lowest priority, are as follows:

1. State owned lands which include all state parks, or fish access areas, and key historical sites in the coastal zones are being managed by state agencies which have been delegated the necessary legislative authority to ensure sound management. The Department of Conservation and Natural Resources manages parks under the Administrative Code of 1929. Master plans have been developed for each coastal state park. These plans are designed to ensure proper development, management, and protection.

The Pennsylvania Fish and Boat Commission (PFBC) manages fish access areas under the Fish Laws of 1959. The PFBC has developed a Statewide Outdoor Recreation Plan which presents the Commission plans for providing additional fishing and boating access in the Commonwealth.

The Historical and Museum Commission manages historical sites under the Historic Preservation Act. Commission directives and site programs determine development priorities for their properties.

Other examples of state managed areas are Little Tinicum Island, managed by the Bureau of Forestry (Department of Conservation and Natural Resources), and the David M. Rodrick Wildlife Preserve (formerly the United States Steel Site) managed by the Pennsylvania Game Commission.

2. The Bluff Hazard Recession Area along Lake Erie is managed by the authority of the Bluff Recession and Setback Act. This area is a natural value area which has an even greater than normal degree of sensitivity caused by the bluff recession problem. Highest priority uses are to protect the natural values of the bluffs by requiring a minimum setback distance for all structures built within bluff recession hazard areas. The results will prevent and eliminate urban and rural blight which results from the damages from bluff recession, and protect people and property in bluff areas from the damages of bluff recession. Low priority uses are any activities that would disrupt the natural dynamics in a way that would lead to increased bluff recession rates.
3. Presque Isle Bay which is managed under the authorities of the Dam Safety and Encroachments Act and the Clean Streams Law, is a unique area offering a climate conducive to the development of both port and recreational activities. High priority uses include: development of coal loading and off loading facilities, increasing the port's import and export grain handling capacity, increasing the ports warehousing capacity and ability, providing better road access between the port and the local interstate highway system, improving port facilities used in support of the growing commercial fishing fleet, expanding the marina capacity of the harbor and providing better recreational access to the harbor area via the development of access roads, parking lots, and service docks. Low priority uses are any used which exclude or conflict with high priority uses.
4. Coastal floodplains are managed under the authority of the Floodplain Management Act and the Clean Streams Law. These areas are managed in a manner that enhances or maintains their natural function of handling flood flow. High priority areas are recreational or development activities, which meet the requirements of the National Flood Insurance Program and the State Act, and does not adversely impact the areas function as a floodplain. Low priority uses are any uses which would exacerbate flooding by impacting the areas natural function as a floodplain. Bluff recession leads to a loss of public investment as a result of flooding
5. Coastal wetlands are managed under the authorities of the Dam Safety and Encroachments Act and the Clean Stream Law. Wetlands have high public values as a result of the natural function they perform such as; areas of fish and wildlife habitat, storage area for flood waters, buffers against shoreline erosion, areas of aquifer recharge, and water purification areas. Therefore, high priority uses are those which benefit from the areas natural qualities while enhancing, restoring, or preserving them, such as; nature study, hiking, and passive recreation. Low priority uses are any uses which adversely impact or limit the areas natural and public values.

In order to qualify for designation as a GAPC, municipalities or responsible agencies may enter into contractual agreements with the CRMP to develop technical or feasibility studies and new or

revised plans and ordinances. Through the contractual process, the state will be able to require adherence to coastal management goals, policies, and recommended use priorities.

Nominated GAPC

Nominated GAPC - Nominated GAPCs are those areas which the public, state, and federal agencies, interest groups, and other affected parties identified as deserving special management attention during implementation of the CRMP. Priority recommendations, which are listed in a following section, Priorities for Uses in Nominated GAPC, are not binding, because the state does not control them through direct ownership or regulation of specified resources areas such as bluff hazard areas, coastal floodplains, and coastal wetlands. Most GAPC in Pennsylvania's coastal zones are of the nominated type. "Nominated" GAPCs will be eligible to receive coastal zone management funds for low cost construction projects after they go through the Routine Program Change process, and formally become a GAPC.

Criteria for Nominated GAPC

Areas of significant natural value are determined according to the concentration of natural characteristics that are either valuable as amenities or unique to the coastal environment. These land-based characteristics include woodlands, uplands, wildlife habitats, and prime agricultural and erodible soils.

Development opportunity areas are those especially suited to more intensive use through development or redevelopment. The purpose for highlighting these areas is to stimulate the economic use of the river or lake and certain related waterfront properties. In particular, some of these opportunity areas could be considered as potential locations for waterfront facilities serving the regional, state or national economic interests. These uses may include facilities, energy facilities, or other commercial and industrial activities.

Areas of significant recreational, historic, or cultural value are areas where reclamation, restoration, public access, and other remedial actions may be needed. Because of the wide range of activities and uses included in this group, criteria establishing them is flexible and responsive to individual conditions. They include the following types of areas:

Areas of reclamation or restoration include those which have experienced serious detrimental modification, but which possess potential for recovery or reuse.

Areas of existing open space that have been identified where recreational needs can be served, and public access to the water's edge exists. Other areas, that are not in their natural state, but which seem appropriate for future public access have also been identified.

Overlap Areas: In some cases, the distinction between a natural area, a recreational area, and a development opportunity area is not as easily defined. For example, many undeveloped sites are appropriate for development and also possess either natural amenities or recreational opportunities. Future economic development of these overlap areas by current or future owners should consider the natural features and/or potential access opportunities. The Van Silver Lake area, in Falls Township, Delaware Estuary, is a prime example of such an area. In this privately owned overlap area, the land use plan of Falls Township indicates an appropriate open space area surrounding a central area which is earmarked for industrial development. The Penn's Landing area in Philadelphia and the Presque Isle Bay area and waterfront district in Erie represent areas that already combine economic development with recreational opportunities.

Priorities for Uses in Nominated GAPC

In addition to highlighting critical areas within each coastal zone, recommended priorities for future use have been developed for the first three types of nominated GAPC. More detailed study will be encouraged to determine priority use within overlap areas. Priorities presented range from the most desirable to least desirable from the perspective of the entire coastal zone. These priorities for future use of GAPC are designed to serve as guidelines to local governments who are responsible for land use decisions within the coastal zone. State agencies will consider the priorities and guidelines as they carry out their administrative responsibilities and exercise authorities throughout the coastal zone.

Priorities for Uses in Areas of Significant Natural Value - The wildlife and vegetation communities existing in these GAPC constitute a significant natural resource, which in many instances provide a greater than local benefit. The major goals of the management program are the protection and enhancement of these areas and the encouragement of only those uses which will not interfere with the areas natural functions.

- High Priority Activities

1. Uses that protect, maintain, or enhance natural resource functions. The protection of these areas as open space, passive recreation and wildlife preserves, restoration of natural plant communities, and the removal of trash are examples of high priority activities.
2. Uses, such as bird watching, hiking, and scientific or educational study, that take advantage of the natural amenities without destroying them.
3. Agriculture activities which occur within prime and unique soil areas (Lake Erie coastal zone only).

- Medium Priority Activities

1. Uses that cause minimal disturbance of ecosystems but which are supported by natural settings; for example, parks with picnic areas, ponds, trails, and limited parking.
2. Limited development activity, such as boat launches and other recreational facilities in cases where the developed portions are on those margins of the natural area most suited to development.
3. Utility and communication rights-of-way are acceptable only in cases where restoration of land to natural conditions can be successfully carried out, or where rights-of-way incorporate active recreation activities such as trails.
4. Agricultural activities which occur in areas not characterized by prime and unique soils (Lake Erie coastal zone only).

- Low Priority Activities

1. Any intensive development activity which will cause widespread, irreversible destruction of natural ecosystems. This includes any development activity which involves the removal or alteration of wildlife habitat and terrain, the draining, dredging, or filling of wetland areas, and the deterioration of stream or coastal water quality.

Priority of Uses in Development Opportunity Areas - Lands suitable for development, fully served with urban infrastructure, can be used to satisfy many essential purposes: development of new manufacturing plants, siting facilities of regional benefit and national interest, and when appropriate, public access to

the coastal waters. The goal is to attract uses to these areas that create jobs and enlarge the tax base, while at the same time improving the visual character of the shoreline by upgrading vacant and under-utilized lands. High priority should be given to those uses requiring large volumes of water or access to the marine channel.

- High Priority Activities

1. Development, expansion, or upgrading of the ports' cargo-handling capabilities to meet both current and future demands.
2. Such high impact uses as energy production and transfer, and dredge spoil disposal, may be located in pertinent development opportunity GAPC contiguous with existing energy activities or disposal sites, provided a permit is received from the Department. Special care should be exercised to ensure that spoil disposal areas can be reclaimed and used for necessary, water related activities.
3. Activities that upgrade the efficiency of highways and railroads that are conduits for goods delivered to the port.
4. Development of new manufacturing facilities considering, when appropriate, public access to the coastal waters. The public access use in industrial areas could occur during nonworking hours.
5. Provision of expanded government services to manufacturers already located within development opportunity areas to make the area more attractive to manufacturing, and stop the trend of relocations outside of the coastal zone.
6. Development activities which occur a safe distance from critically eroding shorefront areas (Lake Erie coastal zone only).

- Medium Priority Activities

1. Development of commercial, warehousing, and wholesale activities, preferably designed to offer public access to the waterfront on weekends.
2. Residential or "mixed use" developments at the waterfront especially when public access is provided.
3. Development of marinas, boat launches, fishing piers, and safe viewing areas. These facilities can be successfully incorporated into the "working waterfront" without increasing use conflicts.

- Low Priority Activities

1. Solid waste disposal on public and nonindustrial private lands is low priority. Such disposal is acceptable on industrial lands when strict environmental safeguards are used.
2. Any development which jeopardizes the quality of life in adjacent communities by increasing noise, traffic, and odor should be carefully scrutinized.
3. Construction of shorefront facilities within erosion hazard areas.

Priority of Uses in Areas of Significant Recreational, Historic, or Cultural Value - These areas have significant social value to citizens as a resource for recreational and cultural activities associated with

the river and port. The goal of the coastal program should be to protect, maintain, or restore these areas, which include several existing state, county and local parks.

- High Priority Activities

1. Activities that maintain or increase the resource value of these GAPC such as better access and walkways, increased parking, improved security, new park equipment, public boat launches, landscaping, etc.
2. Activities which provide financial support; e.g., subsidies, public acquisition, or fund raising.
3. For lands in private ownership, acquisition of easements that permit access to the shoreline should be encouraged.

- Medium Priority Activities

1. Commercial activities of limited extent supporting recreational activities.
2. Residential development which helps to upgrade the character of these GAPC and which furnishes recreational opportunities otherwise not provided to residents in adjacent neighborhoods.
3. Seasonal residential development which does not degrade the aesthetic appeal of the coastline, and which does not preclude recreation access to the lake waters (Lake Erie coastal zone).

- Low Priority Activities

1. Development, public or private, which fails to contribute to the cultural, recreational, or historic activities in the area.

Overlap Areas Constitute a Special Case - They contain valuable natural amenities as well as offer a good climate for development. Since they offer the opportunity for different types of uses and their ultimate use will be largely determined by ownership, a listing of priority of uses would be of little utility. Therefore, the management program encourages uses which recognize the dual potential of the area and are not mutually exclusive of either.

Inventory of GAPC

An Inventory of GAPCs has been developed, and is kept in the Program files.

Process for Creation of All Future Nominated and Designated GAPC

CRMP or any governmental agency with an interest (ie. State ownership, state regulation or contractual agreement) may propose individual sites as a Designated GAPC.

Any individual, group, or governmental agency may propose individual sites as a Nominated GAPC.

ALL proposed GAPCs will be sent concurrently to the local Coastal Zone Steering Committee and to CRMP, and must contain the following information:

1. Proposed GAPCs must be identified as either:
 - Areas of significant natural value,
 - Development opportunity areas,

- Areas of significant recreational, historic, or cultural value, or
 - Overlap areas.
2. A general location map of the proposed GAPC showing GAPC boundaries,
 3. A site-specific map of the proposed GAPC showing GAPC boundaries,
 4. A written description of the GAPC boundary,
 5. Size of proposed GAPC in square acres or miles,
 6. Ownership of proposed GAPC,
 7. Particular significance of proposed GAPC,
 8. Priority of Use proposed for the site (i.e. low, medium, high),
 9. For a Designated GAPC, the name of the state agency which owns the property, the state authorities that will be used to manage the GAPC, and the type of contractual agreement with the agency or entity responsible for management of the GAPC must also be submitted (See beginning of this chapter under Purpose of Designated and Nominated GAPC).

Following discussion, the local coastal zone steering committee will transmit proposed GAPCs along with recommendations and documentation of support or non-support, to the CRMP. The statewide Coastal Zone Advisory Committee will review all proposed GAPCs, and if approved, the proposed GAPC will be made a GAPC. CRMP's GAPC files, mapping, and GIS records will be revised accordingly.

Early coordination with the CRMP is urged prior to proposing a GAPC, in order to ensure that the proposal meets the requirements of the federal Coastal Zone Management Act.

Areas for Preservation or Restoration

The Federal Coastal Zone Management Act requires that procedures be devised to designate specific areas "for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values" (Section 306(c)(9)). The management program must establish criteria for designating these "Areas for Preservation or Restoration" (APR), so that as the program is implemented "special attention" can be focused on these areas.

1. The site must be currently available or capable of being made available for public use, recognizing that use restrictions or regulations may be necessary to preserve the natural character of the site. Private lands without public access cannot be designated as APR.
2. The site must have value, or potential value when restored, as a natural resource area supporting viable plant and animal communities. APR are intended to serve primarily as wildlife preserves, as waterfowl nesting and breeding grounds, and for such passive recreation as hiking, bird-watching, and scientific study.

In the future, additional APR may be "designated" or "nominated" through the process described previously for GAPC. Local proposals will be forwarded by the steering committee to the state with recommendations.

Excluded Federal Lands of Potential State Interest:

Tinicum Marsh (Delaware and Philadelphia Counties) - 1,200 acres

Fort Mifflin Disposal Area (Philadelphia County) - 420 acres

Philadelphia Naval Shipyard (Philadelphia County) - approximately 300 acres

These areas will have a major influence on surrounding coastal uses. Although significant, these areas cannot be nominated or designated as GAPC because of the “Excluded Federal Lands” provision of the Federal Coastal Zone Management Act. Further discussion of Excluded Federal Lands is found in Chapter 1.

CHAPTER 4 - PROGRAM AUTHORITIES AND ORGANIZATION

MANAGEMENT REQUIREMENTS AND AUTHORITIES

Networking Mechanisms

Pennsylvania has developed a state/local management partnership that combines both state and local administration of state authorities. The bulk of the Pennsylvania CRMP will be administered by state agencies. However, some local and county governments will administer state authorities for floodplain management, air quality, encroachments and bluff setback permitting in accordance with state standards.

All state enforceable coastal policies will be administered in a uniform fashion in the coastal areas according to the Program's regulatory authorities. The Executive Order and the Memoranda of Understanding will help to provide a basis for carrying out the management program's nonenforceable policies in a coordinated fashion throughout the coastal areas. This concept of linking various state authorities under one agency is known as networking. However, for purposes of program approval, the Executive Order and Memoranda of Understanding are not required since all program regulatory authorities are enforced by the Department.

The following mechanisms are used to achieve networking in Pennsylvania:

Executive Order - The executive order provides the bases for networking in Pennsylvania. It directs all administrative departments, independent administrative boards and commissions, and other state agencies to comply with the program's regulatory policies. It is legally enforceable in this regard to the extent that it directs the administrative departments, independent administrative boards and commissions, and other state agencies to follow the enforceable policies of the CRMP. Additionally, the executive order designates the Department of Environmental Protection (Department) the lead agency for implementing and administering the CRMP and as the single state agency to receive and administer federal grants available for implementing the management program. **The Executive Order is found in Appendix B.**

Memoranda of Understanding - The memoranda of understanding are program agreements between the Department and other state agencies and commissions that administer authorities and various programs that will be used in the implementation of the CRMP's nonregulatory policies. The Memoranda of Understanding details the manner in which the agencies, independent boards and commissions will use their authorities in the furtherance of the Program's nonregulatory policies. **Memorandums of Understanding with pertinent state agencies are found in Appendices C, D and E.**

Environmental Rights Amendment - Article 1, Section 27 of the Pennsylvania Constitution, commonly referred to as the Environmental Rights Amendment (ERA), provides another basis for networking the various statutory authorities and agencies together in conformance with CRMP. The ERA states:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

The amendment imposes the obligation on the Commonwealth to act as a trustee to conserve and maintain Pennsylvania's public natural resources. Every Commonwealth administrative agency, independent board and commission, and every local government body has the responsibility to carry out the requirements of the ERA.

Networked Authorities

Networking in Pennsylvania is facilitated by the fact that all authorities needed to implement the Program's regulatory policies and many of the authorities needed to implement the CRMP's nonregulatory policies are housed in the Department. The Department is the lead agency for implementing and administering the CRMP, and the single state agency for receiving and administering CRMP grants. **Appendix A** provides a detailed explanation of all networked authorities. These networked authorities are as follows:

Regulatory Authorities

1. Bluff Recession and Setback Act, Act of May 13, 1980
2. Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended, (32 P.S. Sections 693.1 *et seq.*)
3. Floodplain Management Act, Act of October 4, 1978, P.L. 851 (32 P.S. Sections 679.101 *et seq.*)
4. Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, (35 P.S. Sections 691.1 *et seq.*)
5. Pennsylvania Solid Waste Management Act, Act of July 31, 1968, P.L. 788, as amended, (35 P.S. Sections 6001 *et seq.*)
6. Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, as amended, (32 P.S. Sections 4001 *et seq.*)
7. Radiation Control Act, Act of January 28, 1966, P.L. (1965) 1625 (73 P.S. Section 301 *et seq.*)
8. Gas Operations Well-Drilling Petroleum and Coal Mining Act, Act of November 30, 1955, P.L. 756, as amended, (52 P.S. Sections 2101 *et seq.*)
9. Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. (1965) 1531, as amended, (35 P.S. Sections 750.1 *et seq.*)

Nonregulatory Authorities

1. Soil Conservation Law, Act of May 15, 1945, P.L. 547 as amended, (3 P.S. Sections 849 *et seq.*)
2. Open Space Lands, Act of January 19, 1968, P.L. (1967) 992 (32 P.S. Sections 5001 *et seq.*)
3. Stormwater Management Act, Act of October 4, 1979, P.L. 864 (32 P.S. Section 680.1 *et seq.*)

The remainder of the authorities needed to implement the CRMP's nonregulatory policies are either state authorities applying to all agencies, or authorities administered by state agencies that have been networked under the program. The authorities are as follows:

State Authorities Applying to all Agencies

1. Article 1, Section 27 of the Pennsylvania Constitution
2. Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, (71 P.S. Sections 510-1 *et seq.*)
3. Open Meeting Law, Act of July 19, 1974, P.L. 486 (65 P.S. Sections 261 *et seq.*)

Networked State Agencies' Authorities

1. Fish Law of 1959, Act of December 15, 1959, P.L. 1779, as amended, (30 P.S. Sections 20 *et seq.*)
2. Part II of 30 Pa. C.A.s. relating to Fish and Fishing
3. The Noxious Weeds Control law, as amended (3 P.S. Section 401 *et seq.*)
4. The Aquacultural Preservation Act, Act of November 22, 1978, P.L. 160 (71 P.S. Section 1047.1(a) *et seq.*)
5. Historic Preservation Act, Act of November 22, 1978, P.L. 160 (71 P.S. Sections 1047.1(a) *et seq.*)

Networked State Agencies

The following list contains Departmental agencies that have been networked into the CRMP.

1. Office of Chief Counsel
 - a. Bureau of Regulatory Counsel
2. Office of Water Management
 - a. Bureau of Water Quality Protection
 - b. Bureau of Waterways Engineering
 - c. Bureau of Watershed Conservation
3. Office of Air, Recycling and Radiation Protection
 - a. Bureau of Air Quality Control
 - b. Bureau of Land Recycling and Waste Management
 - c. Bureau of Radiation Protection
4. Office of Field Operations
 - a. Southeast Regional Office
 - b. Northwest Regional Office

The following is a list of departments and commissions exclusive of the Department (the lead agency) which have been networked together under the policies of the CRMP.

1. Department of Community and Economic Development
2. Department of Conservation and Natural Resources
 - a. Bureau of Facility Design and Construction
 - b. Bureau of Recreation and Conservation
 - c. Bureau of Topographic and Geologic Survey

- d. Bureau of State Parks
 - e. Bureau of Forestry
 - f. Wild Resource Conservation Fund
- 3. Department of Transportation
 - 4. Department of Agriculture
 - 5. Pennsylvania Fish & Boat Commission
 - 6. Pennsylvania Historic and Museum Commission
 - 7. Public Utility Commission

PROGRAM MONITORING AND EVALUATION

The Executive Order designates the Department as the lead agency for implementing and administering Pennsylvania's CRMP. The CRMP is responsible for monitoring and evaluating activities pertinent to coastal zone management, and ensuring compliance with the program's enforceable policies. The following mechanisms are used by the CRMP to monitor pertinent activities in the coastal zones.

Permit Process

The CRMP uses the following existing state and local permitting processes to monitor for and review permit activities that may impact upon the land and water uses or natural resources of Pennsylvania's coastal zone.

Regionally Administered DEP Permits – As of 1993, all state permits reviewed by the CRMP are issued out of two Regional Offices: the Southeast Regional Office located in Norristown, Pennsylvania, and the Northwest Regional Office located in Meadville, Pennsylvania.

Unlike other federally approved Coastal Zone Management Programs which have their own solid waste, air or water quality experts on staff, the CRMP has a limited staff, and through Departmental networking, relies heavily on the expertise of the regional offices. Take for example, a project involving the development of a new landfill. The CRMP does not have the engineering wherewithal to determine if the proposed facility's design complies with the Commonwealth's solid waste requirements, or if the effluent discharging from the landfill's treatment plant complies with the state's water quality regulation requirements. Instead, the CRMP concentrates its efforts on determining if wetlands, state threatened or endangered species, the CRMP funded projects, recreational opportunities, public access, coastal hazards, etc., will be impacted by the solid waste facility. As such, due to the Department's networking arrangement, there is no need for the CRMP to review permits for the design or construction of certain activities.

In addition, the Department has reacted to concerns of the permitted community, and has developed state general permits or waivers to facilitate the permitting of minor encroachment, solid waste air and water quality activities. Authorization provided by general permits or waivers eliminate the need of filing an application for an individual permit by an applicant who intends to undertake an activity in accordance with the terms, criteria, and conditions of the general permit. The Department issues state general permits for categories of minor projects which are similar in nature, and can be adequately regulated using standard specifications and conditions. During the development of these general permits, the CRMP provided comments, and reviewed the final general permits for consistency with the CRMP.

Review of state permit applications by the CRMP is the primary mechanism used for ensuring compliance with the regulatory policies of the management program implemented by the Department

The CRMP utilizes the following procedures to ensure early coordination and consultation with the regional offices of the Department regarding the issuance of all encroachment, air, water, and solid waste permits affecting uses subject to management by the CRMP:

Regional Office Permits - The CRMP reviews selected state permit applications to ensure that these activities are consistent with its enforceable policies. In addition to reviewing activities that occur within the state defined coastal zone, the CRMP may also elect to review activities located outside of the coastal zone, if they impact upon it.

Through state networking, the CRMP relies on the regional permitting programs to ensure that the proposed facility will function as designed. In our review, the CRMP's main concern is with the impacts the facility will have on coastal wetlands, bluff recession, streams, recreation, public access, the CRMP funded projects, and state species of special concern.

