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Authority

The provisions of this Chapter 106 issued under section 302 of the Flood Plain Management Act (32 P. S. § 679.302); and sections 5 and 402 of The Clean Streams Law (32 P. S. §§ 691.5 and 691.402), unless otherwise noted.

Source

The provisions of this Chapter 106 adopted February 29, 1980, effective March 1, 1980, 10 Pa.B. 911; amended October 14, 1983, effective October 15, 1983, 13 Pa.B. 3156, unless otherwise noted.

§ 106.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

FEMA—The Federal Emergency Management Agency, to which was transferred the functions of the Federal Insurance Administration, Department of Housing and Urban Development, under Reorganization Plan No. 3 of 1978, 43 FR 41943 (September 19, 1978), and Executive Order 12127, 44 FR 19367 (April 3, 1979).

Fill—Sand gravel, earth or other material placed or deposited so as to form an embankment or raise the elevation of the land surface.

Flood insurance rate map—An official map of a municipality on which FEMA has delineated both the floodplain and the risk premium zones applicable to the municipality.

Floodplain or flood hazard area—The 100-year floodway and that maximum area of land that is likely to be flooded by a 100-year flood as shown on the floodplain maps approved or promulgated by FEMA.

Floodway—The channel of the watercourse and those portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year flood. The boundary of the 100-year floodway is as indicated on the maps and flood insurance studies provided by FEMA. In an area where no FEMA maps nor studies have defined the boundary of the floodway, it is assumed,

absent evidence to the contrary, that the floodway extends from the stream to 50 feet landward from the top of the bank of the stream.

Highway obstruction or highway—A roadway, highway embankment, highway drainage structure, or highway appurtenant structure constructed, owned or maintained by the Commonwealth or a political subdivision of the Commonwealth which might impede, retard, or change flood flows, including but not limited to new highway construction, pavement or shoulder widening, reconstruction with additional embankment, turning lanes and curve flattening.

Municipality—A city, borough, town or township, or any similar general purpose unit of government or county or other governmental unit when acting as an agent thereof, or any combination thereof acting jointly.

Obstruction—A structure or assembly of materials owned or maintained by the Commonwealth, a political subdivision of the Commonwealth or a public utility including fill above or below the surface of land or water or an activity conducted by the Commonwealth, a political subdivision of the Commonwealth or a public utility which might impede, retard or change flood flows. The term excludes planting, cultivation and harvesting of field and orchard crops; the grazing of livestock; and the maintenance of necessary appurtenant agricultural fencing.

100-year flood—The highest level of flooding that, on the average, is likely to occur every 100 years, that is, that has a 1.0% chance of occurring each year.

Owner—A person who owns, controls, operates, maintains or manages a highway obstruction or obstruction.

Person—An individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or other legal entity which is recognized by law as the subject of rights, and duties.

Public utility—A person engaged in rendering a public utility service.

Public utility service—The rendering of the following services for the public:

- (i) Gas, electricity, or steam production, generation, transmission or distribution.
- (ii) Water diversion, pumping, impoundment or distribution.
- (iii) Railroad transportation of passengers or property.
- (iv) Operation of a canal, turnpike, tunnel, bridge, wharf or similar structure.
- (v) Transportation of natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration, or other fluid substances by pipeline or conduit.
- (vi) Telephone or telegraph communications.
- (vii) Sewage collection, treatment, or disposal.

Routine maintenance activities—Include but are not limited to repaving; replacement of rails, ties or ballast; gas or water main repairs; and replacement in kind of individual components or appurtenant structures.

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

(b) Areas within this Commonwealth which have been identified by FEMA as being subject to flooding by a 100-year flood are determined to be flood hazard areas. Areas subject to flooding by a 100-year flood are areas of special flood hazard on flood insurance studies and maps provided by FEMA.

§ 106.2. Purposes.

The purposes of this chapter are the following:

- (1) Encourage planning and development in floodplains which are consistent with sound land use practices.
- (2) Protect people and property in floodplains from the dangers and damage of floodwaters and from materials carried by such floodwaters.
- (3) Prevent and eliminate urban and rural blight which results from the damages of flooding.
- (4) Support 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.
- (5) Assist municipalities in qualifying for the National Flood Insurance Program.
- (6) Provide for and encourage local administration and management of floodplains.
- (7) Minimize the expenditure of public and private funds for flood control projects and for relief, rescue and recovery efforts.

§ 106.3. Scope.

The following highway obstructions or obstructions when located in floodplains must meet the requirements of this chapter:

- (1) Any highway obstruction or obstruction constructed, owned or maintained by the Commonwealth or a political subdivision of the Commonwealth; and
- (2) Any obstruction constructed, owned or maintained by a public utility.

PERMIT APPLICATIONS

§ 106.11. Permit requirements.

- (a) No person may construct, modify, remove, destroy or abandon a highway obstruction or an obstruction in a floodplain without first applying for and obtaining a written permit from the Department.
- (b) Routine maintenance activities which will not impede, retard or change flood flows do not require a permit under the act or this chapter.

§ 106.12. Permit applications—information and fees.

(a) Application for permits under this chapter shall be submitted to the Department in writing, upon forms provided by the Department.

(b) Each application submitted for a permit under this chapter shall be accompanied by a check for \$50 payable to "Commonwealth of Pennsylvania"; except that applications submitted by Federal, State, county or municipal agencies or municipal authorities are exempt from the filing fee.

