Wetlands and Waterways Permitting in PA

April 24, 2012

Regulatory Authority

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

Chapter 93 –
WATER QUALITY STANDARDS

Chapter 106–
FLOODPLAIN MANAGEMENT

Based on:
• The Clean Streams Law
• Flood Plain Management Act
• Dams Safety & Encroachments Act

(Not Section 404 of CWA)
Chapter 105

regulates

Water Obstructions and Encroachments

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

[105.3(a)(4)]

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

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

Regulated Waters of this Commonwealth - Definitions

[105.1]

- Watercourse – a channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

- Floodway – The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood.

- Body of Water – A natural or artificial lake, pond, reservoir, swamp, marsh or wetland
Examples of Water Obstructions & Encroachments

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

Dams are regulated under Chapter 105

Dam Safety and Encroachments Act
Types of Authorizations We Review

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

No Permit

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

- **105.12(a):** Waivers for structures or activities regardless of when commenced (16 waivers total)

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

Emergency Permits

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

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

The “Joint” Water Obstruction & Encroachment Permit

Most regulated activities require a federal permit.

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

PASPGP-4 (PA State Programmatic General Permit)
Water Obstruction & Encroachment ("Joint") Permit Review [105.14 and 105.18a]

During permit review, DEP is required to consider a number of factors, including:
- Impacts on regimen & ecology, stream flow, aquatic habitat, fish & wildlife
- Water Dependency
- Impacts on natural areas, refuges, natural landmarks, parks, etc.
- Impacts on historical sites
- Impact on the wetlands, based on area and functions & values
- Water quality & antidegradation requirements
- Secondary impacts
- Cumulative impacts
- Comments from other agencies & the public
- Practicable alternatives (AA)

Small Projects

- Intended for projects located in the stream or floodplain which will have an “insignificant impact” on safety and the protection of life, health, property and the environment.

- May NOT be used for projects located in wetlands!!
Determined using 1987 Army Corps of Engineers Wetland Delineation Manual

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Criteria for a wetland:
- Hydrology
- Vegetation
- Soils

Regional Supplements to the 1987 Wetland Delineation Manual

Two Regional Supplements in SE PA
- Atlantic and Gulf Coastal Plain Region
- Eastern Mountains and Piedmont Region
Chapter 105 specifically regulates two types of wetlands:

- EV
- OTHER (not EV)

“Exceptional Value” Wetland

In accordance with 105.17, wetlands are EV IF:

- In an EV watershed
- In or along the floodplain of a wild trout stream and the floodplain of its tributaries
- Are within a designated National or State wild or scenic river corridor
- Along a drinking water supply and maintain the quality & quantity of the supply
- T&E species are present
- Are hydrologically connected to OR located within ½ mi. of wetlands that are habitat for flora or fauna AND maintain the habitat of the threatened and endangered species
Threatened & Endangered Species

Clear PNHP (aka PNDI), no problem?

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

Be sure your project has clearance(s)!
AVOIDANCE & MINIMIZATION!

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

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

Wetland Mitigation

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

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

NPDES and 105 Permits

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

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

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

Needed in Joint Permit Application

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

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

Questions?

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