CRMP's STATE PERMIT APPLICATION REVIEW LIST

Through networking and the development of state general permits, the CRMP has been able to concentrate its efforts on reviewing the following state permit applications:

TYPES OF REGIONAL WATER MANAGEMENT PROGRAM (WMP) PERMITS REVIEWED BY THE CRMP

Encroachments

1. Joint permit applications.
2. Small project applications.
3. Amendments to applications.
4. Amendments to permits.
5. Dam applications (from central office).

The CRMP does not review state general permits.

NPDES Permits to Discharge Storm Water from Construction Activities (formerly Earth Disturbance Permits)

All activities that require an individual NPDES permit and disturb over 25 acres. [The CRMP will contact the County Conservation Districts or WMP if applicable, to review these applications.]

The CRMP does not review NPDES general permits associated with the discharge of stormwater from construction activities or from industrial activities.

401 Water Quality Certifications

The CRMP only reviews 401 water quality certifications that are required for federal development projects (i.e., COE dredging activities). [The CRMP will contact WMP or the central office (depending on project type) to coordinate the CRMP's federal consistency response.]

Water Quality (industrial wastewater & sewage discharges)

Part I - NPDES applications for proposed discharges of wastewater. Planning for new activities, discharges from new wastewater treatment plants, construction of sewage collection and conveyance systems, and major off-site expansions to existing treatment facilities.

The CRMP does not review Part II - Water Quality Management applications for construction of wastewater treatment plants. The CRMP ascertains the site location of these projects by reviewing the project's Part I - NPDES application. The CRMP will only review Part II applications if the opportunity to review Part I applications has been missed.

Furthermore, the CRMP does not review projects such as minor facility upgrades/modifications, on lot sewage systems, surface impoundments, land applications, sewage holding tanks, temporary storage in holding tanks, minor on-site expansions, or permit renewals.

TYPES OF REGIONAL AIR QUALITY PROGRAM PERMITS REVIEWED BY THE CRMP

Air Quality

Commencement of new activities such as the construction of new trash to energy or incinerator facilities, and major modifications or expansions to existing facilities.

The CRMP does not review applications for facility upgrades, transfer of ownership/acquisition, minor on-site expansions, permitting of or modifications of equipment in existing facilities, reactivation, temporary operating permits, or permit renewals.

TYPES OF REGIONAL WASTE MANAGEMENT PROGRAM PERMITS REVIEWED BY THE CRMP

Solid Waste (hazardous, municipal, residual, construction and demolition)

Commencement of new activities such as the construction of new waste processing/disposal, resource recovery, landfills, trash transfer, trash to energy or incinerator facilities, permanent facilities for the thermal treatment of contaminated soils, composting facilities, waste disposal areas, and major expansions/ major modifications of existing facilities.

The CRMP does not review applications involving permit transfers, sewage sludge for agricultural utilization, permit renewals/reissuance, installation of equipment on-site, or minor permit modifications such as for the management of a previously unpermitted class of waste.

STATE PERMIT APPLICATION REVIEW PROCEDURES - NORRISTOWN

The CRMP utilizes the following state permit application review procedures to review applications processed by the Norristown Regional Office:

Encroachment Applications

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those encroachment activities that the CRMP must review.
2. When an activity occurs within the coastal zone/coastal municipality, the Water Management Program (WMP) copies the CRMP on all pertinent acknowledgement and completeness letters. The CRMP uses the acknowledgement letter to ascertain the applicant's name, address and phone number; and the completeness letter to determine the CRMP's federal consistency start date. The CRMP may also use the Department's Application Processing System (computerized

permit tracking system) to obtain this information. The CRMP monitors the *Pennsylvania Bulletin* to ensure all applications are received.

3. The CRMP then contacts the applicant to request permit application information to review.
4. The CRMP may contact WMP staff to discuss the application, prior to submitting their comments.
5. The CRMP responds to all encroachment applications reviewed. The responses will be sent to the pertinent WMP biologist, engineer, permits clerk, and Assistant Regional Director. Response time will be within three weeks from receipt of information, or sooner if requested by WMP.
6. WMP copies the CRMP on deficiency letters, and correspondence on applications that have been, returned, withdrawn or denied.
7. The CRMP is required to send federal consistency letters three and six months after WMP deems the encroachment application complete. Prior to these critical deadlines, the CRMP uses the Department's Application Processing System and/or contacts the WMP biologist/engineer to ascertain the status of the application, if the project was permitted under a state general permit, and if a Corps' Individual, Nationwide or SPGP permit was used. The CRMP copies the WMP biologist or engineer on all federal consistency letters.
8. The CRMP monitors the *Pennsylvania Bulletin* and DEP's Application Processing Section to be kept informed of encroachment applications, and to ascertain what permits have been issued.
9. The CRMP provides WMP with updated lists of coastal municipalities, and revised Delaware Estuary Coastal Zone boundary maps.

401 Water Quality Certifications

For those federal development projects (i.e. Corps dredging activities) that require only a 401 water quality certification, the CRMP works directly with the WMP to meet the federal consistency requirements of the Federal CZM Act. The CRMP contacts the WMP to ascertain the status of the certification and respond accordingly to the federal agency. The CRMP copies the WMP on these federal consistency determinations. The CRMP monitors the *Pennsylvania Bulletin* to ensure all applications are received.

Air and Water Quality, Solid Waste and Permits to Discharge Storm Water from Construction Activities (formerly Earth Disturbance)

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those activities that the CRMP must review. When an application is received for an air, water, or solid waste activity occurring within a coastal municipality, the Assistant Regional Director copies the CRMP on the coordination letter. When this information is received, the CRMP should be able to initiate their review. Should additional information be needed, the CRMP contacts the lead agency directly. The CRMP responds in writing to all coordination notices received. Responses are sent to the pertinent Program Managers, and the Assistant Regional Director. The CRMP monitors the *Pennsylvania Bulletin* to ensure all applications are received.
2. The CRMP coordinates directly with Philadelphia Air Management Services regarding CRMP's review of Air Pollution Installation Permit Applications occurring within Philadelphia County.

3. For information on Permits to Discharge Storm Water from Construction Activities, the CRMP works directly with the pertinent County Conservation Districts or WMP when applicable. Comments on Permits to Discharge Storm Water from Construction Activities are sent to the County Conservation Districts or WMP when applicable. Response time is within three weeks from receipt of information, or sooner if requested.
4. The CRMP informs the County Conservation Districts of their involvement in these permit application review guidelines.
5. The CRMP monitors the *Pennsylvania Bulletin* and the Department's Application Processing System to ascertain what air and water quality, solid waste, and permits to discharge storm water permits have been issued, denied, returned or withdrawn.
6. The CRMP provides WMP with updated lists of coastal municipalities and revised Delaware Estuary Coastal Zone boundary maps.

STATE PERMIT APPLICATION REVIEW PROCEDURES - MEADVILLE

The CRMP utilizes the following state permit application procedures to review applications processed by the Meadville Regional Office:

Encroachment Applications

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those encroachment activities that the CRMP must review. When an activity occurs within the coastal zone/coastal municipality, the WMP copies the CRMP on all pertinent acknowledgement and completeness letters. The CRMP uses the acknowledgement letter to ascertain the applicant's name, address and phone number; and the completeness letter to determine the CRMP's federal consistency start date. The CRMP may also use the Department's Application Processing System to obtain this information. The CRMP monitors the *Pennsylvania Bulletin* to ensure all applications are received.
2. The CRMP then contacts the applicant to request permit application information to review.
3. The CRMP may contact WMP staff to discuss the application, prior to submitting their comments.
4. The CRMP responds to all encroachment applications reviewed. The responses are sent to the pertinent WMP biologist, engineer, permits clerk, and Section Chief. Response time will be within three weeks from receipt of information, or sooner if requested by WMP.
5. WMP copies the CRMP on deficiency letters, and correspondence on applications that have been, returned, withdrawn or denied.
6. The CRMP is required to send federal consistency letters three and six months after WMP deems the encroachment application complete. Prior to these critical deadlines, the CRMP uses the Department's Application Processing System and/or contacts the WMP biologist/engineer to ascertain the status of the application, if the project was permitted under a state general permit, and if a Corps' Individual, Nationwide or SPGP permit was used. The CRMP copies the WMP biologist or engineer on all federal consistency letters.
7. The CRMP monitors the *Pennsylvania Bulletin* and the Department's Application Processing System to be kept informed of encroachment applications, and to ascertain what permits have been issued.

8. The CRMP provides WMP with updated lists of coastal municipalities, and revised Lake Erie Coastal Zone boundary maps.

401 Water Quality Certifications

For those federal development projects (i.e. Corps dredging activities) that require only a 401 water quality certification, the CRMP works directly with the WMP to meet the federal consistency requirements of the Federal Coastal Zone Management Act. The CRMP contacts the WMP to ascertain the status of the certification and respond accordingly to the federal agency. The CRMP copies the WMP on these federal consistency determinations. The CRMP monitors the *Pennsylvania Bulletin* to ensure all applications are received.

Permit to Discharge Storm Water from Construction Activities (formerly Earth Disturbance)

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those activities that the CRMP must review. For the Permit to Discharge Stormwater from Construction Activities (formerly Earth Disturbance), the CRMP monitors the *Pennsylvania Bulletin* for pertinent applications, and contacts the Erie County Conservation District (ECCD) to request a project narrative, and location map. The CRMP responds in writing to the ECCD and WMP on all applications reviewed. Response time will be within three weeks from receipt of information or sooner, if requested by ECCD or WMP.
2. The CRMP monitors the *Pennsylvania Bulletin* and DEP's Application Processing System to ascertain what water discharge permits have been issued, denied, returned or withdrawn.

Solid Waste and Air Quality Applications

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those solid waste and air quality permit applications that the CRMP must review.
2. Due to the small number of solid waste and air quality permit applications affecting the Lake Erie Coastal Zone, the CRMP monitors the *Pennsylvania Bulletin* and contacts the pertinent Regional program on an as needed basis, to request a project narrative and location map to review. The CRMP responds in writing to the lead regional program on all applications reviewed. Response time will be within three weeks from receipt of information or sooner, if requested.
3. The CRMP monitors the *Pennsylvania Bulletin* and DEP's Application Processing System to ascertain what solid waste and air quality permits have been issued, denied, returned or withdrawn.

Water Quality Permit Applications

1. The preceding CRMP STATE PERMIT APPLICATION REVIEW LIST, lists those water quality permit applications that the CRMP must review.
2. Due to the small number of water quality permit applications affecting the Lake Erie Coastal Zone, the CRMP monitors the *Pennsylvania Bulletin* and contacts the Erie County Department of Health (ECDH) on an as needed basis, to request a project narrative and location map to review. The CRMP responds in writing to the lead regional program on all applications reviewed. Response time will be within three weeks from receipt of information or sooner, if requested.
3. The CRMP will monitor the *Pennsylvania Bulletin* and DEP's Application Processing System to ascertain what water quality permits have been issued, denied, returned or withdrawn.

Intra-departmental Conflict Resolution

- a. Any major concern over an application affecting the CRMP is addressed in writing to the regional DEP office. Concerns rejected by the region involve further discussion by the Regional Director and the CRMP manager for resolution. If these actions fail to resolve the differences, conflict resolution mechanisms as described later and depicted in **Figure iv-2** of this chapter are utilized.
- b. Three possible actions can occur as a result of the discussion: either the CRMP manager's concerns are addressed and the project found consistent; the permit issuer denies the permit based on the CRMP manager's concerns; or no agreement is reached and the process of conflict resolution will be initiated as described later and depicted in **Figure iv-2** of this chapter.

LOCALLY ADMINISTERED PERMITS

Compliance with the CRMP's enforcement policies is monitored via permitting delegated to local governments. Local governments are required to develop and adopt state approved permitting programs covering activities in floodplains and bluff recession hazard areas. State criteria and standards contain provisions for periodic inspections to assure that the affected municipalities are enforcing the programs in a uniform and coordinated manner, and are in compliance with the intent of the acts. This enables the CRMP to monitor these activities with respect to compliance with the policies of the CRMP.

1. **Floodplain Management** - This act requires local governments to qualify within six months of designation or by October 4, 1978 for the National Flood Insurance Program. Municipalities identified by the Department of Housing and Urban Development as having areas subject to flooding are required to develop zoning ordinances, subdivision regulations, building codes, and other special purpose ordinances which will minimize the effects of flooding on life and property. The act places joint responsibility for administration with the Department of Community and Economic Development and the Department of Environmental Protection, and specifies penalties for failure to comply. The CRMP assists the Department of Community and Economic Development when requested in review of municipal implementation and administration of local ordinances to ascertain compliance or noncompliance with any applicable floodplain management regulations. The Department of Environmental Protection's assistance in the review is predicated upon the provisions of the Floodplain Management Act. All coastal municipalities which experience flooding are currently participating in the program.
2. **Bluff Recession and Setback Act** - Requires communities designated as having bluff recession hazard areas, within six months of designation, to develop and submit to the Department of Environmental Protection bluff setback ordinances that meet the minimum requirements of the act. Regulations developed pursuant to the act require the Department to review municipal implementation and administration of the local ordinance at least once a year to verify that the municipality is providing uniform and coordinated enforcement of the bluff setback ordinance. Coastal municipalities subject to the provisions of this act are Fairview Township, Girard Township, Harborcreek Township, Lake City Borough, Lawrence Park Township, Millcreek Township, North East Township, and Springfield Township in Erie County.
3. **Dam Safety and Encroachments** - Pursuant to Section 17 of the Dam Safety and Encroachments Act, and subject to the provisions of this section, the Department may, by written agreement, delegate to a county conservation district or other county agency one or more of its regulatory functions. These functions include enforcement and the power to permit, inspect, and monitor the following categories of water obstructions and encroachments: any category of water

obstruction or encroachment, including culverts, fills, streambank retaining devices, stream crossings, outfalls and headwalls, which do not have the potential of endangering public safety or property or causing significant damage to the environment.

Where the Department delegates one or more of its regulatory functions to a local agency, the Department shall in all cases retain the concurrent power to inspect and monitor all categories of water obstructions and encroachments, and to enforce the Dam Safety and Encroachments Act and regulations adopted thereunder.

Two of the four coastal County Conservation Districts (Delaware and Erie) have signed Delegation Agreements with the Department, and have been assigned Level II (of three possible Levels) responsibilities. Level II allows Delaware and Erie County Conservation Districts to:

- (a) Provide information and written material to the general public and industry, and to educate and train them with Chapter 105 permitting requirements and other requirements of the Act and the regulations.
- (b) To receive, register and acknowledge receipt some or all of the General Permits issued by the Department under 25 Pa. Code Chapter 105.
- (c) To perform on-site investigations of complaints regarding illegal water obstructions and encroachments and either attain voluntary compliance or refer the investigation to the Department's Regional Office for possible enforcement action.

4. Clean Air Act - The Philadelphia Air Management Services (PAMS) has been delegated state responsibility of issuing air quality installation permits under the state's Clean Air Act.

Permit Meetings - In addition to the institutionalized state permit review process mentioned above, several inter/intra agency permit review groups exist. The CRMP participates in the following project review groups in order to monitor and evaluate potential permit activities pertinent to coastal zone management, and ensure compliance with the Program's enforceable policies:

1. The Urban Waterfront Action Group – The Urban Waterfront Action Group (UWAG) is a the CRMP sponsored pre-permit forum comprised of federal, regional, state and local permitting and review agencies. Bimonthly meetings are held to review plans prior to application submittal and offer recommendations to eliminate possible problems that may be present when the application is submitted. Projects reviewed must be located in the Delaware Estuary Coastal Zone.
2. The Environmental Review Group (ERC) - This permit application review group is sponsored by the Department of Environmental Protection and is comprised of federal, state and local (county) permitting and review agencies. Monthly meetings discuss submitted state/federal permit applications affecting wetlands, and possible additional wetland avoidance, mitigation and compensation. Joint agency site visits are also planned. Projects reviewed are located statewide.
3. The Agency Coordination Meeting (ACM) – This review group is sponsored by the Department of Transportation (Pa. DOT). It is comprised of federal, regional, and state permitting and review agencies, and meets monthly. The purpose of the meeting is to review proposed Pa. DOT projects at each step of the NEPA process. Proposed projects are broken down into steps, and discussed according to the NEPA process. Each step of the project must first gain agency concurrence before the next step of the NEPA process is discussed. The final outcome of these meetings is that the transportation project will have been reviewed through the NEPA process, and will be ready to be submitted for state and federal permits. Projects reviewed are located statewide.

4. **Regional Office Pre-application Meetings.** Held monthly at the regional offices, these pre-application meetings are comprised of federal (COE) and state permitting agencies. The purpose of these meetings is to review and discuss projects prior to application submittal, and offer recommendations to eliminate possible problems that may be present when the application is submitted. Projects reviewed are located regionwide.

Project Review Process

The CRMP uses the following existing project review processes to monitor for and review activities that may impact upon the land and water uses or natural resources of Pennsylvania's coastal zone. Activities that are reviewed via these project review processes may sometimes require permits.

1. Pennsylvania Bulletin - Is the official gazette of the Commonwealth of Pennsylvania. It contains notices, regulations, and other documents filed with the Legislative Reference Bureau and supplements the Pennsylvania Code - a loose-leaf codification of administrative regulations, legislative documents, court rules, and home rule charter documents.
2. Direct Contact with Federal Agencies - In 1992, with the abolishment of the Commonwealth's Single Point of Contact (A-95 Review), the CRMP established direct contact review mechanisms with all pertinent federal agencies. All federal development projects and federal assistance projects to state and local governments are directly sent to the CRMP for review by either the federal agency or the applicant applying for federal assistance. OCS activities and Federal permits and licenses are also reviewed through this direct contact mechanism.
3. Executive Order 12372 - Presidential Executive Order 12372 gives states the opportunity to develop their own processes or refine existing processes for state and local officials to review development and assistance projects. The Department of Environmental Protection - Bureau of Fiscal Management has set up a process for state and local governments to review and comment upon the numerous grant applications it submits for federal assistance. The Federal Grants Coordinator within this Department circulates copies of Departmental grant applications throughout the Department for review. The CRMP participates in this review.
4. The Coastal Zone Advisory Committee - Whose membership and activities are described in Chapter 5.
5. The Coastal Zone Steering Committees - Whose membership and activities are described in Chapter 5.
6. Wetlands Protection Advisory Committee - The Wetlands Protection Advisory Committee (WETPAC) consists of a cross-section of environmentalists, landowners, farmers, professionals and local and federal government officials who advise and guide the Department in further developing wetland policies and regulations.
7. State Programmatic General Permit Group - The State Programmatic General Permit (SPGP) is a federal permit issued for the Commonwealth by the U.S. Army Corps of Engineers. The SPGP authorizes the Department to provide federal Section 404 permits concurrently with Chapter 105 permits, thereby eliminating a federal review for the proposed activity. The SPGP results in the elimination of a duplicative federal review of activities. The Group, consisting of state and federal permit and review agencies meets several times a year to discuss and resolve any concerns with the SPGP.

CONFLICT RESOLUTION

The CRMP is designed to balance the protection and preservation of coastal resources with use and development. Because of uses that compete in the coastal zone, conflicts often arise. To resolve the conflicts, Pennsylvania uses a set of existing legal and administrative mechanisms. These mechanisms provide federal, state, regional, and local agencies, as well as citizens and special interest groups a forum to express their views, enter into the decision-making process and challenge actions of the CRMP. Most of these potential conflicts are resolved through informal staff meetings. However, in the event that these informal meetings do not resolve the conflict, legal and administrative processes are available.

The actions of the program to which legal or administrative conflict resolution mechanisms may apply are:

1. Legislative initiatives
2. Rule making and formal designations pursuant to existing state authority
3. Permit issuance or denial
4. Findings of inconsistency of agency actions with policies of the CRMP
5. Failure to enforce the CRMP
6. Administrative decision-making

The legal mechanisms include the:

1. Legislative process
2. Environmental Quality Board
3. Environmental Hearing Board
4. Citizen suits to enforce Article I, Section 27 of the Pennsylvania Constitution
5. Judicial procedures pursuant to state statutes
6. Judicial procedures pursuant to local administration of state statutes
7. Department mediation services

The administrative mechanisms include:

1. Interdepartmental resolution
2. Interdepartmental resolution

Legal Conflict Resolution

The purpose, structure, and means by which agencies, individuals, and groups can become involved in the legal processes are discussed in the following sections.

Legislative Process

Interested parties are notified of proposed bills via special mailings by the House in which the bill originated, news releases, television and radio coverage. The public may express their concerns directly at committee hearings on the proposed legislation, or may express their concerns to committee members.

All sessions of either House where legislation is acted on is open to the public. All committee meetings are open to the public, and during the legislative process anyone can make his interests known by contacting any elected member of the legislature.

Environmental Quality Board

The purpose of the Environmental Quality Board (EQB) is to propose and adopt regulations to implement state authorities administered by the Department of Environmental Protection.

By law, the EQB is comprised of the Secretaries of Agriculture, Community and Economic Development, Conservation and Natural Resources, Environmental Protection, Health, Labor and Industry, and Transportation, the Executive Directors of the Fish and Boat Commission, Game Commission, Historical and Museum Commission, and State Planning Board, the Chairman of the Public Utility Commission; four members of the General Assembly, and five members of the Department of Environmental Protection's Citizens Advisory Council. The Secretary of the Department Protection serves as chairman.

There are three opportunities for a person (person is defined as "any individual, partnership, association, corporation, political subdivision, municipal authority, or other entity") to enter the EQB rulemaking process. These are:

1. Proposal of Regulations - Any program unit, the EQB, the Environmental Hearing Board, any staff member of such boards, official of the of Department, legal counsel (which includes the chief counsel or any member of his staff) or a member of the public may propose regulations to implement state authority. Presentation of proposed regulations to the EQB must be made by legal counsel of the Department of Environmental Protection. The EQB, at its discretion, determines whether the proposed regulations are is rejected, considered for adoption, or returned to the person or unit initiating the proposed regulations for resubmission at a later date.
2. Public Hearing on Proposed Regulations - Proposed regulations which are considered for adoption by the EQB are at the discretion of the EQB, unless otherwise mandated by law, subject to public hearings. Public notice of the hearing is generally provided 30 days in advance of the hearing in the *Pennsylvania Bulletin*. However, this notice of hearings is subject to the discretion of the EQB.
3. Written Testimony on Proposed Regulations - Agencies, individuals, and groups unable to attend a public hearing(s) on proposed regulations have an opportunity to express their reviews in writing to the EQB during the period of public notices prior public hearing(s) and for a period of time after the public hearing(s). The length of these periods in which the record is open for written testimony is 'subject to the discretion of the EQB and is so stated in the *Pennsylvania Bulletin*. Generally the period to receive written testimony remains open 30 days after completion of public hearing(s).

Following formal adoption of the regulations by the EQB, any aggrieved person would have to challenge the applicability of the regulations to the Environmental Hearing Board. This process is reviewed in the following section.

Environmental Hearing Board

The purpose of the Environmental Hearing Board (Board) is to hold hearings and issue adjudication on actions of the Department of Environmental Protection. An "action" is defined as an order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any person, including but not limited to, denials,

modifications, suspensions and revocations of permits, licenses and registrations; orders to cease the operation of an establishment or facility; orders to correct conditions endangering waters of the Commonwealth; orders to construct sewers or treatment facilities; orders to abate air pollution; and appeals from and complaints for the assessment of civil penalties. This includes actions of the CRMP. The membership of the Board consists of its chairman and two members appointed by the Governor.

Any “person” aggrieved by an action of the Department may enter the appeals process by addressing the specific objections to the action of the Department in writing. Upon receiving the appeal, the Board shall provide notice in the *Pennsylvania Bulletin* and the opportunity for any “person” to provide pertinent testimony. “Person” refers to anyone except the applicant, appellant, plaintiff, dependent or intervenor.

Upon completion of the hearing process, final orders of the Board are issued.

The appellant may appeal the decision of the Board to the Commonwealth Court provided the appeal is filed 30 days after final orders of the Board. Further appeal to the Pennsylvania Supreme Court is a matter of judicial discretion. Petitions for allowance for appeal to the Supreme Court must be filed within 30 days after the decision of the Commonwealth Court.

Citizen Suits Under the Environmental Rights Amendment - Article I, Section 27 of the Pennsylvania Constitution provides that:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.”

The section was placed in Article I, the portion of the Constitution which guarantees political rights such as due process, freedom of speech, and freedom of religion to Pennsylvania citizens. The amendment creates important personal “environmental rights” which citizens can assert on their own, if necessary, in the courts. The remaining portion of the amendment imposes duties on the Commonwealth to act as trustee to “conserve and maintain” Pennsylvania’s “public natural resources”.

When citizens bring suit in Commonwealth Court against the Commonwealth or its representatives for actions that are challenged as improper under Article I, Section 27, the court has developed a three-fold test to resolve the issue. This test, evolved from the Payne vs. Kassab Commonwealth Court decision and has become the standard test used in all subsequent court decisions. The test asks three basic questions to resolve the issue:

1. Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources?
2. Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
3. Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom, that to proceed further would be an abuse of discretion?

Judicial Procedures Pursuant to State Administration of State Statutes – The CRMP relies in part on seven legislative acts, which delegate administration of the acts to the Department. These are the Dam Safety Act, Clean Streams Law, Solid Waste Management Act, Air Pollution Control Act, Radiation

Control Act, Gas Operations Well Drilling Petroleum and Coal Mining Act, and Sewage Facilities Act. These acts provide that the Department may institute suits in law or equity to abate violations of either the act or regulations. These suits are instituted in Commonwealth Court. Appeals from such suits are taken, as a matter of right, to the Pennsylvania Supreme Court. Such appeals must be filed within 30 days following the decision of the Commonwealth Court.

Judicial Procedures Pursuant to Local Administration of State Statutes – The CRMP relies in part on two legislative acts which delegate administration of state authorities to local governments. These are the Floodplain Management Act and the Bluff Recession and Setback Act. Both laws provide that the Department or any affected county, municipality or aggrieved person may institute suits in law or equity to abate violations of either Act or regulation. These suits are to be instituted in the Commonwealth Court. Appeals from such suits are taken to the Pennsylvania Supreme Court as a matter of right. Such appeal must be filed within 30 days following the decision of the Commonwealth Court.

Persons may become involved in the administration of the Floodplain Management Act and the Bluff Recession and Setback Act at the local level according to the formal provisions of the Pennsylvania Municipalities Planning Code or other applicable enabling legislation.

Persons have two opportunities to become involved in the local administration of these statutes. These are:

1. Public hearings prior to enactment of local zoning ordinances.
2. Appeals on the validity of local zoning ordinances or the application of these ordinances. (See **Figure iv-1**).

Department Mediation Services – The Department offers mediation services to help resolve conflicts between groups, individuals and state government agencies concerning the use of Commonwealth resources or the regulation of such resources. Any conflict that might lead the parties to litigation or arbitration is a candidate for mediation. This may include inter-agency disputes, noncompliance with laws and regulations, appeals of agency actions, multi party agreements and remediations.

Mediation is the intervention into a dispute or negotiation of an acceptable, impartial and neutral third party who has no authoritative decision-making power, to assist contending parties to voluntarily reach their own mutually acceptable settlement of issues in dispute. The Department has trained staff to serve as mediators when conflicts arise where the parties involved are willing to use the service. The mediator stimulates negotiation and facilitates settlement and usually results in a written agreement signed by all parties. Although not legally binding the agreement has a very good chance of survival because it is based on the voluntary cooperation and good faith collaboration of all parties.

Mediation is a sound alternative to traditional formal processes where a judge or arbitrator decides the outcome. Conflicts are often resolved with less time and cost than litigation. Mediation gives all parties a chance to determine the outcome of the resolution. It can provide a win/win situation.

Administrative Conflict Resolution

Through the use of the monitoring mechanisms described in this chapter, the CRMP is informed of all major activities in the coastal zones.

Most decisions and actions of the CRMP occur at the staff level. Occasionally there may be instances when intra- and inter-agency staff level discussion may not produce agreement on an action that is taken or proposed to be taken by the program. On these occasions, it may be necessary for the heads of agencies to administratively resolve these conflicts.

Intra-departmental Conflict Resolution (Permit and Non-Permit Conflicts)

This conflict resolution mechanism is used to resolve disputes between CRMP and other DEP agencies.

When the Program is informed of an activity affecting the CRMP, it contacts the appropriate DEP agency and requests detailed information on the activity. This detailed information includes permit applications and supporting documentation (where applicable), drawings, activity descriptions, proposed time frames for completion and any other information that may be required to evaluate the activity. The CRMP reviews the activity for consistency with the program policies. If the review by the CRMP indicates that the activity is consistent with the program, the CRMP indicates this fact to the appropriate DEP agency. The CRMP continues to monitor the activity for continued compliance with the program.

In the event the activity is found to be inconsistent, the CRMP schedules a meeting with the appropriate DEP agency's staff to discuss and resolve the conflict. If this meeting does not resolve the conflict, a meeting is scheduled by the CRMP with the appropriate DEP Division Chief.* If this meeting fails to resolve the conflict, a meeting between the Bureau Director of Watershed Conservation and the appropriate DEP Regional Director/Bureau Director will be scheduled to resolve the conflict. If the conflict is still unresolved, a meeting may be requested between the DEP Deputy Secretary for Water Management and the appropriate DEP Deputy Secretary. Failure to resolve the conflict during the course of this meeting will require DEP's Deputy Secretary for Water Management to request a meeting with the Secretary of DEP. The Secretary will issue a decision that is administratively binding on all parties involved in the activity. **(See Figure iv-2).**

*If the conflict is with a bureau in another Deputate, the Deputy Secretary for Water Management will meet with the other Deputy Secretary to resolve the conflict. If this meeting fails to resolve the conflict, the Deputies will request a meeting with the Secretary of DEP to resolve the conflict. The Secretary will issue a decision that is administratively binding on all parties involved in the activity. **(See Figure iv-2).**

Inter-departmental Conflict Resolution

This conflict resolution mechanism is used to resolve disputes between CRMP and state departments and agencies outside of DEP.

The first steps of this process are identical to DEP's intra-departmental conflict resolution process. The major difference in the two processes occurs when a conflict is unresolved following the meeting between the CRMP Deputy Secretary for Water Management and the appropriate deputy secretary for the outside state agency.

At this point, the CRMP (DEP) Deputy Secretary for Water Management, requests that a meeting be scheduled between the appropriate outside state agency Secretary. If this meeting also fails to resolve the conflict, the DEP Secretary requests a meeting with the Governor to review the conflict and issue an order resolving the conflict. This order will be administratively binding on all parties under the Governor's jurisdiction. **(See Figure iv-3).**

**Figure iv-1
APPEALS PROCESS**

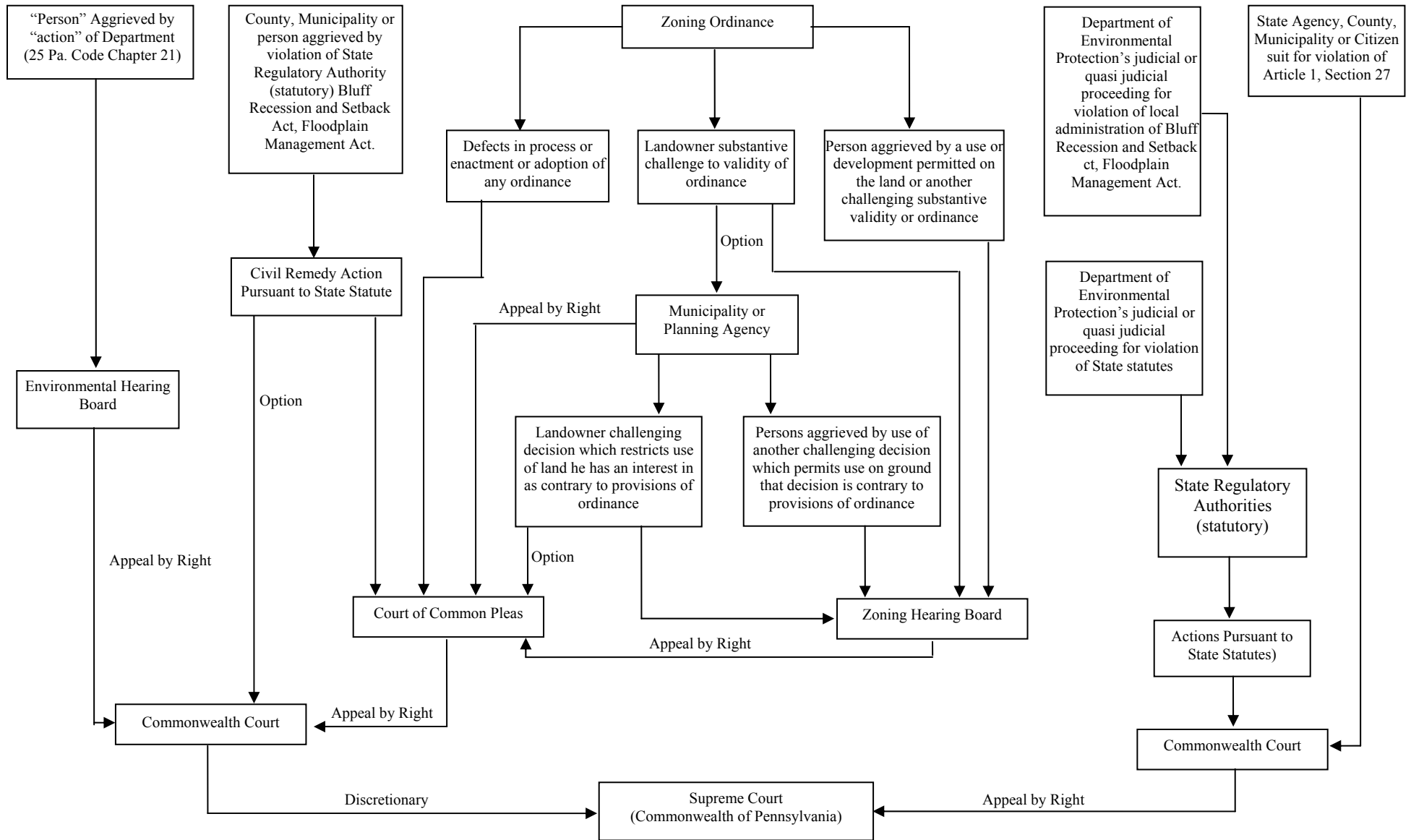
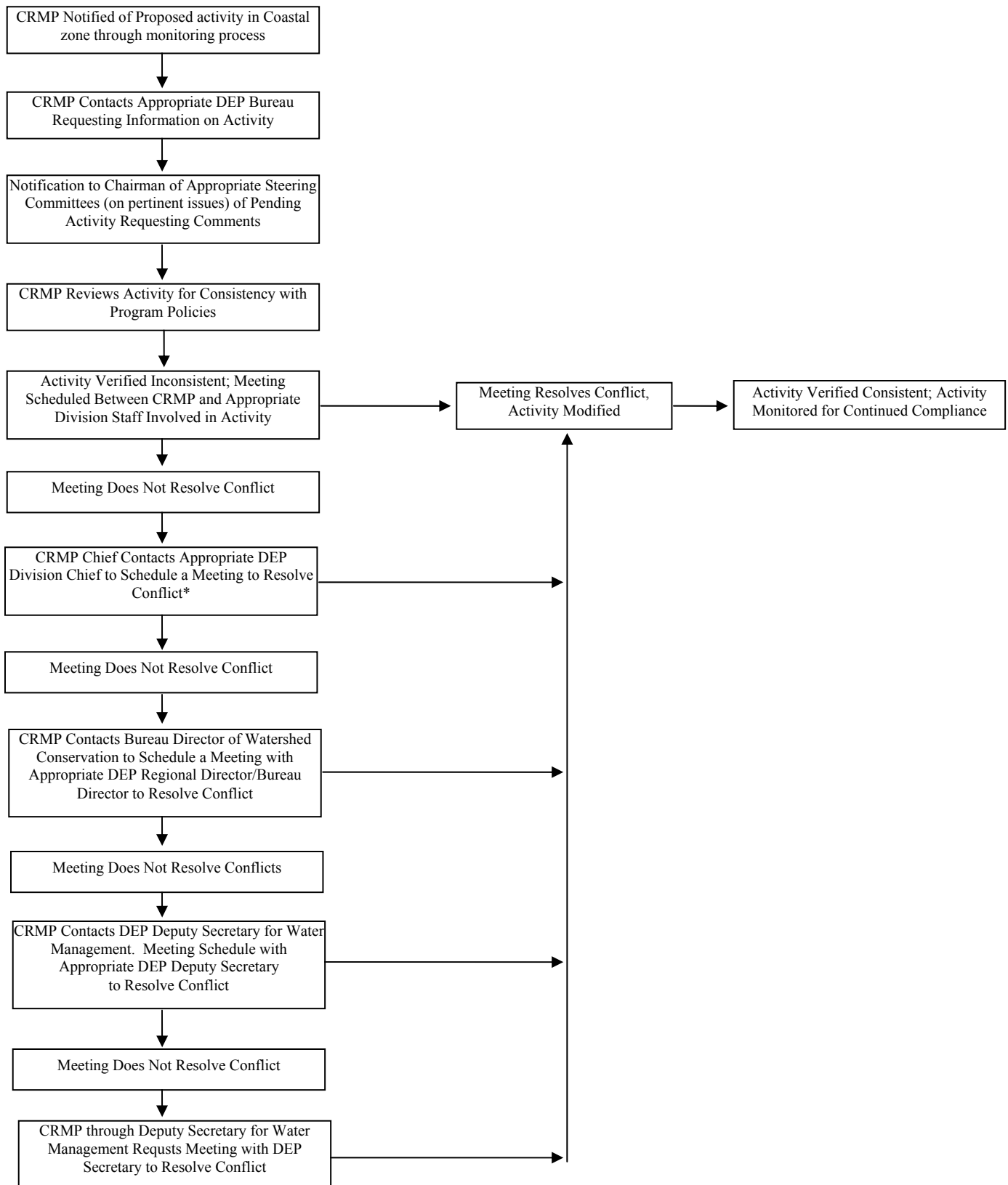


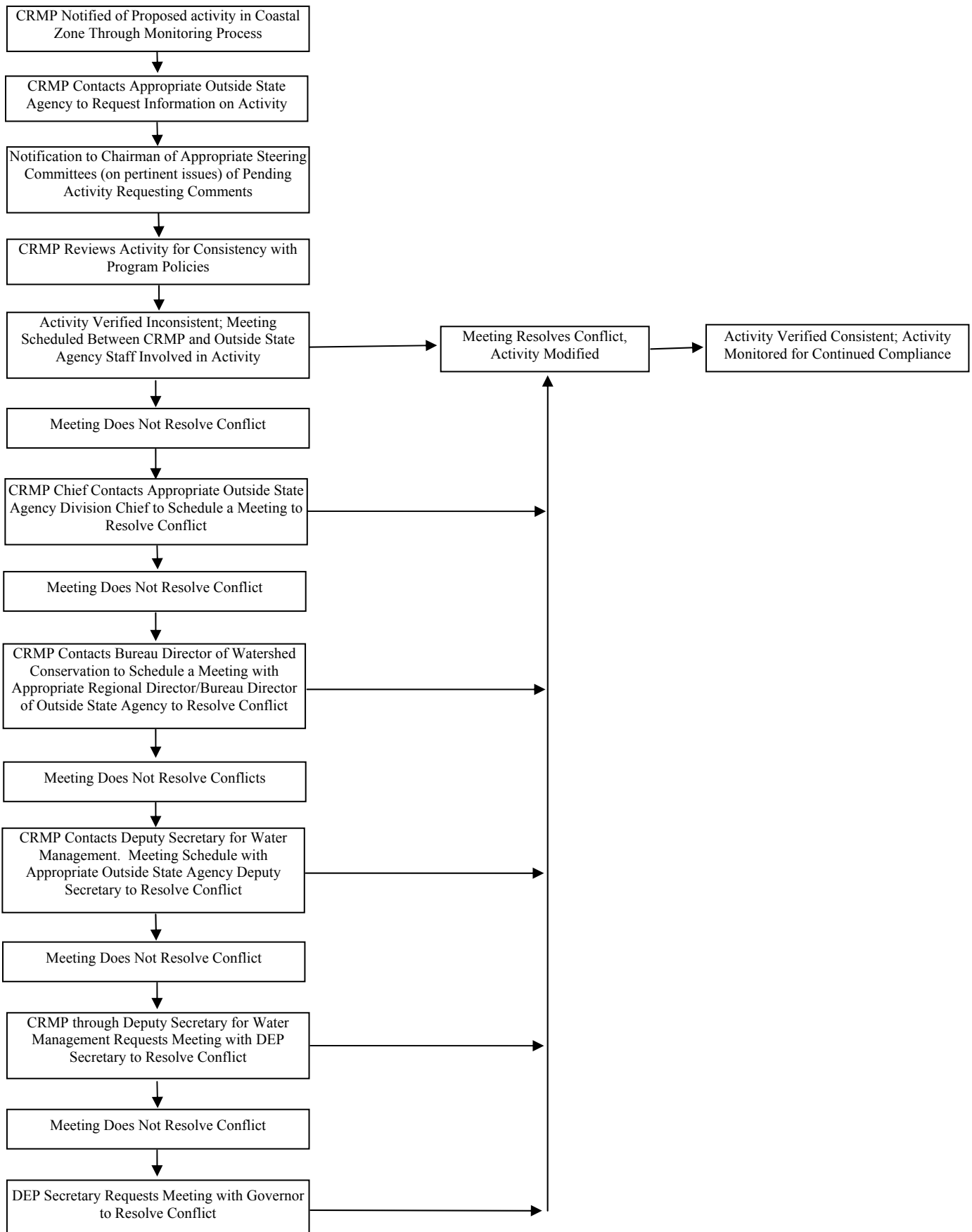
Figure iv-2
INTRA - DEPARTMENTAL ADMINISTRATIVE CONFLICT RESOLUTION



* The Coastal Zone Management Section is located in the Bureau of Watershed Conservation. Therefore, the Bureau Director will resolve conflicts between Division's while the Deputy Secretary will resolve conflicts between Bureaus in this Deputate.

Figure iv-3

INTER - DEPARTMENTAL ADMINISTRATIVE CONFLICT RESOLUTION



CHAPTER 5 - INTERGOVERNMENTAL PUBLIC COORDINATION AND REVIEW

INTRODUCTION

This chapter describes the procedures that are used to coordinate with and review actions of various governmental units as well as the public. The coordination and review procedures established by Pennsylvania's CRMP are presented at the federal, interstate, state and local levels.

FEDERAL CONSISTENCY

Federal Consistency is the Federal Coastal Zone Management Act (CZMA) requirement that federal actions (regardless of location) that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources, or coastal effects) must be consistent with the enforceable policies of a coastal state's federally approved coastal management program, before they can occur. The CZMA federal consistency requirements are found at 15 CFR Part 930.

Federal actions consist of:

1. Federal Agency Activities (15 CFR Part 930 Subpart C), - activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency.

E.g., Fisheries Plans by the National Marine Fisheries Service, Naval exercises, the disposal of federal land by the General Services Administration, a U.S. Army Corps of Engineers (Corps) breakwater or beach nourishment project, an outer continental shelf (OCS) oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, activities in National Parks such as installation of mooring buoys or road construction;
2. Federally Licensed and Permitted Activities (15 CFR Part 930 Subpart D), - activities not performed by a Federal agency, but requiring federal permits, licenses or other forms of federal approval.

E.g., activities requiring Corps 404 permits, MMS approvals for OCS oil and gas plans, Corps permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, licenses from the Federal Energy Regulatory Commission (FERC) for hydroelectric facilities;
3. Outer Continental Shelf (OCS) exploration, production and development plans (15 CFR Part 930 Subpart E), and
4. Federal Financial Assistance to State and Local Government (15 CFR Part 930 Subpart F).

E.g., Federal Highway Administration funds to state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, and Housing and Urban Development grants.

Pennsylvania's Department of Environmental Protection (DEP) is the state agency responsible for coordinating the federal consistency review of these federal actions, and concurring with or objecting to the consistency determinations of federal agencies, and consistency certifications of applicants for federal licenses or permits, Outer Continental Shelf (OCS) or federal assistance activities. The CRMP within DEP has been tasked with federal consistency coordination and reviews.

Through coordination with all pertinent federal agencies, CRMP has developed direct contact procedures to review all federal consistency actions. In these procedures either the pertinent federal agency or the applicant sends to the CRMP the required consistency certification/determination, and the information necessary for CRMP to perform its consistency review. In every consistency review CRMP notifies in writing, BOTH the applicant and federal agency of its decision.

REVIEW PROCEDURES FOR ASSURING CONSISTENCY

Consistency for Federal Agency Activities, 15 CFR Part 930 Subpart C

CRMP uses the following procedures to review federal agency activities and development projects. These procedures are modified if the federal consistency regulations promulgated by NOAA mandate changes, or if unforeseen deficiencies or conflicts arise in using these procedures. Necessary changes made to correct deficiencies or conflicts are submitted to all federal agencies for comment. Following a reasonable review period, all received comments are evaluated and a new procedure is developed. This new procedure is then utilized in the review of federal actions requiring consistency.

The existing review procedures for federal agency activities or development projects are as follows:

- Direct contact review procedures have been instituted with all pertinent federal agencies whereby these agencies send their federal activities and development projects to CRMP for review. These federal agencies have been made aware of which of their activities and projects are expected to affect coastal uses or resources.
- At the earliest practicable time, federal agencies should notify CRMP that they are planning to undertake an activity or development project affecting the coastal zone, and whether it is consistent to the maximum extent practicable with Pennsylvania's CRMP program. The federal agency provides its consistency determination in writing to CRMP at least 90 days before final state CRMP approval of the federal agency activity unless both CRMP and the federal agency agree to an alternative notification schedule. CRMP uses the DEP's permit process, participation in pre-permit meetings, and review of the *Federal Register* and *Pennsylvania Bulletin* as a backup to ensure receipt of all federal agency activities and projects, and also to monitor for other unlisted, but pertinent federal activities and projects. For those federal activities and projects not received, the CRMP notifies the federal agency of its need to review them.

NOTE: Development projects located inside the Pennsylvania coastal zone are automatically subject to consistency reviews, and require a consistency determination. However, for federal agency activities located in or outside of the coastal zone, and development projects located outside of the coastal zone, the federal agency determines if they will have reasonably foreseeable coastal effects. Any federal agency activity/development project regardless of its location is subject to the CZMA consistency requirement if it will affect any natural resources, land uses, or water uses of the coastal zone. No federal agency activities/development projects are categorically exempt from this requirement.

States are encouraged to list federal agency activities (see list below) that are routinely expected to affect coastal uses or resources in their approved management plans, and to monitor unlisted activities and to notify federal agencies when an unlisted activity requires consistency review. If coastal effects are reasonably foreseeable, then the federal agency must submit a consistency determination to CRMP at least 90 days before the activity is scheduled to commence. If there are "no effects" the federal agency may have to provide a Negative Determination as per section 15 CFR 930.35.

- The required consistency determination includes a brief statement on whether or not the proposed action will be undertaken in a manner consistent to the maximum extent practicable with the state's approved management program, a detailed description of the proposed action, its associated facilities, its combined coastal effects, and will be presented in sufficient detail to support the federal agency's consistency statement. As appropriate and at the request of the federal agency, CRMP assists the agency in making the consistency determination concerning the proposal. Consistency determination is made with respect to the program's enforceable policies approved by NOAA.
- Upon receipt of the consistency determination and other required information, CRMP coordinates its review with appropriate state permitting and resource agencies, and responds to the federal agency within the time period (60 days,) and in the manner prescribed by 15 CFR Part 930 Subpart C. Should CRMP object to the federal agency's consistency determination and fail to resolve its differences with the federal agency, the CRMP may request mediation by the Secretary of Commerce or the federal Office of Ocean and Coastal Resource Management (OCRM), pursuant to 15 CFR Part 930, Subpart G. Mediation is not required and is a non-binding administrative remedy. Should Pennsylvania be dissatisfied with the outcome of the mediation process, or if the federal agency elects to proceed despite the state's objection, prior to, during or after the mediation, the state may pursue remedies in the federal courts.

The following federal agency activities or development projects are expected to have coastal effects:

1. U.S. Department of the Interior - Minerals Management Service
 - a. OCS oil and gas lease sales (Outer Continental Shelf Lands Act (43 U.S.C. 1334, *et seq.*)).
 - b. Pipeline rights-of-way or easements for oil and gas transmission on the Outer Continental Shelf (Outer Continental Shelf Lands Act (43 U.S.C. 1334, *et seq.*)).
2. U.S. Department of the Interior - National Park Service
 - a. Designing, acquiring, constructing, modifying and removing facilities and other national park service amenities (National Park Service Concessions Management Improvement Act of 1997 (16 U.S.C. 5951)).
 - b. Acquisitions, transfer, and disposal of land, including granting rights-of-way (National Park Service Concessions Management Improvement Act of 1997 (16 U.S.C. 5951)).
3. U.S. Department of the Interior - U.S. Fish and Wildlife
 - a. Plans for US Fish & Wildlife Service lands such as National Wildlife Refuges (National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd)).
 - b. Acquisition, transfer, and disposal of land and interest in land including granting rights-of-way (National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd)).
4. U.S. Department of Defense - U.S. Army Corps of Engineers
 - a. Designing, constructing, reconstructing and modifying navigation channels, mooring areas, anchorages, breakwaters, groins, jetties, barriers, harbors, piers docks, sand bypass systems, habitat areas including wetlands, beach and dune nourishment, erosion control

and shoreline stabilization structures (Rivers and Harbors Act (33 U.S.C. 1), Water Resources Development Act (42 U.S.C. 1962 d-5, d5e, d5f)).

- b. Dredging, storing, dewatering and disposing of dredged material (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), Federal Water Pollution Control Act (33 U.S.C. 1344)).
- c. Establishment of harbor lines (Rivers and Harbors Act (33 U.S.C. 404)).
- d. Land acquisition, transfer and disposal including sites for disposal of dredged material (Rivers and Harbors Act (33 U.S.C. 558b)).
- e. Development of or changes to Nationwide Permits, State Programmatic General Permits or Regional Permits (33 CFR Parts 325 and 330).
- f. Selection of storage, dewatering and disposal sites for dredged material including dredged material management plans (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), Federal Water Pollution Control Act (33 U.S.C. 1344)).

5. U.S. Department of Defense - U.S. Navy

- a. Acquisition, design and construction of new or modified defense installations (P.L. 97-214 (10 U.S.C. 2682), P.L. 85-861 (10 U.S.C. 2663)).
- b. Storage, dewatering and disposal of dredged material including development of dredged material management plans (Federal Water Pollution Control Act (33 U.S.C. 1344)).
- c. Ocean discharge and ballast water exchange programs (Act to prevent pollution from Ships (33 U.S.C. 1902)).
- d. Base closures, disposal of Defense property, including disposal and reuse plans for base closures (Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687, and P.L. 104-106 (U.S.C. 2662)).
- e. Dredging, storing, testing, sampling, dewatering and disposing of dredged material (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344)).

6. U.S. Department of Defense - U.S. Air Force

- a. Acquisition, design and construction of new or modified defense installations (P.L. 97-214 (10 U.S.C. 2682), and P.L. 85-861 (10 U.S.C. 2663)).
- b. Base closures, disposal of Defense property, including disposal and reuse plans for base closures (Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687), and P.L. 104-106 (U.S.C. 2662)).

7. General Service Administration

- a. Acquisition, design, construction, development, transfer, disposal and leasing of federal lands, structures and facilities (Federal Property and Administrative Services Act (40 U.S.C. 471, 472)).

8. U.S. Department of Homeland Security - U. S. Coast Guard
 - a. Designation, expansion, modification or abandonment of anchorages, lightering areas, navigation channels and shipping lanes (Ports and Waterways Safety Act (33 U.S.C. 1223)).
 - b. Dredging, storing, dewatering and disposing of dredged material (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344)).
 - c. Construction of new or enlarged Coast Guard stations, bases and lighthouses (Ports and Waterways Safety Act (33 U.S.C.)).
9. U.S. Department of Commerce - National Marine Fisheries
 - a. Development of Fishery Management Plans, amendments and framework adjustments (Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1835))
10. Environmental Protection Agency
 - a. Designation of open water sites for dredged and other materials and development of standards for designated sites (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1412)).
 - b. Development of Comprehensive Port Improvement Plans (National Environmental Policy Act (42 U.S.C. 4321, *et seq.*))
11. U.S. Department of Energy - Federal Energy Regulatory Commission
 - a. Grant of right of eminent domain for rights-of-way for natural gas pipelines (Natural Gas Act (15 U.S.C. 717f)).
12. Department of Transportation - Federal Highway Administration
 - a. Designing, constructing, reconstructing and modifying roads, highways, bridges, causeways and associated transportation facilities such as rest areas, toll areas and park and ride facilities (Pub. L. 97-449, 103-272, 104-324, and 106-159 (49 U.S.C. 104)).
 - b. Land acquisition for highway construction and improvements (P.L. 85-767 and 105-178 (23 U.S.C. 107) and Declaration of Taking Act (40 U.S.C. 258a)).
13. Department of Transportation - Federal Aviation Administration
 - a. Siting and design, installation, construction, and demolition of aviation facilities and aids to navigation (Air Traffic Management System Performance Improvement Act (49 U.S.C. 106)).
14. Department of Transportation - Maritime Administration
 - a. Ports and intermodal facilities and operations (Merchant Marine Act (46 U.S.C. 861), Defense Production Act, and Executive Orders 10480 and 12656)).

Consistency for Federally Licensed and Permit Activities, 15 CFR Part 930 Subpart D - Section 930.51 defines federal license and permit activities:

Any applicant required to obtain a federal license or permit for an activity that affects any land or water use or natural resource of the coastal zone should consult with the CRMP to assure that the proposed activity will be conducted in a manner consistent with the CRMP.

NOTE: All federal license or permit activities occurring in Pennsylvania's coastal zone are deemed to affect coastal uses or resources, if CRMP has "listed" the particular federal license, permit, approval or authorization in its federally approved program management document (i.e. see CRMP list below).

Persons or agencies required to obtain federal licenses or permits listed by the state as requiring consistency review shall submit a copy of the license or permit application to the CRMP along with the necessary data and information required by 15 CFR 930.58, and indicate that the proposed activity complies with and will be conducted in a manner consistent with the enforceable policies of the CRMP. Upon receipt of the application, the CRMP will coordinate its consistency review with appropriate state permitting and resource agencies, and respond in writing to both the applicant and federal agency in a manner prescribed by 15 CFR Part 930, Subpart D.

If an applicant is applying for one of the listed U.S. Army Corps of Engineers' permits, DEP and the Corps have developed a joint federal /state permit application to facilitate the state/federal permit process. A single application is submitted in triplicate to the pertinent DEP Regional Office. DEP keeps one copy, the second copy is sent to the Corps, and the third copy is sent to the Pennsylvania Fish and Boat Commission. Through coordination with DEP's regional offices, CRMP will be informed of the project and requests a fourth copy from the applicant. Some activities requiring a Corps' permit and which qualify for a Corps' State Programmatic General Permit-2 (in Pennsylvania only), have already been determined to be consistent by CRMP, under 15 CFR Part 930 Subpart C, and do not require further state federal consistency review.

If a federal license or permit requires a CRMP consistency review, and the CRMP has not replied within 6 months of receipt of the certification and necessary data and information, then the CRMP's concurrence is presumed. CRMP's consistency decision will be communicated in writing to both the applicant and the authorizing federal agency.

CRMP uses the DEP permit process, federal agencies' Public Notices, participation in pre-permit meetings, and review of the *Federal Register* and *Pennsylvania Bulletin* as a backup to ensure receipt of all listed federal licenses and permits, and also to monitor for unlisted federal licenses or permits. For those federal permit and license activities not received or unlisted, CRMP notifies the applicant and applicable federal agency of any CZMA consistency responsibilities.

Upon receiving certification concurrence from CRMP, the federal agency may approve the activity. If CRMP objects, then CRMP forwards in writing to the applicant and to the federal agency, the reasons the application was determined to be inconsistent. The letter may also include recommendations for making the application consistent with Pennsylvania's program. The applicant may appeal the CRMP's objection to the Secretary of Commerce within 30 days of receipt of the CRMP's objection. The Secretary of Commerce shall then determine whether the activity is consistent with the objectives of the Federal Coastal Zone Management Act, or is necessary in the interest of national security. If the Secretary finds that the proposal meets with either of these requirements, the federal agency may approve the activity. If neither of these requirements is met, then the Secretary shall notify the federal agency that it may not issue the permit. If CRMP objects, the applicant is also encouraged to discuss options with CRMP. If a satisfactory resolution is negotiated, then CRMP will remove its objection.

The geographic scope of the consistency review involving federal licenses and permits includes the entire coastal zone and, in some cases, areas outside the coastal boundaries. Federal lands within the coastal zone boundary are excluded from the coastal zone, but listed federal license or permit activities on these federal lands are still subject to consistency review. Federal license or permit activities on federal lands and on other lands outside the zone boundary are subject to consistency review if the license or permit is listed by CRMP and the activity is located in a geographic area outside the coastal zone that is described in CRMP's FEIS. See 15 CFR 930.53. If the federal license or permit activity is not listed or is listed but is outside such a geographic location, then CRMP must obtain OCRM approval to review the activity pursuant to 15 CFR 930.54. Persons proposing to conduct an activity with potential coastal effects should consult with CRMP early in the planning process in order to avoid later problems

To assist federal agencies and applicants in determining whether or not licenses or permits for an activity require a consistency certification with CRMP, the following list describes the licenses and permits subject to CRMP's review. Other permits and licenses may be added as further needs are indicated. As this list is modified, CRMP will communicate the changes to the appropriate federal agencies and OCRM.

The following federal permits and licenses are subject to CRMP's consistency procedures.

1. Environmental Protection Agency
 - a. Water Quality Certifications, NPDES permits and other activities requiring a permit or license under sections 401, 402, 405, and 318 of the Federal Water Pollution Control Act (Sections 401, 402, 405 and 318 of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342, 1345 and 1328)).
 - b. Permits pursuant to the Clean Air Act including prevention of significant deterioration permits, nonattainment major new source review permits, and permits for major amounts of hazardous air pollutants (Clean Air Act (42 U.S.C. 7401, *et seq.*))
2. Nuclear Regulatory Commission
 - a. Approval for the construction, decommissioning, and modification of nuclear facilities, and the possession and use of byproducts, source and special nuclear material (Atomic Energy Act of 1954 (42 U.S.C. 2011), Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841), the National Environmental Policy Act of 1969, and Nuclear Waste Policy Act of 1982 and its 1987 amendments (10 CFR 71, 72 and 50)).
3. Federal Energy Regulatory Commission
 - a. Licenses required for non-federal hydroelectric projects (Federal Power Act (16 U.S.C. 796(11), 797(e), 800, 801, and 808) HYDROPOWER).
 - b. Orders for interconnection of electric transmission facilities (Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b) HYDROPOWER).
 - c. Certificates of public convenience and necessity for the construction of natural gas pipeline facilities, including both interstate pipelines and LNG terminal facilities (Sections 7 and 7(c) of the Natural Gas Act (15 U.S.C. 717 and 717f(c)). (PIPELINES)
 - d. Permission and approval for the abandonment of natural gas pipeline facilities (Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)). (PIPELINES)

4. Department of Defense - Army Corps of Engineers
 - a. Permits for construction of dams, dikes, bulkheads, revetments, groins, jetties, piers, docks, pipelines, cables, seawalls, wharfs, piers or other structures (Sections 9, 10, 11 and 14 of the Rivers and Harbors Act (33 U.S.C. 401, *et seq.*)).
 - b. Discharge of dredge or fill material in navigable waters of the United States, including wetlands (Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344)).
5. Department of Homeland Security - US Coast Guard
 - a. Permits for the construction or modification of bridges or causeways over navigable waters, including affixed pipelines or other structures (Section 9 or 10 of the Rivers and Harbors Act (33 U.S.C. 401 and 403), and General Bridge Act (33 U.S.C. 491-507, and 525-534)).
 - b. Construction of deepwater ports (Deepwater Ports Act (33 U.S.C. 1501 *et seq.*)).
6. Department of Transportation - Surface Transportation Board
 - a. Approval for construction, expansion, or alteration of railway services and facilities, water carriers, including commercial ferries and associated facilities, and intermodal facilities and operations (49 U.S.C. 10101 *et seq.*, 49 U.S.C. 10901 *et seq.*, and 49 U.S.C. 13101).
7. Department of the Interior - Minerals Management Service
 - a. Licenses and permits described in detail in OCS oil and gas plans (Outer Continental Shelf Lands Act (43 U.S.C. 1338 *et seq.*)).
8. Department of Transportation - Surface Transportation Board and Federal Administration
 - a. Licenses or Certificates for rail line construction, including line crossings (ICC Termination Act of 1995 (49 U.S.C. 10101, *et seq.*)).
 - b. Licenses or Certificates for design, construction, expansion, curtailment, upgrading, or regulating of railroad facilities, including bridges (ICC Termination Act of 1995 (49 U.S.C. 10101, *et seq.*)).
 - c. Licenses or Certificates for removal of trackage and disposition of right-of-way (ICC Termination Act of 1995 (49 U.S.C. 10101, *et seq.*)).

Consistency for Outer Continental Shelf Exploration, Development and Production Activities, 15 CFR Part 930 Subpart E

Exploration, development, or production activities requiring a federal license or permit and described in detail in an Outer Continental Shelf (OCS) plan for any area which has been leased under the Outer Continental Shelf Lands Act (43 SC, Section 1331 *et seq.*), and which affect the coastal zone, must be conducted in a manner consistent with the enforceable policies of Pennsylvania's approved CRMP program. The person submitting an OCS exploration or development/production plan to the U.S. Department of the Interior must provide a consistency certification. The Department of the Interior then forwards a copy of the OCS plan, excluding proprietary information, and the person's consistency certification to CRMP requesting a decision on the person's certification.

CRMP should seek to coordinate review of other pertinent federal permits associated with the review of OCS plans. In addition, CRMP will coordinate its review with other state permitting and resource agencies, especially regarding compliance with state oil and gas regulations. CRMP also coordinates its review of OCS plans with any affected coastal communities.

CRMP uses DEP's permit process, federal agencies' Public Notice, participation in pre-permit meetings, and review of the *Federal Register* and *Pennsylvania Bulletin* as a backup to ensure receipt of all OCS permits and projects. For those federal activities and projects not received, CRMP notifies the federal agency of its need to review them.

CRMP will respond to the person and the Department of the Interior within 3 months of receiving from the Department of the Interior the consistency certification and supporting information. If a decision on consistency is not issued within 3 months, CRMP will notify the U.S. Department of the Interior and the person of the status of the consistency review. Concurrence with the consistency certification is conclusively presumed in the absence of this response. Concurrence is conclusively presumed in the absence of an objection by CRMP within 6 months of commencement of the consistency review.

In the event that CRMP objects to the consistency certification, CRMP notifies the person, the Department of the Interior, and the Director of OCRM of the reasons why the state objects to the action. Additionally, the person will be provided with the following: suggestions for correcting the proposal so that it complies with the enforceable policies of the CRMP, notice that the person may appeal CRMP's objection to the Secretary of Commerce pursuant to 15 CFR part 930 subpart H. The CRMP is also available to meet with the person to attempt to resolve the differences.

Consistency for Federal Assistance to State and Local Governments, 15 CFR Part 930 Subpart F

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid. An "applicant agency" is a State agency or local government applying for federal financial assistance. When these activities involve financial assistance to entities other than state or local governments, the activities are subject to the consistency provisions of 15 CFR Part 930, Subpart C.

CRMP reviews all federal assistance activities to governmental agencies that potentially affect the environmental, economic, and social resources of the Commonwealth's coastal zones. CRMP uses a review procedure where all pertinent federal, state and local governmental grant recipient agencies send their federal assistance grant applications directly to CRMP for review. Federal agencies have informed these governmental agencies that their grant activities require CRMP's consistency review, and have directed them to submit consistency certifications and copies of grant applications to CRMP. The federal Office of Management and Budget has added CRMP consistency requirements to the "Assurances" form found in all grant applications. This "Assurances" form also requires compliance with NEPA, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Clean Air Act, etc.

In addition, CRMP relies on DEP's internal federal assistance project review process developed under Executive Order 12372, and discussed in the last chapter.

CRMP uses DEP's permit process, participation in pre-permit meetings, and review of the *Federal Register* and *Pennsylvania Bulletin*, as a backup to ensure receipt of all listed federal assistance activities, and also to monitor for other pertinent federal assistance activities not received. For those federal assistance activities not received, CRMP notifies the pertinent governmental agency of its need to review them.

Upon receipt of the consistency certification and the information required by 15 CFR section 930.94(c), CRMP coordinates its review with appropriate state permitting agencies, and affected coastal municipalities, and responds in writing to the applicant agency and the federal agency within 30 days of receipt of the certification. Within 30 days, CRMP prepares a consistency concurrence or objection, and sends copies to the applicant and the federal grant agency. If CRMP does not object, the federal agency may grant the funds.

In the event CRMP objects to the applicant's proposal, CRMP's written objection will describe how the proposal is inconsistent with the applicable CRMP enforceable policies, or lacks information needed to determine consistency, and alternative measures which makes the proposed project consistent with CRMP. CRMP's objection letter is sent to the applicant, the federal agency and DEP's Office of Policy.

NOTE: Before sending an objection, CRMP first coordinates its objection with DEP's Office of Policy.

As a result of CRMP's federal consistency objection, the federal agency may not provide the financial assistance.

The applicant agency may appeal CRMP's objection with the Secretary of Commerce as described above, within 30 days of receipt of the state's objection. Applicant agencies are also encouraged to arrange a meeting with CRMP to address CRMP's objection and enforceable policies.

The following federal assistance to state and local governments are subject to CRMP's consistency procedures:

1. U.S. Department of the Interior - National Park Service
 - 15.916 Outdoor Recreation, Acquisition, Development and Planning
 - 15.918 Disposal of Federal Surplus Real Property for Parks, Recreation, and Monuments
 - 15.919 Urban Park and Recreation Recovery Program
2. U.S. Department of the Interior - US Fish and Wildlife Service
 - 15.600 Anadromous Fish Restoration
 - 15.605 Sport Fish Restoration
3. Environmental Protection Agency
 - 66.001 Air Pollution Control Program Support
 - 66.005 Air Pollution Control Survey and Demonstration Grants (construction projects only)
 - 66.418 Construction Grants for Wastewater Treatment Works
 - 66.419 Water Pollution Control, State and Interstate Program Support
 - 66.454 Water Quality Management Planning
4. U.S. Department of Housing and Urban Development
 - 14.110 Manufactured Home Loan Insurance - Financing Purchase of Manufactured Homes as Principal Residences of Borrowers
 - 14.112 Mortgage Insurance for Construction or Substantial Rehabilitation of Condominium Projects
 - 14.117 Mortgage Insurance - Homes
 - 14.124 Investor Sponsored Cooperative Housing
 - 14.125 Mortgage Insurance - Land Development and New Communities
 - 14.127 Mortgage Insurance - Manufactured Home Parks

- 14.128 Community Development Block Grants/Entitlement Grants
 - 14.129 Mortgage Insurance - Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities
 - 14.218 Community Development Block Grants - Small Cities Program
 - 14.221 Urban Development Action Grants
 - 14.225 Community Development Block Grants/Special Purpose Grants/Insular Areas
 - 14.228 Community Development Block Grants/State's Program
 - 14.231 Emergency Shelter Grants Program
 - 14.239 HOME Investment Partnerships Program
 - 14.248 Community Development Block Grants - Section 108 Loan Guarantees
5. U.S. Department of Transportation - Federal Aviation Administration
- 20.102 Airport Development Aid Program
 - 20.103 Airport Planning Grant Program
 - 20.106 Airport Improvement Program
6. U.S. Department of Transportation - Federal Highway Administration
- 20.205 Highway Planning and Construction
 - 20.506 Urban Mass Transportation Demonstration Grants
 - 20.515 State Planning and Research
7. U.S. Department of Commerce - Economic Development Administration
- 11.300 Grants and Loans for Public Works and Development Facilities
 - 11.301 Business Development Assistance
 - 11.302 Economic Development -Support
 - 11.304 Economic Development - Public Works Impact Projects
 - 11.305 State and Local Economic Development Planning
 - 11.307 Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
 - 11.308 Grants to States for Supplemental and Basic Funding Titles I, II, III, IV, and V Activities
 - 11.501 Development and Promotion of Ports and Intermodal Transportation
 - 11.509 Development and Promotion of Domestic Waterborne Transport Systems
8. Department of Commerce - National Oceanic and Atmospheric Administration
- 11.441 Regional Fishery Management Councils

INTERSTATE CONSISTENCY

Chapter 5 of CRMP's FEIS titled "*Intergovernmental/Public Coordination and Review*," discusses the Pennsylvania CRMP's federal consistency review requirements and describes the process that CRMP uses to coordinate and review actions of various levels of government and the public. CRMP's process was federally approved by the federal Office of Coastal Resource Management (OCRM) in 1980, and is based on the requirements of 15 CFR Part 930.

In 1990 and 1996 the Coastal Zone Management Act of 1972 was reauthorized and amended. The resulting regulatory revisions which became effective in January 2001, created a new subpart in 15 CFR Part 930, titled, Subpart I - Consistency for Federal Activities Having Interstate Coastal Effects. Subpart I allows one coastal state to review federal actions occurring totally within another state, if the

action will have reasonably foreseeable effects on the uses or resources of the first state. “Effects” include both direct effects and indirect (cumulative and secondary) effects, which result from the federal action. The review of federal actions occurring in one coastal state, by another coastal state is referred to as “interstate consistency.”

INTRODUCTION

CONSISTENCY FOR FEDERAL ACTIONS HAVING INTERSTATE COASTAL EFFECTS

This section deals with federal actions having interstate coastal effects or interstate consistency. Federal consistency is the Federal Coastal Zone Management Act (CZMA) requirement that federal actions (regardless of location) that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone, must be consistent with the enforceable policies of a coastal state’s federally approved coastal management program, before they can occur. The CZMA federal consistency requirements are found at 15 CFR Part 930.

This section describes federal actions occurring in specified areas in the state of Ohio that have reasonably foreseeable effects on the uses or resources of Pennsylvania’s coastal zone - called “interstate consistency.” See 15 CFR Part 930 Subpart I - Consistency of Federal Activities Having Interstate Coastal Effects.

For example, Pennsylvania’s CRMP may review a federal permit application for an activity occurring wholly within Ohio’s borders, if Pennsylvania has met the requirements of 15 CFR Part 930 Subpart I. Inclusion of this section in the CRMP’s FEIS document signifies that CRMP has met these requirements.

The following section lists those federal agency activities, federal development projects and federal permits and licenses located in Ohio (along with a geographical description of the area), which are subject to federal CZMA consistency review procedures. The Pennsylvania CRMP has determined that these listed federal actions will have reasonable foreseeable coastal effects upon Pennsylvania’s Lake Erie Coastal Zone because these actions will either trap or interrupt the flow of littoral beach material from Ohio into Pennsylvania, or will preclude former littoral beach material from being replaced back into the Ohio/Pennsylvania littoral drift system. These federal actions will exacerbate beach erosion and bluff recession along Pennsylvania’s shoreline.

Federal Shoreline Structures

The design, construction and modification of federal shoreline structures in Ohio have reasonably foreseeable effects upon Pennsylvania’s coastal resources. For example, as designed, Conneaut Harbor protrudes approximately 1 mile into Lake Erie, and interrupts and traps the flow of littoral beach material, which travels from Ohio, eastward into Pennsylvania’s coastal zone. As a result, this trapped material cannot continue in the littoral drift system into Pennsylvania, where it would otherwise accumulate on Pennsylvania’s beaches. Without nourishment by this littoral material, beach erosion is exacerbated along Pennsylvania’s shoreline.

Furthermore, since the sand-starved littoral drift system cannot renourish Pennsylvania’s remaining narrow beaches, destructive wave action eventually undercuts the high coastal bluffs in Pennsylvania east of the Harbor, causing bluff collapse and bluff recession along Pennsylvania’s shoreline. CRMP’s long-term monitoring of bluff recession along Pennsylvania’s Lake Erie shoreline shows that the highest recession rates are found along a section of shoreline that extends eastward from the Conneaut Harbor structure into Pennsylvania, for a distance of 10.5 miles. (See Figures #3 & 4.)

Conneaut Harbor in Ohio extends from the shoreline, approximately 1 mile into Lake Erie. (See Figure #5). According to the Buffalo District Corps of Engineer's (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes (4/4/77), large volumes of littoral beach material are being trapped by Conneaut Harbor. It concludes that the "severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure." Therefore, there is a direct cause and effect from Conneaut Harbor's trapping of littoral beach material, and the high erosion and recession rates along Pennsylvania's western Lake Erie shoreline (See Figure # 6).

Littoral beach material moving within the littoral drift system, which normally builds up beaches and minimizes shoreline erosion and bluff recession along the shoreline east of Conneaut (i.e. in western Erie County, Pennsylvania), is being captured by Conneaut Harbor. The large volume of littoral beach material captured by this federal structure is trapped by the harbor's western wall, and has created a very large sand fillet outside the harbor, along the western wall. (See Figure #7).

Furthermore, additional entrapment of littoral beach material also occurs inside Conneaut Harbor as a result of storm events. Trapped littoral beach material from the Conneaut fillet is washed over the Harbor's western wall, and deposits in the navigation and recreational channels within Conneaut Harbor. (See Figure #8). Although once part of the littoral drift system, this trapped littoral material has also been effectively removed out of the littoral drift system by the Harbor structure.



Figure #3
Beach and Bluff Erosion in Pennsylvania, immediately east of Conneaut Harbor.



Figure #4
Beach and Bluff Erosion in Pennsylvania, immediately east of Conneaut Harbor.



Figure #5
Location and configuration of Conneaut Harbor.

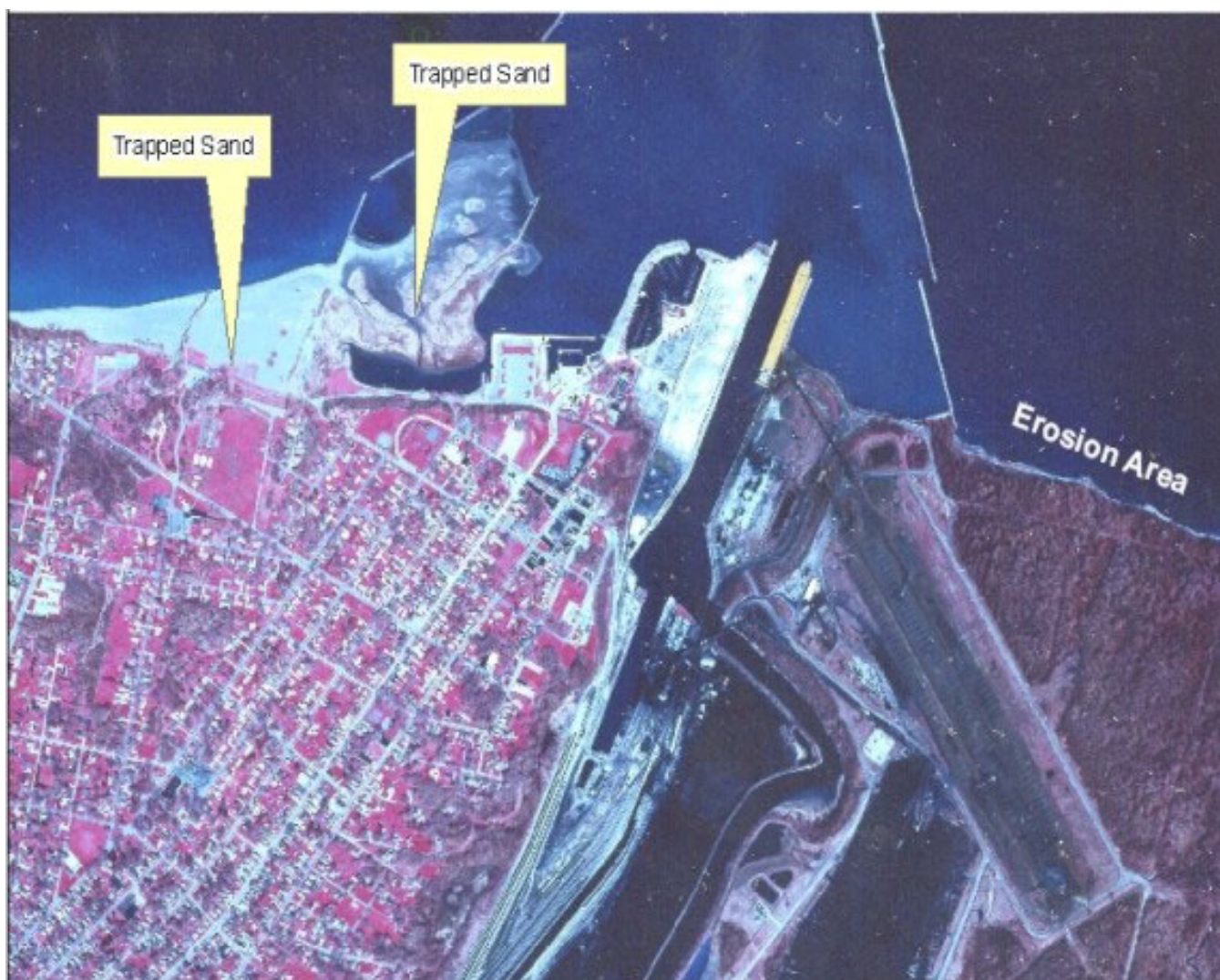


Figure #6 **Date: April, 2005**
Comparison between volume of sand trapped by Conneaut Harbor and downdrift erosion.



Figure #7 **Date: 2005**
Sand trapped by Conneaut Harbor's western harbor wall, which has created a very large sand fillet (beach) outside the harbor. Note: Bench is on a high bluff overlooking the sand fillet.



Figure #8 **Date: April 19, 2006**
Sand trapped inside Conneaut Harbor as a result of storm events washing littoral sand from the Conneaut fillet over the Harbor's western wall.



Figure #9
Aerial view of total amount of sand trapped by Conneaut Harbor.

Date: April 9, 2006

Figure # 9 shows the total amount of sand trapped by Conneaut Harbor.

Through its review of these federal activities, CRMP will ensure that the design, construction and modification of federal shoreline structures in Ohio will not interrupt or trap littoral drift beach material naturally flowing into Pennsylvania's Lake Erie coastal zone.

Federal Dredging and Disposal Activities

Federal activities, which dredge and dispose of material from federal waters, navigation channels, recreational channels and harbors also contribute to beach and bluff erosion in Pennsylvania.

As a matter of economics, the Buffalo COE selects the least costly method of disposing of dredge material. Typically, material dredged from Conneaut Harbor's channels that's suitable as beach nourishment material, is either disposed of in an approved open-lake disposal site, or in near-shore areas. In a February 25, 2004 negative consistency determination involving a previous dredging project at Conneaut Harbor, the Buffalo COE informed CRMP that it uses the Federal Standard requirements pursuant to 33 CFR, Section 335, to determine the near-shore disposal site. According to the Buffalo COE, "Federal standard means the dredged material disposal alternative or alternatives identified by the Corps, which represents the least costly alternatives consistent with sound engineering and environmental requirements. USACE Buffalo District standard for near-shore disposal of suitable coarse-grain material at Conneaut Harbor, Ohio is -11 low water datum (LWD). Historic cost estimates, dredging equipment capabilities, and historic disposal depths define the acceptable depth of -11 LWD."

Through several studies (to be discussed later), CRMP has found that the COE's disposal of dredge material into water deeper than 4 feet, places the material outside of the breaker zone of the sediment transporting beach-enriching littoral drift system. As such, the material will not be transported in the littoral drift system and nourish Pennsylvania's downdrift beaches. Instead, the material placed at the COE's Federal Standard of -11 feet of water depth is directed offshore by the undertow and lost in deeper water. Thus, the dredge material will not be available for needed beach replenishment. The COE's adherence to their Federal Standard of -11 feet LWD contributes to beach and bluff erosion along Pennsylvania's portion of the Lake Erie shoreline. In addition, CRMP is not aware of any federal requirement that requires that dredge material found suitable for use as beach nourishment, must be used for beach replenishment.

As a result, these federal activities preclude former littoral beach material from ever being replaced back into the littoral drift system, which ultimately nourishes Pennsylvania's beaches and protect its bluffs.

CRMP's requirement of placing suitable material into water no deeper than 4 feet is based on three studies. The first is a CRMP funded study titled Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures (Meadows, December 1982). This study notes the breaker zone along the Lake Erie shoreline as being an approximate water depth of 3 to 4 feet. The second study, the previously mentioned Buffalo District COE study titled Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes, discusses breaking waves at the exact location of CRMP's preferred dredge disposal area and water depth along the shoreline just east of the Harbor's eastern shorearm, and states "Calculations showed the critical depth of breaking [breaker zone] to be 4.6 feet." Finally, another COE document entitled Groins - Their Applications and Limitations (Coastal Engineering Technical Note, CETN - III - 10/3/81 (Coastal Engineering Research Center at Fort Belvoir, Virginia)) states that most of the sand material transported along the coast by the littoral drift moves within the breaker zone. Thus, the breaker zone along the Lake Erie shoreline, which transports most of the littoral drift material, is located in approximately 4 feet or less of water depth. A federal agency's selection of a dredge disposal site in Ohio could have reasonable foreseeable coastal effects on Pennsylvania's coastal zone. The selection

options for dredge disposal sites would include land acquisition or the choosing of dewatering sites, storage, transfer and disposal of the site. As previously mentioned as a matter of economics, the COE's least costly method of handling, processing and disposing of dredge material is usually selected.

The Pennsylvania CRMP will review the selection of federal dewatering sites, land acquisition, storage, transfer and disposal of these sites to ensure that the sites selected will not preclude the reuse of suitable dredged material for use as beach nourishment. CRMP will also review these sites to ensure that the location of the selected sites will not logistically or economically prevent the reuse of suitable dredge material for beach nourishment due to their remote location.

Federal License and Permit Activities

The COE's issuance of federal permits for dredging, filling, construction and maintenance of groins, jetties, docks, boat ramps, and shoreline structures, and the discharge of dredge or fill material into navigable waters may also interrupt the beach nourishing littoral currents and breaker zones, and contribute to the removal of sand material from the littoral drift system. Identical to the affects that Conneaut Harbor has on the littoral drift system, improperly designed and constructed nonfederal shoreline structures will also contribute to the removal of sand material from the littoral drift system.

If the structure, such as a groin is designed too high, its height will trap excessive amounts of littoral drift material, and will also prevent the trapped littoral sand from overtopping the structure during storm events. As a result, sand that is naturally destined to be carried onto Pennsylvania's beaches by the littoral drift system will be trapped on the updrift side of these high structures.

If the groin is designed too long (i.e., extending lakeward, beyond the 4-foot depth limits of the breaker zone), littoral drift material will be directed offshore into deeper water where it will not be able to reenter the littoral drift system. Moreover, during storm events, littoral drift material that has already accreted on the updrift side of these structures will erode more rapidly, and also be directed offshore by the undertow, into water deeper than 4 feet. Eventually, more sand material will accrete on the updrift side of these longer groins to replace the sand material previously directed offshore into the depths of Lake Erie. This cycle will repeat itself with less sand remaining in the littoral drift system to nourish Pennsylvania's downdrift beaches.

In determining the proper design and construction of groin structures in Pennsylvania, CRMP relies on the findings of the following three studies/documents:

Lake Erie - Shoreline Protection Structures Study (Bennett/Meadows, September 2001),

Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures (Meadows, December 1982, and

Groins - Their Applications and Limitations (Corps of Engineers Coastal Engineering Technical Note, CETN - III - 10, 3/81).

Findings contained in these documents are used by the Pennsylvania Department of Environmental Protection and CRMP in their review of permit applications for groin structures proposed along Pennsylvania's Lake Erie shoreline. The findings recommend that groin structures should be constructed as low profile structures designed to closely mimic the existing beach profile, and should not extend lakeward beyond the breaker zone (into water depths greater than 4 feet). In reviewing permit applications submitted to the COE for groin structures in Ohio, CRMP will also utilize the findings of these three above listed documents to ensure that the design and construction of groin structures in Ohio will not remove sand from or interrupt the littoral drift system.

Development of or Changes to Nationwide Permits, State Programmatic General Permits, and Regional Permits

The PA CRMP Program will review the COE's development of, or amendments to Nationwide Permits, State Programmatic General Permits, and Regional Permits to ensure that the design criteria contained in federal permits for groin structures is not contrary to the findings of the three aforementioned documents. As previously discussed, this will ensure that federal permit criteria for groin construction in Ohio will not lead to the removal of sand from the littoral drift system or interrupt the flow of littoral beach material from Ohio into Pennsylvania.

The geographic area selected for the following list of federal actions is along Ohio's Lake Erie shoreline. The area extends from the Ohio/Pennsylvania border approximately 3 miles westward, to an aqueduct located on Ohio's Lake Erie shoreline. More specifically, the aqueduct is located at the northern terminus of Lake Erie Street in the City of Conneaut, Ohio. The geographic area extends from the Ordinary High Water Mark of 572.8 feet (IGLD 1955), lakeward to the United States/Canadian border located in Lake Erie.

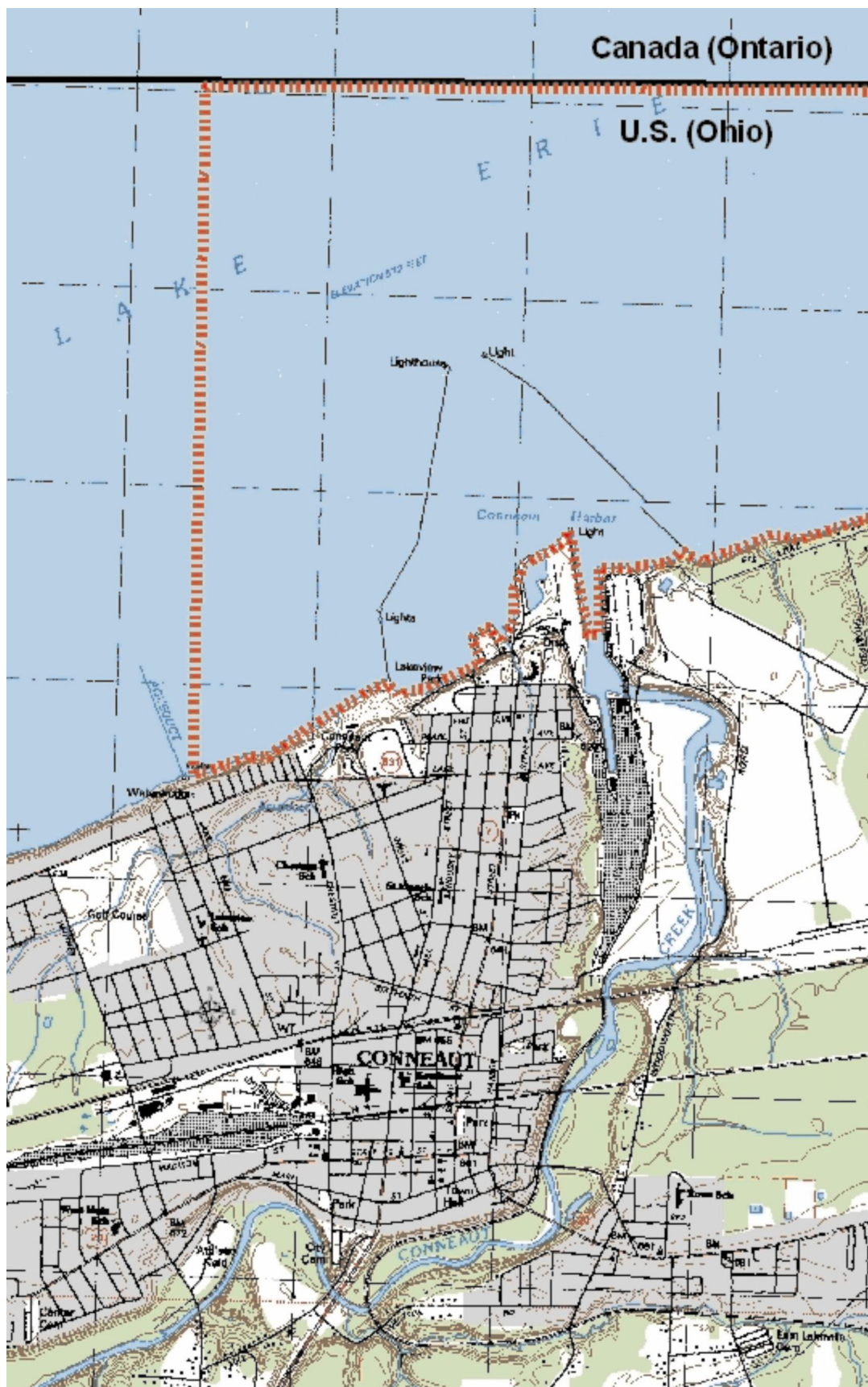


Figure #10

Geographic area in Ohio selected by Pennsylvania CZM for interstate consistency.

Figure #10 depicts the selected geographic area. The 1955 IGLD Ordinary High Water Mark elevation of 572.8 feet converts to IGLD's 1985 Ordinary High Water Mark of 573.4 feet.

In determining CRMP's western limit of the geographical area for interstate consistency reviews, the Ohio Department of Conservation and Natural Resources, Division of Geologic Survey (ODNR) was consulted. According to ODNR, Avon Lake is near the nodal point of diverging westward and eastward littoral transport systems. That is, east of Avon Lake the littoral sand transport in Lake Erie is generally eastward, and west of Avon Lake the littoral sand transport is generally westward. The distance from the Pennsylvania/Ohio border to Avon Lake is approximately 86 miles. However, in an effort to have a more manageable area for interstate consistency reviews, CRMP reduced this 86-mile length of Ohio shoreline, and selected its midpoint at Mentor On-The-Lake. This 43-mile geographic area was originally proposed by CRMP in its early coordination with affected federal and state agencies. Subsequent to this coordination, CRMP reevaluated the 43-mile distance and determined that there was no need for CRMP to review federal permit applications for shoreline structures in this 43-mile reach to ensure that their design and construction would allow the passing of littoral drift material into Pennsylvania. CRMP realized that the major and final impediment to passage of littoral drift material into Pennsylvania were federal actions occurring at or in the vicinity of Conneaut Harbor. As a result, CRMP decided upon the 3-mile distance from the Pennsylvania/Ohio boundary to the Conneaut aqueduct in Ohio.

The following federal actions occurring in Ohio, within the geographic location described above are subject to the federal consistency review of CRMP:

FEDERAL AGENCY ACTIVITIES

1. U.S. Department of Defense - U.S. Army Corps of Engineers
 - a. Designing, constructing, reconstructing and modifying navigation channels, mooring areas, anchorages, breakwaters, groins, jetties, barriers, harbors, piers, docks, sand bypass systems, habitat areas including beach and dune nourishment, erosion control and shoreline stabilization structures (Rivers and Harbors Act (33 U.S.C. 1), and Water Resources Development Act (42 U.S.C. 1962 d-5, d5e, d5f)).
 - b. Dredging and disposal of dredge or fill material. This includes disposal of dredged material at designated and undesignated open water sites (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344)).
 - c. Selection of storage, dewatering and disposal sites for dredged material. This activity would include dredged material management plans (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344) of dredged material, (Rivers and Harbors Act (33 U.S.C. 558b).
 - d. Land acquisition, transfer and disposal including sites for disposal 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344) of dredged material, (Rivers and Harbors Act (33 U.S.C. 558b).
 - e. Development of or changes to Nationwide Permits, State Programmatic General Permits, and Regional Permits (33 CFR Parts 325 and 330).

2. Department of Homeland Security - U.S. Coast Guard

- a. Dredging of access channels, mooring and berthing areas at existing or proposed facilities, and disposal of dredged material (Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413), and Federal Water Pollution Control Act (33 U.S.C. 1344)).

FEDERAL LICENSE AND PERMIT ACTIVITIES

1. Department of Defense

- a. U.S. Army Corps of Engineers permits for obstructions or alterations in navigable waters (Sections 9, 10, 11, and 14 of the Rivers and Harbors Act (33 U.S.C. 401, *et seq.*)).
- b. U.S. Army Corps of Engineers permits for discharge of dredge or fill material in navigable (Section 404 of the Federal Clean Water Act (33 U.S.C. 1344)).

ANALYSIS OF IMPACT – Addition of Interstate Consistency from RPC XII

Pennsylvania's Lake Erie shoreline is experiencing beach and bluff erosion. In an effort to address these problems, the CRMP depends on two enforceable policies:

- Coastal Hazard Areas Policy 1.2 which regulates “the siting of any water obstruction or encroachments along Lake Erie to assure proper planning, design, construction, maintenance and monitoring, in order to prevent unreasonable interference with water flow (which includes sediment laden beach enriching currents),” and
- Dredging and Spoil Disposal Policy 2.1 which ensures that dredging and spoil disposal in the coastal zones will be regulated to protect against damages to the public interest.

CRMP has been using these two policies to address federal actions in Pennsylvania for over 25 years. CRMP will now rely on these two policies and the interstate consistency provisions of 15 CFR Subpart I to address federal actions occurring in Ohio, that have reasonably foreseeable effects on the uses or resources of Pennsylvania.

The previously discussed Buffalo District Corps of Engineer's (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes has found that large volumes of sand are being trapped by Conneaut Harbor, and concludes “that the severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure.” Furthermore, in response to a 2001 petition to Pennsylvania's Environmental Quality Board by the Millcreek Township, Erie County to clarify the designation of Bluff Recession Hazard Areas along Lake Erie, DEP conducted a study of Pennsylvania's entire Lake Erie shoreline to determine Bluff Recession Hazard Areas. The study is entitled, Study to Tentatively Designate Bluff Recession Hazard Areas – November 2004. As part of the study, bluff recession rates from 1975 to 2003 were averaged. The chart below shows the bluff recession rates for municipalities along Pennsylvania's Lake Erie shoreline. The listing of municipalities is from west (located immediately downdrift of Conneaut Harbor) to east.

Municipality	Average Rate of Bluff Recession Through 2003
Springfield Township	1.27 feet per year
Girard Township	1.14 feet per year
Fairview Township	0.57 feet per year
Millcreek Township	0.45 feet per year
City of Erie	0.24 feet per year

Municipality	Average Rate of Bluff Recession Through 2003
Lawrence Park Township	0.40 feet per year
Harborcreek Township	0.59 feet per year
North East Township	0.55 feet per year

As can be seen by the chart, Springfield and Girard Townships, the townships located immediately downdrift of Conneaut Harbor have average bluff recession rates that are twice the average recession rates of the other affected municipalities. The Lake Erie shoreline length of these two municipalities is approximately 10.5 miles of Pennsylvania's total Lake Erie shoreline of 58 miles. An earlier study undertaken by CRMP in 1975 entitled, Shoreline Erosion and Flooding – Erie County showed similar bluff recession rates. Therefore, there is a direct cause and effect caused by Conneaut Harbor's trapping of littoral beach material and the high erosion and recession rates along Pennsylvania's western Lake Erie shoreline.

Material dredged from Conneaut Harbor's channels and suitable for beach nourishment is either disposed of in an approved open-lake disposal site, or in near-shore areas. The Buffalo COE relies on the Federal Standard requirements pursuant to 33 CFR, Section 335. Federal Standard means the dredged material disposal alternatives identified by the COE, which represents the least costly alternatives consistent with sound engineering and environmental requirements. The Buffalo District has determined that the Federal Standard for near-shore disposal of suitable beach nourishment material from Conneaut Harbor is –11 low water datum (LWD). The use of the Federal Standard of –11 of water depth contributes to beach and bluff erosion along Pennsylvania's portion of the Lake Erie shoreline.

Findings of three studies/documents, the Lake Erie - Shoreline Protection Structures Study, Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures, and Groins - Their Applications and Limitations (Corps of Engineers Coastal Engineering Technical Note, CETN - III - 10, 3/81) have determined that disposal at the Federal Standard of -11 feet of water depth, will place the dredge material outside the breaker zone of the sediment transporting littoral drift system. As a result, this dredge material will move offshore, be lost in deeper water, and will not be available for needed beach replenishment.

The Buffalo COE's determined Federal Standard of –11 LWD, represents the least costly alternative to dredge and dispose of material. It is developed using historic cost estimates, dredging equipment capabilities, and historic disposal. However, the federal consistency regulations at 15 CFR Subpart C specifically point out that a federal agency cannot use the claim of lack of funding or insufficient appropriated funds as a basis for being fully consistent to the maximum extent practicable with an enforceable policy of a state coastal management program.

The Buffalo COE's use of their determined Federal Standard of –11 LWD for disposal of dredge material is inconsistent with CRMP's enforceable Coastal Hazard Areas and Dredging and Spoil Disposal Policies. These two policies address the placement of material dredged from Lake Erie and ensure that it will be placed back into the littoral drift system to prevent further beach and bluff erosion in Pennsylvania. In order for the COE's dredging/disposal practice to be consistent with the Pennsylvania CRMP's policies, suitable material dredged from within Conneaut Harbor must be deposited along the shoreline immediately east of the Harbor, within the breaker zone, in water no deeper than 4 feet below the lake level as measured at the time of deposition. CRMP will rely on its Dredging and Spoil Disposal Policy 2.1 and Coastal Hazard Areas Policy 1.2 to prevent unreasonable interference with the littoral drift system and ensure that dredging and spoil disposal in the coastal zones will be regulated to protect against damages to the public interest.

Furthermore, CRMP can find no federal requirement that dredge material found suitable for use as beach nourishment must be used for beach nourishment. As a result, these federal activities preclude former littoral beach material from ever being replaced back into the littoral drift system, which would ultimately nourish Pennsylvania's beaches and protect its bluffs.

Finally, it must be noted that twice previously, in 1999 and 2004, that the Pennsylvania CRMP has reviewed the Buffalo COE's proposed dredging/disposal projects at Conneaut Harbor for consistency with its enforceable policies. Under 15 CFR Subpart C – Consistency for Federal Agency Activities and the Federal CZM Act, CRMP required in both projects that the material found suitable for beach nourishment be deposited on the downdrift side of Conneaut Harbor in less than 4 feet of water. The COE agreed with the Pennsylvania CRMP in both projects.

Through 25+ years of experience, CRMP has found that improperly designed (height and length) and constructed private shoreline protection structures, such as groins constructed in Pennsylvania, also interrupt the beach nourishing littoral currents located within the breaker zone by removing sand from the littoral drift system. Findings of the three studies/documents listed above are used by the Pennsylvania Department of Environmental Protection and CRMP in their review of permit applications for proposed shoreline stabilization structures along the Lake Erie shoreline in Pennsylvania.

Through the interstate consistency provisions of 15 CFR Part 930 Subpart I - Consistency of Federal Activities Having Interstate Coastal Effects, CRMP will review applications for federal permits in Ohio to determine if they will have reasonably foreseeable effects on the uses or resources of Pennsylvania's coastal zone. CRMP will use the findings of the three studies/documents listed above to ensure that projects submitted for COE permits reflect proper construction and consistent placement of these structures in Ohio. Following guidance contained in these three studies/documents will ensure that federal permits and licenses issued for shoreline structures in Ohio are consistent with CRMP's Coastal Hazard Areas Policy 1.2 and Dredging and Spoil Disposal Policy 2.1.

The Pennsylvania CRMP will review the COE's development of, or amendments to Nationwide Permits, State Programmatic General Permits, and Regional Permits to ensure that the criteria contained in federal permits for shoreline structures is not contrary to the findings of the three studies/documents listed above. This will ensure that federally permitted shoreline structures will not remove sand from the littoral drift system or interrupt the flow of littoral beach material from Ohio into Pennsylvania. CRMP will rely on its Coastal Hazard Areas Policy 1.2 and Dredging and Spoil Disposal Policy 2.1 to assure proper planning, design, construction, maintenance and monitoring of any water obstruction or encroachment along Ohio's Lake Erie shoreline in order to prevent unreasonable interference with water flow, and to ensure that dredging and spoil disposal will be regulated to protect against damages to Pennsylvania's public interest.

During development of its interstate consistency proposal, CRMP coordinated with the Buffalo District COE, the U.S. Coast Guard and the state of Ohio. In its coordination letter, CRMP requested written comments within 30 days, and internally, CRMP waited 60 days for the requested comments. The Buffalo District COE provided the only comments. The three COE comments are:

- "We believe the proposed changes to the Pennsylvania CRMP are outside the scope and intent of the Coastal Zone Management Act".

CRMP Response: CRMP disagrees. The Coastal Zone Act Reauthorization Amendments of 1990 clarified that the federal consistency review trigger is coastal effects, regardless of the geographic location of the federal activity. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the State's coastal zone and in another state, if there will be effects.

- “In our opinion, there are no reasonably foreseeable actions with respect to Federal and non-Federal activities in the State of Ohio that would require Consistency Concurrence by the State of Pennsylvania”.

CRMP Response: CRMP disagrees. According to previous findings of the Buffalo District Corps of Engineer’s (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes (4/4/77), large volumes of sand are being trapped by Conneaut Harbor. It concludes, “that the severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure.” Furthermore, CRMP’s long term monitoring of bluff recession along Pennsylvania’s Lake Erie shoreline supports the COE’s findings by showing that the highest bluff recession rates are in the section of shoreline and bluffs adjacent to the border with Ohio. Therefore, there is a direct cause and effect from Conneaut Harbor’s trapping of littoral beach material, and the high erosion and recession rates along Pennsylvania’s western Lake Erie shoreline. CRMP believes that the “effects test” has been proven.

- “In addition, there appear to be several significant inconsistencies between Pennsylvania’s proposed policy changes and existing policies under Ohio Department of Natural Resources (ODNR) Coastal Management Program.”

CRMP Response: The Pennsylvania CRMP is not proposing new policies or policy changes with its addition of interstate consistency. The two pertinent enforceable policies CRMP will apply to federal actions in Ohio have been in use for 25+ years. Furthermore, since the Buffalo COE did not list or discuss the several significant inconsistencies noted by them, they were not addressed in this RPC. Finally, ODNR has also been provided an opportunity to respond to CRMP’s proposed program changes. ODNR did not respond with any comments.

EXCLUDED FEDERAL LANDS:

Section 304(1) of the act provides that lands, the use of which is subject solely to the discretion of the federal government, or which are held in trust by the federal government, are excluded from the coastal zone. The Department of Justice has interpreted this to include all lands owned, leased or otherwise used by the United States. Even though federal lands are excluded from the coastal zone, the uses of these lands are subject to the federal consistency requirements of the act where their use affects the land or water uses or natural resources of the coastal zone. However, even though federally owned lands are excluded from state coastal zone management programs, the Federal Coastal Zone Management Act (CZMA) requires that certain activities, which may have significant spillover impacts or uses or resources under the purview of the state’s management program, to be consistent with the state’s program.

SECTION 306 PROGRAM CHANGES

Introduction - Section 306(d)(14) Program Changes

When Congress reauthorized the CZMA in 1990, a new requirement was added. Section 306(d)(14), requires that states with approved CZM Programs provide for public participation in their federal consistency determinations. NOAA has determined that Section 306(d)(14) imposes a new requirement for effective public participation only in the state’s review of consistency determinations pertaining to direct federal activities, as discussed under Section 307(c)(1) of the CZMA, and as defined in 15 CFR Section 930.31.

Section 930.31 defines direct federal activities as activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency. Examples would include activities in

National Parks such as installation of mooring buoys, or road construction, Fisheries Management Plans by the National Marine Fisheries Service, Naval exercises, the disposal of surplus federal land by the General Services Administration, a U.S. Army Corps of Engineers (COE) breakwater, or beach renourishment project, the development of COE regional, nationwide or state programmatic general permits, an outer continental shelf (OCS) oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, etc.;

Section 930.31(c) clarifies that direct federal activities do not include the issuance of federal licenses or permits (i.e., activities requiring COE 404 permits, Interstate Commerce Commission water carrier licenses, MMS licenses for OCS exploration, development and production, COE permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, etc.), nor do they include federal financial assistance to states and local governments (i.e., Federal Highway Administration funds to state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, Housing and Urban Development grants, etc.).

Selected Procedures for Meeting Section 306(d)(14) Public Comment Requirements

CRMP has determined that the most efficient way of meeting these requirements is to modify the current review mechanism used by Pennsylvania to review federal activities.

In the current mechanism (called PREP), federal agencies send direct federal activities to this Department's Office of Policy, who then forwards a copy onto CRMP for a consistency review and response. In many instances, federal agencies also send a copy of their activities directly to CRMP for review and response.

In the proposed modified version, CRMP will request that ALL federal agencies send a copy directly to CRMP for review. Direct receipt of this information is crucial as it will ensure that a public comment period of sufficient length will occur within the mandated 45 day review period, and that the required public notice will be timely. These important aspects will be discussed in detail later in this RPC.

To begin the process, CRMP will notify all pertinent federal agencies in writing of the CZMA's public participation requirements. Copies of Section 306(d)(14) regulations will be provided, along with a listing of those direct federal activities (listed in CRMP's FEIS) which specifically require 306(d)(14) coordination. State and federal agencies' respective 306(d)(14) requirements will be discussed, as well as the timeframes involved.

The Pennsylvania CRMP Program will implement Section 306(d)(14) requirements by following OCRM's guidance contained in 59 *Federal Register* 30339. They are:

1. *Timely public notice must be provided. States must issue public notice at the earliest practicable time after the application, and/or consistency determination has been received by the lead state coastal management agency.*

CRMP is mandated to review a direct federal activity, and make a decision within 45 calendar days. Historically, for those federal activities sent to CZM through PREP, CRMP was able to review/respond under PREP's review timeclock. However, PREP does not provide for a public comment period.

CRMP has determined that in order to issue a public notice at the "earliest practicable time," and meet the 45 day federal consistency timeclock period, it must receive these federal activities directly from the federal agencies. As such, CRMP's federal consistency timeclock for direct

federal development projects will now begin on the date that the federal project is stamped "Received" in the CRMP office.

2. *Public participation at a minimum must consist of written public notice and solicitation of public comments.*

Within this 45 day federal consistency review timeframe, CRMP will develop a public notice, publish the notice in the *Pennsylvania Bulletin*, solicit public comments, coordinate with other state agencies, and respond in writing back to the federal agency.

3. *A public comment period must be provided. The length of the comment period may vary in accordance with state or Federal law, and as appropriate for the type of authorization involved.*

CRMP will provide for a 15 day public comment period.

In calculating the length of the public comment period, CRMP had two timeframes to contend with. The first was the mandated 45 day federal consistency review timeframe, in which to review the federal activity, make a decision, and respond in writing to the federal agency.

The second timeframe to contend with was that submissions for publication in the *Pennsylvania Bulletin* must be received in Harrisburg by Tuesday, noon. Every Tuesday this information is collated, and the packet is sent to the *Pennsylvania Bulletin* to be published. Publication date is the second Saturday following that Tuesday. This two-week publication delay will not stop CRMP's 45 day federal consistency timeclock. This publication delay would consume between 12 to 18 days of the public's comment period.

Furthermore, CRMP has to allow itself a reasonable time period for the review of public and state agency comments, further state agency coordination, and to develop and send a final consistency decision to the pertinent federal agency. Therefore, based on these time constraints, as well as a review of public comment periods offered by federal agencies, **CRMP has determined that 15 days is an equitable public comment period.**

As can be seen, it is important that the CRMP receives these project DIRECTLY, in order to assure publication of a Public Notice, ensure a suitable public comment period, and respond back to the federal agency within 45 days. Under the CZMA, federal agencies who do not receive a written response within 45 days can presume their project is consistent with Pennsylvania's CRMP.

4. *Written public notice must:*
 - (a) *specify that the proposed activity is subject to review for consistency under the policies of the state coastal management program;*
 - (b) *provide sufficient information to serve as a basis for meaningful comment;*
 - (c) *specify a source for additional information; and*
 - (d) *specify a contact for submitting comments to the state coastal management program.*

CRMP will develop a generic public notice form which will include the above requirements.

5. *At a minimum, public notice must be provided in the area(s) of coastal zone likely to be affected by the activity.*

One of OCRM's suggested procedural options will be used by CRMP. CRMP will provide its public notice via the *Pennsylvania Bulletin*, the official state gazette.

STATE COORDINATION ACTIVITIES

The following mechanisms are utilized in the coordination and review of state agencies' activities affecting the management program.

1. Coastal Zone Advisory Committee - The Coastal Zone Advisory Committee (CZAC) was established to advise and assist in the design, implementation, and administration of the Commonwealth's CRMP. It is a state level committee comprised of representatives of state departments, commissions, and other agencies that administer or are affected by various programs in the Commonwealth's coastal areas. In addition, the CZAC includes representatives of the local Coastal Zone Steering Committees to encourage coordination between the statewide and local level advisory mechanisms.

The CZAC membership evolves over time with the changing organizational structure of state government, current interest on the part of other state agencies, and their pertinence to coastal matters.

In a program such as Pennsylvania's, which is based on networking, it is important to develop the program in such a manner as to foster close working relationships between the designated Coastal Zone Management agency and other state agencies involved in implementing the policies.

The CZAC performs several important functions:

Address Project Coordination: The purpose of this function is to ensure that projects or activities proposed for funding under the CRMP are in concert with planned or existing state agency activities. All projects to be funded, and other actions proposed by the local Steering Committees or the CRMP are reviewed by the CZAC with respect to their agency's programs and objectives. Additionally, members of the CZAC may propose projects or actions for consideration for CRMP funding or support.

Once proposed projects or actions have been reviewed, approved and set in priority by the appropriate Coastal Zone Steering Committee and the CZAC, the CRMP makes a determination of projects and actions to be undertaken based on the available project funding.

Advise Coastal Zone Management Program on Regulations: Periodically, CZAC members will be asked to review the effectiveness of regulations affecting coastal resources. If a regulation is found to be deficient, the CRMP may recommend changes in the regulations, or the development of new regulations, to the Department.

Participate in Program Review: Annually, the CZAC will review the CRMP with respect to its achievements in attaining program goals and meeting the needs of the Commonwealth coasts. This review will also examine the degree to which Commonwealth agencies are cooperating in the achievement of goals and policies of the CRMP. The committee also makes recommendations to the CRMP steering committee members to improve the program, such as modifications to existing policies, development of new policies, additional emphasis on certain policies, or implementation of new coordinative mechanisms. The CRMP gives due consideration to such recommendations, and take such action as is deemed to be appropriate.

LOCAL COORDINATION ACTIVITIES

The Coastal Zone Steering Committees (CZSC) are utilized in the coordination and review of regional and local governmental activities.

Coastal Zone Steering Committees have been operating in the Lake Erie and Delaware Estuary zones since 1975, and played a major role in determining the goals, policies, scope, and objectives of the CRMP. They have been instrumental in fostering coordination with local elected officials, and providing a mechanism for the incorporation of local values.

During the implementation of the management program, the structure of the CZSC will be revised and their focus of attention will be shifted. The Commonwealth's two coastal areas contain distinctly different political and social structures, and the committees have evolved somewhat differently in adopting to these different structures.

Lake Erie Coastal Zone Steering Committees

The Lake Erie Coastal Zone Steering Committee is organized according to bylaws adopted in 1987. These provide for steering committee membership by all ten coastal municipalities. Four additional members are selected by the committee itself, from among special interest groups such as environmental, neighborhood, civic, sportsman's, and economic development organizations. The Erie-Western Pennsylvania Port Authority is the fifteenth member. The bylaws also provide for alternate members. Administrative support is provided by the Erie County Department of Planning.

Delaware Estuary Coastal Zone Steering Committee

The Delaware Estuary Coastal Zone Steering Committee is also organized according to bylaws adopted in 1987. Membership provisions however, are considerably different than the Erie committee.

Both Bucks and Delaware Counties are members, and each also appoints two representatives from among their constituent municipalities. The City of Philadelphia is represented by several City agencies including the Water Department, and the Fairmount Park Commission. Administrative support is provided by the Delaware Valley Regional Planning Commission, a multi-county regional agency.

Steering Committee Functions

The major functions of both local steering committees are similar in nature.

1. Selection criteria: The CZSCs annually reviews and considers changes to the criteria to be used in the selection of local projects.
2. Funding priority: The CZSCs annually considers applications for funding of local level projects, and recommends a priority for funding by the program.
3. Local perspective: The CZSCs continually offer a local perspective for consideration by the CRMP.
4. Program review: The CZSCs provide the integral part of the ongoing program review process, making suggestions for improvement.

PUBLIC INVOLVEMENT

The Pennsylvania CRMP utilizes the following means and mechanisms to ensure opportunity for full participation by all interested parties both public and private under program implementation:

1. The Lake Erie and Delaware Estuary CZSC as discussed in the previous section.
2. Adherence to the Pennsylvania Open Meeting Law.
3. The promulgation of newsletters, brochures, audio-visual presentations, public displays, and other informational presentations concerning the program and coastal issues.
4. Utilization of the A-95 review process and the *Pennsylvania Bulletin*.

APPENDIX A

EXISTING MANAGEMENT AUTHORITIES

INTRODUCTION

The Federal Coastal Zone Management Act requires coastal states to identify the means by which the state proposes to manage land and water uses subject to the program, including a listing of relevant constitutional provisions, laws, regulations and judicial decisions. This appendix provides a detailed explanation of those authorities which will be utilized in carrying out the policies of Pennsylvania's CRMP. The authorities are presented in the following numerical sequence:

- | | |
|---|--|
| 1. Pennsylvania Constitutional Provision | 13. Pennsylvania Sewage Facilities Act |
| 2. Bluff Recession and Setback Act | 14. Schuylkill River Pollution/
Siltation Law |
| 3. Dam Safety Act | 15. Fish Laws of 1959 |
| 4. Soil Conservation Law | 16. Historic Preservation Act |
| 5. Floodplain Management Act | 17. Stormwater Management Act |
| 6. Clean Streams Law | 18. Open Meeting Law |
| 7. Open Space Lands | 19. Noxious Weed Control Law, Act of 1982 |
| 8. Pennsylvania Solid Waste
Management Act | 20. Aquacultural Development Law,
Act of October 16, 1998 |
| 9. Air Pollution Control Act | 21. Executive Order |
| 10. Radiation Control Act | 22. Memorandum of Understanding |
| 11. Administrative Code of 1929 | |
| 12. Gas Operations Well-Drilling
Petroleum and Coal Mining Act | |

EXISTING MANAGEMENT AUTHORITIES

1. Pennsylvania Constitutional Provision

On May 18, 1971, the Pennsylvania Constitution was amended by adding a new section (hereinafter referred to as Article I, Section 27 or Environmental Rights Amendment):

Article I, Section 27 Natural resources and the public estate

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The Environmental Rights Amendment was placed in Article I, the portion of the Constitution which guarantees political rights such as due process, freedom of speech, and freedom of religion to Pennsylvania citizens. The first sentence does create important personal "environmental rights" which citizens can assert on their own, if necessary, in the courts. Pennsylvania Gas and Water Co. v. Kassab, et al. 14 Pa. Cmwlth. 564, 322 A2d 775 (1974); Payne v. Kassab, 11 Pa. Cmwlth. 14, 312 A2d 86 (1973), aff'd 468 Pa. 226, 361 A2d 263 (1976). The remaining portion of Article I, Section 27 imposes new duties on the Commonwealth to act as a trustee to "conserve and maintain Pennsylvania's public natural resources".

Initially, there was a question as to whether adoption of Article I, Section 27 alone created citizen rights and Commonwealth duties. The courts have settled the question by holding that

the amendment is “self-executing” Commonwealth v. National Gettysburg Tower, Inc., 8 Pa. Cmwlth. 231, 302 A2d 586 (1973), aff’d 454 Pa. 193, 311 A2d 588 (1973); Accord, Payne, v. Kassab, 11 Cmwlth. 14, 312 A2d 86 (1973) aff’d without a general ruling on self-execution 468 Pa. 226, 361 A2d 263 (1976). This means that although the Legislature may pass legislation further explicating the meaning of the amendment, no such legislation is required before rights and duties created by Article I, Section 27 will be enforced by the courts.

The Department of Environmental Protection (hereinafter Department) is a trustee of the Commonwealth’s public natural resources by virtue of Article I, Section 27. Concerned Citizens for Orderly Progress v. Commonwealth, Department of Environmental Resources, 36 Pa. Cmwlth. 192, 38 A2d 989, 993-94 (1978). It is thus the Department’s duty to conserve and maintain these resources for the benefit of the people. This duty attaches in its clearest sense to publicly owned lands such as parks, Payne v. Kassab, 468 Pa. 226, 245, 361 A2d 263, 272 (1976). Where public lands are involved, even a statute might have to give way if it is inconsistent with Article I, Section 27, Klink v. Commonwealth, PennDOT 29 Pa. Cmwlth. 106, 370 A2d 389 (1977). In addition to publicly owned land, air and water are included in the public trust. Commonwealth v. Barnes & Tucker Co., 455 Pa. 392, 412, 319 A2d 871, 872 (1974), DER v. Locust Point Quarries, 27 Pa. Cmwlth. 270, 396 A2d 1205, 1209 (1979). Article I, Section 27 also protects natural, scenic, aesthetic and historic values. Commonwealth v. National Gettysburg Tower, Inc., 8 Pa. Cmwlth. 231, 302 A2d 586 (1973), aff’d 454 Pa. 193, 311 A2d 558 (1973).

It should be noted that the Environmental Rights Amendment imposes on every administrative agency the responsibility to meet the requirements of the amendment. Bruhin et al. v. Commonwealth et al., 14 Pa. Cmwlth. 300, 306-307, 320 A2d 907, 910-911 (1974). Local governments also must fulfill trusteeship responsibilities imposed by Article I, Section 27, particularly with respect to local land use planning. Community College of Delaware County v. Fox, 20 Pa. Cmwlth. 335, 358-359, 342 A2d 468, 482 (1975).

In Payne v. Kassab, 11 Pa. Cmwlth. 14, 29-30, 312 A2d 86, 94 (1973) aff’d 468 Pa. 226, 361 A2d 263 (1976), the Commonwealth Court applied a three-fold test for reviewing agency actions which are challenged as improper under Article I, Section 27:

- a. Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth’s public natural resources?
- b. Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum?
- c. Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

It should be kept in mind that the Payne test was developed as a standard for courts to use when reviewing agency actions where citizens alleged that the agency failed to meet minimum duties imposed by Article I, Section 27. Thus, the test identified minimum elements that must be incorporated into agency procedures.

2. Bluff Recession and Setback Act, Act of May 13, 1980

The policy and purpose of this Act is to:

- a. Encourage planning and development in bluff areas which are consistent with sound land use practices.
- b. Protect people and property in bluff areas from the dangers and damage associated with the inevitable recession of bluffs.
- c. Prevent and eliminate urban and rural blight which results from the damages of bluff erosion and recession.
- d. Minimize the expenditure of public and private funds for shoreline protection and bluff stabilization structures and activities.
- e. Authorize a comprehensive and coordinated program to regulate development activities through the use of setback ordinances in bluff recession hazard areas, designed to preserve and restore the natural ecological systems, and to prevent continuing destruction of private property and structures.
- f. Encourage local administration and management of bluffs consistent with the Commonwealth's duty as trustee of natural resources, and the people's constitutional right to the preservation of the natural, scenic, aesthetic and historic values of the environment.

The Act outlines a procedure whereby the Department of Environmental Protection (hereinafter Department) conducts studies to identify municipalities with bluff recession hazard areas. The Department then notifies municipalities identified and submits a report to the Environmental Quality Board (hereinafter EQB). The EQB, following notice and public hearing, may designate municipalities with bluff recession hazard areas. Municipalities so designated must, within six months, adopt bluff setback ordinances requiring permits for all proposed construction, installation or substantial improvement of structures or water, sewage, electric or gas utility services located in designated bluff recession hazard areas. These ordinances are subject to review and approval by the Department, and must meet the minimum standards delineated by the EQB.

Sanctions are imposed for failure to adopt and enforce ordinances by designated municipalities, and for violation of the provisions of the Act, any bluff setback ordinance, or regulation. The sanctions include mandamus actions and withholding funds to municipalities, as well as civil remedies and criminal penalties.

3. Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended (32 P.S. Sections 693.1 *et seq.*)

The purpose of this Act is to:

- a. Provide for the regulation of dams and reservoirs, water obstructions and encroachments in the Commonwealth, in order to protect the health, safety and welfare of the people and property.
- b. Assume proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs, including such preventative measures as are necessary to provide an adequate margin of safety.

- c. Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution and conserve the water quality, natural regime and carrying capacity of watercourses.
- d. Assume proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments, in order to prevent unreasonable interference with waterflow and to protect navigation.

The Act outlines a permitting procedure, and no person may construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without a permit from the Department of Environmental-Protection (hereinafter Department).

The EQB has the power and duty to adopt regulations necessary to carry out the purposes of the Act.

The term encroachment means any structure or activity which in any manner changes, expands or diminishes the course, current or cross section of any water course, floodway, or body of water. A "body of water" is defined as any natural or artificial lake, pond, reservoir, swamp, marsh or wetland.

Thus, the Department has the authority and duty to regulate dredging and filling activities (as encroachments). The Department also has the authority and duty to regulate all dams, water obstructions and encroachments in wetlands (as bodies of water).

- 4. Since the Commonwealth holds the beds in trust for the public, the Act also gives the Department the right, subject to approval by the Governor, to grant an easement, right-of-way, license or lease to occupy submerged lands of the Commonwealth in any navigable lake, river or stream declared a public highway or any dam, water obstruction or encroachment which is constructed for the purpose of:
 - a. Improving navigation or public transportation;
 - b. Recreation, fishing or other public trust purposes;
 - c. Protecting public safety or the environment;
 - d. Providing water supply, energy production or waste treatment;
 - e. Providing a public utility service by a government agency or subdivision or public utility or electric cooperative; or
 - f. Other activities which require access to water.

Sanctions imposed for violations of the Act or any regulation promulgated thereunder, include enforcement orders and civil and criminal penalties. The Department may issue enforcement orders for any purpose necessary to aid in the enforcement of the Act.

- 5. Soil Conservation Law, Act of May 15, 1945, P.L. 547, as amended (3 P.S. Sections 849 *et seq.*)

The Act declares that it is the policy of the Commonwealth to provide for the conservation of the soil, water, and related resources of this Commonwealth, and for the control and prevention of soil erosion, and, thereby, to preserve natural resources; assist in the control of floods; prevent impairment of dams and reservoirs; assist in maintaining the navigability of rivers and harbors;

preserve wildlife; preserve the tax base; protect public lands; and protect and promote the health, safety, and general welfare of the people of the Commonwealth.

The Act provides for the creation of conservation districts managed by a board of district directors. The directors have the power among other things:

- a. To conduct surveys, investigations and research relating to the character of soil erosion and the preventive control measures needed.
- b. To carry out preventive and control measures within the district.
- c. To cooperate or enter into agreements with, and to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district in carrying on erosion control and prevention operations.
- d. To obtain options upon, and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property real or personal or right or interests therein; to maintain, administer and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Act; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this Act.
- e. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this Act.
- f. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district.
- g. To accept contributions of any character from any source whatsoever, but only with the consent and approval of the State Soil and Water Conservation Commission, unless specifically authorized so to do by this Act.
- h. To sponsor projects under the Watershed Protection and Flood Prevention Act, U.S. Public Law 566, of 1954, as amended, and the Resource and Conservation and Development Program authorized by Public Law 87-703, and the Food and Agriculture Act of 1962, as amended.

6. Floodplain Management Act, Act of October 4, 1978, P.L. 851 (32 P.S. Sections 679.101 *et seq.*)

The policy and purpose of this Act is to:

- a. Encourage planning and development in floodplains which are consistent with sound land use practices.
- b. Protect people and property in floodplains from the dangers and damage of floodwaters and from materials carried by such floodwaters.
- c. Prevent and eliminate urban and rural blight which results from the damages of flooding.
- d. Authorize a comprehensive and coordinated program of floodplain management, based upon the National Flood Insurance Program, designed to preserve and restore the efficiency and carrying capacity of the streams and floodplains of the Commonwealth.
- e. Assist municipalities in qualifying for the National Flood Insurance Program.

- f. Provide for and encourage local administration and management of floodplains.
- g. Minimize the expenditure of public and private funds for flood control projects and for relief, rescue, and recovery efforts.

The Act requires that each municipality, which has been identified by the United States Department of Housing and Urban Development as having an area or areas subject to flooding, shall adopt such floodplain management regulations, and amendments thereto, as are necessary to comply with the requirements of the National Flood Insurance Program. The identified municipality has six months after a floodplain map is approved or promulgated for the municipality by the United States Department of Housing and Urban Development to adopt the required ordinance.

The Department of Community and Economic Development in consultation with the Department of Environmental Protection must review and approve all municipal floodplain management regulations for assuring compliance with the National Flood Insurance Program. The Department of Community and Economic Development is authorized to administer grants to municipalities and counties to assist or reimburse them for costs in preparing official plans and actual administrative enforcement and implementation costs and revisions to official plans for floodplain management required by this Act, and for carrying out related studies, surveys, investigations, research, and analyses.

Sanctions for violating the requirements of the Act include withholding funds and civil penalties. If after 180 days notice of violation of the Act a municipality has failed to comply, the Secretary of Community and Economic Development shall notify the State Treasurer to withhold payment of all funds payable to the municipality from the General Fund or any other fund. The State Treasurer is to hold funds in escrow until the municipality complies.

The Floodplain Management Act also confers powers on municipalities administering floodplain management regulations to require special regulation of hospitals, nursing homes, jails, new mobile home parks, subdivision or substantial additions to mobile home parks or subdivisions. The municipality is responsible for administering this provision with oversight by the Department of Community and Economic Development. The Department of Environmental Protection is responsible for administering Section 302 of the Act, which gives the Department exclusive jurisdiction to regulate through permit:

- a. Any obstruction otherwise regulated under the Water Obstructions Act;
- b. Any flood control project constructed, owned, or maintained by a governmental unit;
- c. Any highway or other obstruction constructed, owned or maintained by the Commonwealth or a political subdivision thereof; and
- d. Any obstruction owned or maintained by a person engaged in the rendering of a public utility service.

7. Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended (35 P.S. Sections 691.1 *et seq.*)

It is the policy of the Act that:

- a. Clean, unpolluted streams are absolutely essential if Pennsylvania is to attract new manufacturing industries and to develop Pennsylvania's full share of the tourist industry;

- b. Clean, unpolluted water is absolutely essential if Pennsylvanians are to have adequate outdoor recreational facilities in the decades ahead;
- c. It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted;
- d. The prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth; and
- e. The achievement of the objective herein set forth requires a comprehensive program of watershed management and control.

The Department of Environmental Protection (hereinafter Department) has the power and duty to (among other things) review plans, issue permits, modify, suspend or revoke permits, and issue correction and cease operation orders.

Powers under this Act are broad due to the definition of “pollution” and “waters of the Commonwealth”. Pollution means contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical, or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid, or other substances into such waters. The Department shall determine when a discharge constitutes pollution, as here in defined, and shall establish standards whereby and wherefrom it can be ascertained and determined whether any such discharge does or does not constitute pollution as herein defined.

“Waters of the Commonwealth” shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs, and all other bodies or channels or conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

In addition, the Department is approved to operate NPDES permit system under the Federal Clean Water Act (25 Pa. Code Chapter 92).

Sanctions for violation of this Act include criminal and civil penalties, as well as, equity actions restraining violations of the Act, and enforcement orders to ensure municipal compliance.

7. Open Space Lands, Act of January 19, 1968, P.L. (1967) 992 (32 P.S. Sections 5001 *et seq.*)

It is the purpose of this Act to clarify and broaden the existing methods by which the Commonwealth may preserve land in or acquire land for open space in and near urban areas to meet needs for recreation, amenity, and conservation of natural resources, including farm land, forests, and a pure and adequate water supply. The acquisition and resale of property interests authorized by this Act are hereby declared to be for the public benefit, for the advancement of the public health, safety, morale, and general welfare of the citizens of the Commonwealth, and for the promotion of sound land development by preserving suitable open space and concentrating more dense development in nearby areas.

The Act provides that the Commonwealth through the Department of Environmental Protection may acquire any interest in real property by purchase, contract, condemnation, gift, devise, or otherwise, for any of the following purposes:

- a. To protect and conserve water resources and watersheds;
- b. To protect and conserve forests and land being used to produce timber crops;
- c. To protect an existing or planned park, forest, wildlife preserve, nature reserve, or other recreation or conservation site by controlling the use of contiguous or nearby lands in order to protect the scenic, aesthetic or watershed values of the site;
- d. To protect and conserve natural or scenic resources, including but not limited to soils, beaches, streams, floodplains, or marshes;
- e. To protect scenic areas for public visual enjoyment from public rights of way;
- f. To preserve sites of historic, geologic or botanic interest;
- g. To promote sound, cohesive, and efficient land development by preserving open spaces between communities; and
- h. To limit the use of the real property so as to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes specified in clauses (1) through (7) hereof.

8. Pennsylvania Solid Waste Management Act, Act of July 31, 1968, P.L. 788, as amended (35 P.S. Sections 6001 *et seq.*)

Since improper and inadequate solid waste practices create public health hazards, environmental pollution, and economic loss, it is the purpose of the Act to:

- a. Establish and maintain a cooperative state and local program of planning and technical and financial assistance for comprehensive solid waste management;
- b. Utilize, wherever feasible and desirable, the capabilities of private enterprise in accomplishing the desired objectives of an effective solid waste management program; and
- c. Require permits for the operation of processing and disposal systems.

The Act requires municipalities with specified population densities to submit for Department of Environmental-Protection (hereinafter Department) approval a plan for a solid waste management system within the municipality's jurisdiction. Each plan is to consider all aspects of planning, zoning, population estimates, economics, etc., so as to project the municipality's solid waste needs for 10 years. The Department may bring actions in mandamus against municipalities which fail to submit adequate plans.

The Act also provides for a permit procedure administered by the Department. It is unlawful for any person, municipality, county or authority to use or continue to use their land (and/or the land of any other person, municipality, county or authority) as a solid waste processing or disposal area without obtaining a permit from the Department.

"Solid waste" means garbage, refuse and other discarded materials including, but not limited to, solid and liquid waste materials resulting from industrial, commercial, agricultural and

residential activities. “Solid waste management system” means the entire process of storage, collection, transportation, processing and disposal of solid wastes by any person engaging in such process as a business or any municipality, authority, county or any combination thereof.

Sanctions for violation of this Act include criminal and civil remedies, as well as, suits in equity restraining violations of the Act and compliance orders to municipalities to comply with the Act.

9. Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, as amended (35 P.S. Sections 4001 *et seq.*)

The Act declares that it is the policy of the Commonwealth to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety, and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth; and (iv) development, attraction and expansion of industry, commerce, and agriculture.

The Department of Environmental Protection (hereinafter Department) has, among other powers, the power to develop a plan for abatement, control and prevention of air pollution, to regulate the amount of air pollution allowed, to issue orders for compliance with Departmental regulations, and to institute proceedings in court to compel compliance with any Departmental orders. Such orders may be for cessation of operation, reduction of emissions, modification or repair or maintenance of pollution control devices, installation of pollution control devices or institution of process changes.

The Act also provides for a permit procedure administered by the Department. No person shall construct, assemble, install or modify any stationary air contamination source, or install thereon any air pollution control equipment or device, or reactivate any air contamination source after said source has been out of operation or production for a period of one year or more unless such person has applied to and received from the Department written approval to do so. No person shall operate any stationary air contamination source which is subject to the provisions of subsection (a) of this section unless the Department shall have issued to such person a permit to operate such source in response to a written application for a permit.

“Air pollution” is defined as the presence in the outdoor atmosphere of any form of contaminant including but not limited to the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes, or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic or radioactive substances, waste, or any other matter in such place, manner, or concentration inimical or which may be inimical to the public health, safety, or welfare or which is, or may be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property. “Stationary air contamination source” is any place, facility or equipment stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any contaminant other than any place facility or equipment which, when operated, moves in a given direction under its own power.

Sanctions for violation of this Act include criminal and civil remedies, as well as enforcement orders, injunctions and petitions to enforce.

10. Radiation Control Act, Act of January 28, 1966, (1965) 1625 (73 P.S. Sections 1301 *et seq.*)

This Act designates the Department of Environmental Protection (hereinafter Department) as the agency of the Commonwealth which shall be responsible for the control and regulation of radiation sources, but the Department shall not have the power to regulate, license, or control nuclear reactors or facilities or operations incident thereto in duplication of any activity of the Federal government without the consent of the Federal government.

The Act makes it unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, possess, or dispose of any radiation source contrary to the provisions of the Act or any rules or regulations issued thereunder.

Sanctions for violation of this Act include criminal penalties as well as equitable actions including injunctions.

11. Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Sections 510-1 *et seq.*)

Section 510-1 provides for the transfer of powers and duties from numerous Departments to the Department of Environmental Protection.

Section 510-2(13) provides that the Department of Environmental Protection (hereinafter Department) shall, with the approval of the Governor, have the authority to enter into agreements with owners or lessees of property or property rights located in the same area as lands owned or leased by the Commonwealth, for the protection, preservation or recovery of metallic or nonmetallic ore, fuel, oil, natural gas, or any other mineral deposits underlying said lands, provided the said deposits are owned by the Commonwealth.

Section 510-8(d) transfers to the Department the powers and duties once exercised by the now defunct Water and Power Resources Board with regard to permits for the construction of dams, and other water obstructions, or of any change therein or addition thereto, and consents or permits for changing or diminishing the course, current, or cross section, of any stream or body of water.

Section 510-17 gives the Department the power and duty to order nuisances to be abated or removed. This includes any condition which is declared to be a nuisance by any law administered by the Department, or any activities which exposes the people of the Commonwealth to unsanitary conditions.

12. Gas Operations Well-Drilling Petroleum and Coal Mining Act, Act of November 30, 1955, P.L. 756, as amended (52 P.S. Sections 2101 *et seq.*)

This is an Act relating to coal mining, well operations, and the underground storage of gas. The Act further describes procedures for the safety of personnel and facilities engaged in the activities mentioned above, and prescribes the rights and duties of well operators and coal mine operators.

The Act provides for a permit procedure for drilling any type of oil and gas wells.

Sanctions for violation of this Act include criminal penalties as well as equitable actions including injunctions.

13. Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. (1965) 1531, as amended (35 P.S. Sections 750.1 *et seq.*)

It is the policy of the Commonwealth of Pennsylvania through this Act:

- a. To protect the public health, safety, and welfare of its citizens through the development and implementation of plans for the sanitary disposal of sewage waste.
- b. To promote intermunicipal cooperation in the implementation and administration of such plans by local government.
- c. To prevent and eliminate pollution of waters of the Commonwealth by coordinating planning for the sanitary disposal of sewage wastes with a comprehensive program of water quality management.
- d. To provide for the issuance of permits for on-lot sewage disposal systems by local government in accordance with uniform standards and to encourage intermunicipal cooperation to this end.
- e. To provide for and ensure a high degree of technical competency within local government in the administration of this Act.
- f. To encourage the use of the best available technology for on-site sewage disposal systems.
- g. To ensure the rights of citizens on matters of sewage disposal as they may relate to this Act and the Constitution of this Commonwealth.

The Act outlines a procedure whereby each municipality shall submit to the Department of Environmental-Protection (hereinafter Department) an officially adopted plan for sewage services for areas within its jurisdiction, and submit revisions to that plan from time to time as required by the Department. The Department is authorized to approve or disapprove all municipal plans. The Act also provides for a permitting procedure administered by the local agencies with Department overview. The Act declares:

No person shall install, construct, or request bid proposals for construction, or alter an individual sewage system or community sewage system or construct, or request bid proposals for construction, or install or occupy any building or structure for which an individual sewage system or community sewage system is to be installed without first obtaining a permit indicating that the site and the plans and specifications of such a system are in compliance with the provisions of this Act and the standards adopted pursuant to this Act. No permit may be issued by the local agency in those cases where a permit from the Department is required pursuant to the Act of June 22, 1937 (P.L. 1987, No. 39B), known as the “The Clean Streams Law”, as amended, or where the Department pursuant to its rules and regulations, determines that such permit is not necessary either for a rural residence or for the protection of the public health.

“Sewage” means any substance that contains any of the waste products or excrement or other discharge from the bodies of human beings or animals and any noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under the Act of June 22, 1937 (P.L. 1987, No. 39B), known as “The Clean Streams Law, as amended.

“Individual sewage system” means a system of piping, tanks, or other facilities serving a single lot and collecting and disposing of sewage in whole or in part into the soil or into any waters of this Commonwealth or by means of conveyance to another site for final disposal; an alternate individual sewage system shall mean an individual sewage system not heretofore recognized by rules, regulations, and standards of the Department.

“Community sewage system” means any system, whether publicly or privately owned, for the collection of sewage or industrial wastes of a liquid nature from two or more lots, and the treatment and/or disposal of the sewage or industrial waste on one or more of the lots or at any other site.

Sanctions for violations of this Act include criminal and civil remedies as well as suits in equity to enjoin violation of the Act and enforcement orders to municipalities to ensure their compliance with the Act.

14. Schuylkill River Pollution/Siltation Law, Act of June 4, 1945, P.L. 1383, as amended, (32 P.S. Sections 751.1 *et seq.*)

It is the intent and purpose of this Act to carry into effect a project to prevent the future accumulation of wastes including coal, silt, industrial processes and municipal sanitation, and the prevention of pollution in the Schuylkill River and its tributaries, and to dredge and dispose of the existing accumulations in the Schuylkill River above the Norristown Dam at Norristown, Pennsylvania.

Such project, among other things, will involve the acquisition of dams, canals, lands, easements, right-of-ways and other rights, and of properties for the disposal of material dredged from the Schuylkill River and its tributaries; the construction, repair and maintenance of dams required to carry on dredging operations; the construction of dikes and other protective works at disposal areas and physical dredging operations.

The Department of Environmental Protection is authorized to clean out, widen, alter, dredge, deepen, or change the course, current or channel of the Schuylkill River, or any of the tributaries; to fill up any abandoned canal or water course; to construct and maintain levees, dikes, walls, revetments, dams, reservoirs, and other works and improvements deemed necessary to carry out the purpose of this Act, and to prohibit any dredging operation deemed inimical thereto. It also has the power to control and regulate the flow of the Schuylkill River and its tributaries during the period of the execution of the project; to construct or enlarge bridges and culverts; to construct and relocate public highways; to construct any of said works and improvements across or through any public highway, canal, railroad right-of-way or tracks; to remove, change the location of, or construct any of the above mentioned structures and facilities, or such other structures or facilities as are necessary to carry out the intent of the Act.

15. Fish Laws of 1959, Act of December 15, 1959, P.L. 1779, as amended, (30 P.S. Sections 1 *et seq.*), and Part II of 30 Pa. C.S.A. relating to Fish and Fishing

This Act is a comprehensive statute relating to fish and fishing in the Commonwealth. It covers the following general subject areas:

- a. Fishing regulations applying to inland waters.
- b. Fishing regulations applying to boundary lakes.
- c. Fishing regulations applying to boundary rivers.

- d. Seine licenses.
 - e. Artificial propagation licenses.
 - f. Dams, fishways, barbarks, obstructions, etc.
 - g. Pollution, trespass on state hatcheries.
 - h. Sale of fish.
 - i. Fishing licenses.
 - j. Complimentary licenses.
 - k. General powers of the Fish Commission.
 - l. Sunday fishing.
 - m. Enforcement of the Act.
 - n. The Fish Fund.
 - o. Frogs, tadpoles and turtles.
16. Historic Preservation Act, Act of November 22, 1978, P.L. 1160 (71 P.S. Sections 1047(o) *et seq.*)

It is the policy of this Act that:

- a. Section 27 of Article I of the Constitution of Pennsylvania makes the Commonwealth trustee for the preservation of the historic values of the environment.
- b. The conservation of Pennsylvania's historic heritage and the preservation of public records, historic documents and objectives of historic interest, and the identification, restoration, and preservation of architecturally and historically significant sites and structures are duties vested primarily in the Pennsylvania Historical and Museum Commission.
- c. The irreplaceable historical, architectural, archeological, and cultural heritage of the Commonwealth should be preserved and protected for the benefit of all of the people, including future generations.
- d. The preservation and protection of historic resources within the Commonwealth promotes the public health, prosperity, and general welfare.
- e. The rapid social and economic development of our contemporary society threatens to destroy the remaining vestiges of our historic heritage.
- f. It is in the public interest for the Commonwealth, its citizens and its political subdivisions to engage in comprehensive programs of historic preservations for the enjoyment, education and inspiration of all the people, including future generations.

The Act further provides that all public officials shall cooperate fully with the commission in the preservation, protection, and investigation of archeological sites.

17. Stormwater Management Act, Act of October 4, 1979, P.L. 864 (32 P.S. Section 680.1 *et seq.*)

The policy and purpose of this Act is to:

- a. Encourage planning and management of stormwater runoff in each watershed which is consistent with sound water and land use practices.
- b. Authorize a comprehensive program of stormwater management designed to preserve and restore the flood carrying capacity of Commonwealth streams; to preserve to the maximum extent practicable natural stormwater runoff regimes and natural course, current and cross section of water of the Commonwealth; and to protect and conserve groundwaters and groundwater recharge areas.
- c. Encourage local administration and management of stormwater 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.

The Act requires that each county prepare and adopt a watershed stormwater management plan for each watershed located in the county as designated by the Department of Environmental Protection. Guidelines published by the Department will provide useful information to the counties in preparing watershed plans. The stormwater management plans will be prepared with the assistance of watershed advisory committees composed of representatives of municipalities and others, and will include criteria and standards for the control of stormwater runoff. Stormwater plans are to be implemented by municipalities in the adoption of ordinances to regulate development to control stormwater runoff.

18. Open Meeting Law, Act of July 19, 1974, P.L. 486 (65 P.S. Sections 261 *et seq.*)

This Act requires that the meetings or hearings of every agency at which formal action is scheduled or taken are public meetings and shall be open to the public at all times. No formal action shall be valid unless such formal action is taken during a public meeting.

“Formal action” means the taking of any vote on any resolution, rule, order, motion, regulation or ordinance or the setting of any official policy.

The Act requires public notice of all public meetings in a newspaper of general circulation and posting of notice in the principal office of the agency holding the meeting.

Intentional violation of this Act is a summary offense and carries up to a \$100 fine.

19. Noxious Weed Control Law, Act of 1982, P.L. 228, No. 74, as amended (3 P.S. Section 243 *et seq.*)

The purpose of this Act is to:

- a. Create a Noxious Weed Control Committee to establish a noxious weed control list for the Commonwealth. Plants can be added to or deleted from the list following public hearings.
- b. Prohibit the sale, transport, planting, or propagation of a noxious weed in the Commonwealth except if the Secretary grants permission for horticultural or experimental use.

- c. Enable the Secretary to designate weed control areas.
- d. Enforce landowner compliance in designated weed control areas.

“Noxious weeds” are defined as plants that are determined to be injurious to public health, crops, livestock, agricultural land, or other property.

Purple loosestrife and its cultivars, which are normally found in wetlands, have been designated noxious weeds.

20. Aquacultural Development Law, Act of October 16, 1998, P.L. ---, as amended (3 P.S. Section 4201 *et seq.*)

The purpose of this Act is to:

- a. Encourage aquacultural operators to make a long-term commitment to aquaculture by offering them the same protections afforded other agricultural practices.
- b. Reduce the amount of governmental agencies with jurisdiction over aquaculture by transferring authority over commercial aquacultural operations to the Department of Agriculture.
- c. Encourage further development of the aquacultural industry by including aquaculture in any and all promotional and other economic developmental programs, which are made available to other industry sectors.

The Act designates the Fish and Boat Commission as the agency of the Commonwealth, which shall be responsible for determining which species of fish are allowed to be propagated in each watershed. Except triploid and other nonreproducing forms, species may be propagated in watersheds where they are allowed to be stocked.

The Act designates the Department of Agriculture as the agency of the Commonwealth, which shall be responsible for administering registration for artificial propagation. Under this registration, the purchase, sale, or offer for sale is restricted to fish species approved for propagation and stocking under section 4219. This Act does not authorize registrants to harvest species of fish taken from Commonwealth waters, or to transport species of fish that were not cultivated or purchased by the registrant. Registrants are also not permitted to stock or maintain species of fish or eggs taken from Commonwealth waters that are not listed on their registration.

The Act also designates the Department of Agriculture as the agency of the Commonwealth, which shall be responsible for administering registration for dealers of live aquatic animals. Under this registration, distribution of live aquatic animals is limited to fish species approved by the Department, and approved health inspection permits are required to transport fish species into the Commonwealth.

The Act prohibits propagation of fish species that are not approved under section 4219 or by Department regulations.

“Aquatic organism” means any plant or animal that grows or lives in or upon the water. “Fish” are defined as game fish, fish bait, baitfish, amphibians, reptiles, and aquatic organisms.

Sanctions for violations of this Act include criminal penalties.

21. Executive Order

The Governor of the Commonwealth of Pennsylvania has the power and it is his duty to take care that the laws of the Commonwealth are faithfully executed, Pa. Constitution of 1960, Article IV, Section 2; 71 P.S. Section 241 (1929).

In carrying out this power, the Governor may issue executive orders. There are three types of executive orders. The first type includes formal, ceremonial, and political orders which are often issued as proclamations. The usual purpose of a proclamation is to declare some special day or week in honor of or in commemoration of some special thing or event. It is issued to make the public aware of the commemoration and usually has no legal effect. Shapp v. Butera, 22 Pa. Cmwlth. 229, 348 A2d 910, 913 (1975). The second type of executive order is intended for communication with subordinate officials in the nature of requests or suggested directions for the execution of the duties of the executive branch of the government. Like the first classification, this class is not legally enforceable. Shapp, supra, 348 A2d at 913. The third type includes those executive orders which serve to implement or supplement the Constitution or statutes. These executive orders have the force of law. Shapp, supra, 348 A2d at 913; U.S. v. Messer Oil Corp., 391 F. Supp 577 (D C Pa. 1975); Farmer v. Philadelphia Elec. Co. 329 F2d 3 (CA Pa. 1964).

Executive Order is the second type of order identified above. See **Appendix B** of this appendix for the text of the Executive Order. Where this Executive Order suggests directions for the execution of duties, it is administratively enforceable. However, for purposes of program approval, the Executive Order is not required since all enforceable policies are implemented by the Department of Environmental Protection.

22. Memoranda of Understanding

The statutory basis for agreements between agencies is the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended (71 P.S. Section 181) which provides:

Coordination of Work: The several administrative departments, and the several independent administrative and departmental administrative boards and commissions, shall devise a practical and working basis for cooperation and coordination of work, thereby eliminating duplication and overlap of functions, and shall, so far as practical, cooperate with each other in the use of employees, land, buildings, quarters, facilities, and equipment. The head of any administrative department, or any independent administrative or departmental administrative board or commission, may empower or require an employee of another such department, board, or commission, subject to the consent of the head of such department or of such board or commission, to perform any duty which he or it might require of the employees of his or its own department, board, or commission; provided; however, that employees shall not be assigned to another department, board or commission in order to circumvent appropriation limits.

Appendix C is the Memoranda of Understanding (MOU) signed with the Pennsylvania Utility Commission.

Appendix D is the MOU signed with the Pennsylvania Fish and Boat Commission (PFBC). This appendix details how the PFBC will participate in the implementation of the CRMP.

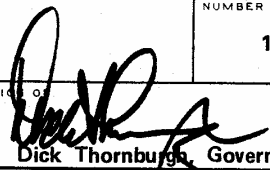
Appendix E is the MOU signed with the Pennsylvania Historical and Museum Commission (HMC). The appendix details how the HMC will participate in the implementation of the CRMP.

However, for purposes of program approval the MOUs are not required since all enforceable policies are implemented by the Department of Environmental Protection.

APPENDIX B
EXECUTIVE ORDER



Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
EXECUTIVE ORDER

SUBJECT Pennsylvania Coastal Zone Management Program		NUMBER 1980-20
DATE September 22, 1980	DISTRIBUTION B	BY DIRECTOR OF  Dick Thornburgh, Governor

WHEREAS, the Commonwealth of Pennsylvania is one of the foremost states in the nation in leading the battle to improve the quality of our environment; and

WHEREAS, there is a need to insure the wise use of the valuable and unique natural resources of Pennsylvania's coastal areas; and

WHEREAS, there is a need to insure that the inherent economic and social potential of Pennsylvania's coastal areas be wisely used; and

WHEREAS, the Department of Environmental Resources, with the advice of local governments, the general public, industry groups, other branches of State government, and appropriate Federal agencies, has been developing the Pennsylvania Coastal Zone Management Program; and

WHEREAS, the Federal Coastal Zone Management Act of 1972 provides funds to states who voluntarily implement a Federally approved Coastal Zone Management Program; and

WHEREAS, pursuant to Federal regulations, one condition of Coastal Zone Management Program approval is demonstration that the program, as approved, is enforceable; and

WHEREAS, several State departments and agencies have authority for enforcing Pennsylvania's Coastal Zone Management Program and for making rules affecting the program's enforcement.

NOW, THEREFORE, I, Dick Thornburgh, Governor of the Commonwealth of Pennsylvania, in furtherance of the purposes and policies of the Pennsylvania Constitution, Article I, Section 27, and the statutory authorities relied on by the Pennsylvania Coastal Zone Management Program, direct that the following steps be taken:

1. Designated State Agency.

a. The Department of Environmental Resources is designated as the lead agency for implementing and administering the Federal Coastal Zone Management Program for the Commonwealth of Pennsylvania.

b. The Department of Environmental Resources shall be the single State agency to receive and administer the Federal Coastal Zone Management grants for implementing the management program.

c. The Department of Environmental Resources, Coastal Zone Management Office, shall provide technical advice and assistance in the administration of the program, coordinate its activities with other agencies involved in the program, and act as a forum for conflict resolution among agencies in connection with their responsibilities under this Order.

2. Program Objectives.

a. The objectives of the Pennsylvania Coastal Zone Management Program are to:

(1) Identify and evaluate those coastal resources requiring management or protection by the State.

(2) Reexamine existing policies or develop new policies to manage these resources.

(3) Determine specific uses and special geographic areas that are to be subject to the management program.

(4) Identify the inland and seaward areas subject to the management program.

(5) Provide for consideration of the national interest in the planning for and siting of facilities that will meet more than local requirements.

(6) Include sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

b. The program will involve affected State agencies in order to assure that existing authorities are used to implement the policies and management techniques identified as necessary for coastal management purposes.

3. Coastal Zone Advisory Committee.

a. The Committee shall be comprised of representatives designated by the heads of the following agencies: the Departments of Commerce, Community Affairs, Environmental Resources, and Transportation; the Governor's Office of Policy and Planning; the Governor's Energy Council; and the Fish, Game, Historical and Museum, and Public Utility Commissions. Each agency shall have one vote. The Chairperson of the Committee shall be designated by the Secretary of Environmental Resources.

b. Functions of the Committee.

(1) To insure that projects or activities proposed for funding under the Coastal Zone Management Program are in concert with planned or existing State agency activities.

(2) To be responsible for State and local coordination on actions of the Coastal Zone Management Program.

(3) To participate in the continuing review of the Pennsylvania Coastal Zone Management Program.

4. Cooperation by State Agencies.

a. To the maximum extent permitted by law, all administrative departments, independent administrative boards and commissions, and other State agencies shall, upon Federal approval of the Pennsylvania Coastal Zone Management Program, enforce and act consistently with the goals, policies, and objectives of that Coastal Zone Management Program and provide for adequate consideration of the national interest involved in planning for and siting of facilities and the use of resources in the coastal zones when such planning, siting, and uses are of more than local interest.

b. Each administrative department, independent administrative board and commission, and other State agencies shall, upon Federal approval of the Pennsylvania Coastal Zone Management Program and thereafter, notify the Department of Environmental Resources, Coastal Zone Management Office, pursuant to rules distributed to members of the Coastal Zone Advisory Committee, of any and all proposed activities having an effect on coastal resources.

c. Conflicts among fiscal, developmental, service, or regulatory activities of State agencies which have a direct and significant impact on the coastal zone, that cannot be resolved through available administrative mechanisms, shall be resolved by the Governor.

5. Force and Effect. This Executive Order shall remain in full force and effect as long as monies are available for the management of the Pennsylvania Coastal Zone Management Program.

APPENDIX C
MEMORANDUM OF UNDERSTANDING WITH
PENNSYLVANIA UTILITY COMMISSION
INTERAGENCY
MEMORANDUM OF UNDERSTANDING
CONCERNING COASTAL ZONE MANAGEMENT

THIS AGREEMENT, entered into this 29th day of September 1980, between the Pennsylvania Department of Environmental Protection, hereinafter called "DEPARTMENT", and the Public Utility Commission hereinafter referred to as "AGENCY".

WITNESSETH:

WHEREAS, the parties recognize and acknowledge the need to preserve, protect, develop, and where possible, restore or enhance the resources of Pennsylvania's coastal areas for this and succeeding generations; and

WHEREAS, the parties further recognize the need for full governmental coordination and public involvement in the Commonwealth's Coastal Zone Management Program, and the need to give due consideration to the significance of coastal resources to Pennsylvania; and

WHEREAS, the DEPARTMENT has been designated by the Governor as the lead agency for implementation of the State Coastal Zone Management Program.

WHEREAS, the AGENCY recognizes that its programs and activities within Pennsylvania's coastal zones may have a direct and significant impact on the Commonwealth's coastal environment; and

WHEREAS, the Federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended) provides funds to states to implement federally approved state coastal zone management programs; and

WHEREAS, pursuant to federal regulations, one condition of the Coastal Zone Management Program approval is demonstration that the program, as approved, will be implemented; and

WHEREAS, several state departments and agencies have authority for implementing the Commonwealth of Pennsylvania's Coastal Zone Management Program and for making rules affecting the program's enforcement; and

WHEREAS, adoption and implementation of the Coastal Zone Management Program by the various agencies of the Commonwealth is authorized by the Pennsylvania Constitution, Article I, Section 27; Bluff Recession and Setback Act, Act of May 13, 1980; The Dam Safety Act, Act of November 26, 1978, P.L. 1375, as amended, (32 P.S. Sections 693.1 *et seq.*); Stormwater Management Act, Act of October 4, 1978, P.L. 864 (32 P.S. Sections 680.1 *et seq.*); Soil Conservation Law, Act of May 15, 1945, P.L. 547, as amended, (32 P.S. Sections 849 *et seq.*); The Floodplain Management Act, Act of October 4, 1978, P.L. 851 (32 P.S. Sections 679.101 *et seq.*); Schuylkill River

Pollution/Siltation Law, Act of June 4, 1945, P.L. 383, as amended, (32 P.S. Sections 751.1 *et seq.*); Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, (35 P.S. Sections 691.1

et seq.); The Fish Law of 1959, Act of December 15, 1959, P.L. 1779, as amended, (30 P.S. Sections 200 *et seq.*); Open Space Lands, Act of January 19, 1968, P.L. (1967) 992 (32 P.S. Sections 5001 *et seq.*); Historic Preservation Act, Act of November 22, 1978, P.L. 1160 (71 P.S. Sections 1047.1 *et seq.*); The Solid Waste Management Act, Act of July 31, 1968, P.L. 788, as amended, (35 P.S. Sections 6001 *et seq.*); The Air Pollution Control Act, Act of January 8, 1960, P.L. (1959) 2119, as amended, (35 P.S. Sections 4001 *et seq.*); Radiation Control Act, Act of January 28, 1966, P.L. (1965) 1625 (73 P.S. Sections 1301 *et seq.*); Gas Operations, Well Drilling, Petroleum and Coal Mining Act, Act of November 30, 1955, P.L. 756, as amended, (52 P.S. Sections 2101 *et seq.*); Act of July 1, 1978, Public Utility Code, No. 1978-116, as amended; the Sewage Facilities Act, Act of January 24, 1966, P.L. (1965) 1535, as amended (35 P.S. Sections 750.1 *et seq.*); Open Meeting Law, Act of July 19, 1974, P.L. 486 (65 P.S. Sections 261 *et seq.*); the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, (71 P.S. Sections 181, 194, 241, 510-1, 510-2, 510-4, 510-5, 510-6, 519-8, 510-17, 510-20).

NOW, THEREFORE, the DEPARTMENT and the AGENCY in accordance with these considerations, pursuant to Section 501 of the Administrative Code (71 P.S. Section 181), and in furtherance of the purposes and policies of Pennsylvania Constitution, Article I, Section 27 and the statutes cited above, as applicable, do hereby agree as follows:

A. To the maximum extent permitted by law, the AGENCY agrees to:

1. In managing its programs having an affect on the coastal areas, the AGENCY will consider the DEPARTMENT'S adopted positions and coastal policies including any national interest incorporated into those positions and coastal policies.
2. If the AGENCY becomes aware that its plans and programs or decisions may be inconsistent with the DEPARTMENT'S Coastal Zone Management Program, the AGENCY will notify the DEPARTMENT of any inconsistency.
3. Provide an agency staff representative to serve on the Coastal Zone Advisory Committee of the DEPARTMENT'S Coastal Zone Management Program, who will advise the DEPARTMENT'S Coastal Zone Management Program of the initiation and status of projects or programs likely to have a direct and significant impact on the coastal environment.
4. Provide access, through the Coastal Zone Advisory Committee representative, to AGENCY staff and information gathered by the AGENCY in order to allow the Department to obtain the best information available for its decision-making process.
5. Review and comment on all policies, plans, and other actions of the DEPARTMENT'S Coastal Zone Management Program that apply to the AGENCY.

B. The DEPARTMENT shall:

1. Solicit comments from the AGENCY for due consideration concerning the implementation of coastal zone policies and programs that relate or could relate to the policies, programs, and statutory responsibilities of the AGENCY.
2. As it deems appropriate or when so requested by the AGENCY, comment in a timely manner on proposed projects and programs likely to have an impact on the coastal environment, including proposed facilities and resources in which there may be a national interest.

3. Encourage and facilitate coordinated activities by federal, state, and local agencies whose activities affect the coastal environment.
- C. The DEPARTMENT and the AGENCY may, by mutual agreement, supplement this AGREEMENT to provide for particular activities, programs, or projects necessary to assist in implementing one or more of the Coastal Zone Management Program policies.
- D. This AGREEMENT shall become effective on federal approval of the Commonwealth of Pennsylvania's Coastal Zone Management Program, and shall continue in full force for a period of one (1) year and be automatically renewed thereafter in successive one (1) year terms unless and until either party have given three (3) months written notice of its intention to terminate this AGREEMENT or request a revision of the terms and conditions of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Lucy M. Cunko
(Title) *Adm. Off.*

Clifford L. Jones
Clifford L. Jones, Secretary

Approved as to legality and form:

M. Duke Peppel
Assistant Attorney General
Department of Environmental Resources

ATTEST:

PUBLIC UTILITY COMMISSION

Chairman
(Title)

Susan M. Shanahan
Susan M. Shanahan, Chairperson

Approved as to legality and form:

Joseph S. Malatesta, Jr.
Chief Counsel

Appendix D

Pennsylvania Fish & Boat Commission's Memorandum of Understanding

Appendix D

THIS AMENDED APPENDIX D entered into on this day of January 16, 2003, between the Pennsylvania Department of Environmental Protection, hereinafter called "DEPARTMENT", and the Pennsylvania Fish and Boat Commission, hereinafter referred to as the "COMMISSION", is part of the INTERAGENCY MEMORANDUM OF UNDERSTANDING concerning COASTAL ZONE MANAGEMENT for the PENNSYLVANIA COASTAL ZONE MANAGEMENT PROGRAM.

WITNESSETH:

1. The COMMISSION and the DEPARTMENT agree to use their legal and administrative authorities to the fullest extent possible to actively address the issues of water quality, habitat and aquatic resource conservation through cooperation and coordination.
2. The COMMISSION and the DEPARTMENT will help ensure through monitoring and project review that coastal waters shall not contain substances attributable to point or nonpoint source waste discharges in concentrations or amounts sufficient to be inimical or harmful to the water uses to be protected as specified in Chapter 93 of the Department Rules and Regulations (25 PA. Code Section 93.1 et seq.) or to human, animal, plant, or aquatic life including cold water, warm water, and migratory fishes.
3. The COMMISSION and the DEPARTMENT agree to use their legal and administrative authorities to the fullest extent possible to prevent the introduction or limit the spread of nonnative aquatic invasive species as specified in the Fish and Boat Code (58 PA Code Chapters 71, 73, and 77). The COMMISSION and the DEPARTMENT will cooperate in the control of harmful aquatic nuisance species in an environmentally sound manner, through timely review of applications for approval of the use of algicides, herbicides, and fish control chemicals to control plants in surface waters and manage fish populations as specified in Chapter 91 of the Department Rules and Regulations (25 PA Code Section 91.38).
4. The COMMISSION agrees to use its legal and administrative authorities to the fullest extent possible to actively augment native stocks and introduce appropriate species (i.e. trout and triploid carp), only after careful consideration of the potential impacts of nonnative or genetically modified organisms on coastal ecosystems, in order to provide diverse, unique, and bountiful catches for the Commonwealth's coastal recreational anglers.

5. The COMMISSION agrees to use its legal and administrative authorities to the fullest extent possible to improve access to the Delaware Estuary and the Lake Erie waterfronts through supporting the acquisition of new sites and/or the expansion of existing sites including the Coastal Zone Management Program's Geographic Areas of Particular Concern nominated as areas of significant natural value and areas of historical, cultural, or recreational significance.
6. The COMMISSION agrees to give full consideration to the undertaking of detailed technical studies of coastal fisheries, their aquatic habitat and associated issues that impact their management.
7. The COMMISSION agrees to actively assist the DEPARTMENT in undertaking comprehensive studies aimed at improving the regulatory permitting process in the Commonwealth's coastal zones.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have caused these presents to be executed the day and year first above written.

ATTEST:

Shirley A. Wright
CLERK TYPIST (Title)

Commonwealth of Pennsylvania
Department of Environmental Protection

Kathleen A. McGinty
Kathleen A. McGinty, Acting Secretary

Approved as to legality and form:

Michael D. Bedini
Chief Counsel
Department of Environmental Protection

ATTEST:

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Nazyl Polischuk
Administrative Secretary (Title)

Peter A. Colangelo
Peter Colangelo, Executive Director

Approved as to legality and form:

[Signature]
Chief Counsel
Pennsylvania Fish and Boat Commission

Robert J. Stumelle
Office of Attorney General

APPENDIX E

APPENDIX TO PENNSYLVANIA HISTORIC AND MUSEUM COMMISSION'S MEMORANDUM OF UNDERSTANDING

THIS APPENDIX A is a part of the INTERAGENCY MEMORANDUM OF UNDERSTANDING concerning COASTAL ZONE MANAGEMENT for the PENNSYLVANIA COASTAL ZONE MANAGEMENT PROGRAM entered into on this day _____ of _____, 1980, between the Pennsylvania Department of Environmental Protection, hereinafter called "DEPARTMENT", and the Pennsylvania Historical and Museum Commission, hereinafter referred to as the "AGENCY".

WITNESSETH:

1. The DEPARTMENT agrees to notify the AGENCY when it receives a permit application, which if approved, has the potential for significantly affecting an archeologically, architecturally, or historically significant site or structure in the Commonwealth's coastal zones.
2. The AGENCY agrees to provide timely comments to the DEPARTMENT, when it receives notices and appropriate background information that a permit application is being reviewed by the DEPARTMENT, which if approved, has the potential for significantly affecting an archeologically, architecturally, or historically significant site or structure in the Commonwealth's coastal zones.
3. The AGENCY agrees to provide when appropriate technical assistance in the identification, restoration, and preservation of archeologically, architecturally, and historically significant sites and structures in the Commonwealth's coastal zones.

(NOTE: Signed version cannot be found)