(c) A single application may be submitted and the Department may issue a single permit authorizing in one or more floodplains multiple obstructions or recurrent activities which are associated with an integrated project or activity or consist of numerous dispersed individual elements or classes of obstructions or activities similar in type, character or design.

(d) Each application for a permit shall be accompanied by the following information, maps, plans, specifications, design analyses, test reports and other data and additional information as may be required by the Department to determine compliance with this chapter:

(1) Floodplain maps prepared by FEMA and copies of municipal floodplain management regulations adopted under the act.

(2) Plans showing the location, size and height of the proposed highway obstruction or obstruction and detailing the topographic features, elevations, and nearby structures so as to enable an appraisal of the hazard potential of the obstruction.

(3) A description of the floodplain within the municipality or area which may be affected by the project and a plan showing drainage patterns and flood elevations within the floodplain.

(4) A hydrologic and hydraulic report which shall include:

(i) Data on size, shape and characteristics of the watershed.

(ii) The 100-year flood elevation.

(iii) An hydraulic analysis to show the effect of the highway obstruction or obstruction on the floodplain including a backwater analysis and an assessment of flood damage.

(5) For buildings subject to § 106.31(c) (relating to hydraulic capacity), an evacuation plan which fully explains the manner in which the site will be safely evacuated before or during a flood event.

(e) Applications for permits under this chapter shall be accompanied where applicable by an erosion and sedimentation control plan for all earthmoving activities in the floodplain. This plan shall conform to Chapter 102 (relating to erosion and sediment control) and shall include a copy of a letter from the conservation district in the county where the project is located indicating that the district has reviewed the applicant's erosion and sedimentation control plan and considered it to be satisfactory.

(f) Each application shall be signed by the owner of the highway obstruction or obstruction or the persons exercising primary responsibility for the highway obstruction or obstruction. In the case of a partnership, one or more members of the partnership authorized to sign on behalf of the entire partnership shall sign the application. In the case of a corporation, it shall be signed by the president, vice president, or other responsible official empowered to sign for the corporation, with the corporate seal or other proof of authorization to sign for the corporation affixed. In the case of a political subdivision, it shall be signed by the chief officer of the political subdivision or other responsible official empowered to sign for the political subdivision, with the seal affixed and attested by the clerk.

(g) Plans, specifications, and reports accompanying applications for highway obstructions or obstructions shall be affixed with the seal of a registered professional engineer, architect, land surveyor, landscape architect or other person licensed by the Commonwealth to provide the professional service required for the specific project and his certification, which shall read as follows:

“I (name) do hereby certify to the best of my knowledge, information and belief, that the information contained in the accompanying plans, specifications, and reports has been prepared in accordance with accepted professional practice, is true and correct, and is in conformance with Chapter 106 of the rules and regulations of the Department of Environmental Protection.”

(h) Applications may be submitted which omit information specifically required by this section if the applicant justifies the omissions. The Department may waive specific requirements of this section if, upon review of the data submitted, it is determined that the information is not necessary. The Department may also waive documentary requirements of this section for specific classes of obstructions if the required information is not necessary to review an application for those classes of obstructions.

§ 106.13. Review of permit applications.

(a) Applications will be reviewed under prevailing practices in the engineering profession.

(b) In reviewing a permit application under this chapter for construction, modification, removal, abandonment, or destruction of a highway obstruction or obstruction, the Department will consider the following factors as they relate to flood damage or water pollution:

(1) Potential threats to life or property created by the highway obstruction or obstruction.

(2) Potential threats to safe navigation created by the highway obstruction or obstruction.

(3) The effect of the proposed highway obstruction or obstruction on the property or riparian rights of owners upstream, downstream, or adjacent to the highway obstruction or obstruction.

(4) The effect of the proposed highway obstruction or obstruction on the regimen of the watercourse or other body of water and on the prevention of pollution or other hazards to health, safety and welfare.

(5) The need for the proposed highway obstruction or obstruction to be located in the floodplain and alternatives in location, design and construction which are available to minimize the adverse impact of the project.

(6) Present conditions and the effects of reasonably foreseeable future development within the affected watershed upstream and downstream of the highway obstruction or obstruction. In assessing the impact of future development, the Department may require the applicant to submit data regarding estimated development potentials based on municipal, county and regional planning related to the affected watershed.

(7) Consistency with State and local floodplain and storm water management plans and programs, the State Water Plan and the Pennsylvania Coastal Zone Management Program.

§ 106.14. Permit applications—public notice and time limits.

(a) The Department will publish a notice in the *Pennsylvania Bulletin* upon receipt of a complete application for a permit and again upon the issuance or denial of a permit by the Department.

(b) Following the receipt of the complete application, the permit shall become effective in 60 days unless the application is disapproved by the Department.

(c) No application for a permit is complete until necessary information required under the act and this chapter has been provided by the applicant. The Department will advise the applicant of the completeness of the application within 60 days after receipt of the application.

(d) Whenever the Department determines that an application is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. This notification will include a description of deficiencies and instructions for completion of the application. The applicant shall then have 60 days to complete his application, or the Department will return the application to the applicant as incomplete. The time required for the applicant to complete his application will not be counted as part of the Department's 60-day review period.

PERMIT ISSUANCE, TRANSFER AND REVOCATION

§ 106.21. Issuance of permits.

(a) The Department may grant a permit if it determines that the following applies:

(1) The application is complete.

(2) The proposed project or action complies with the standards and criteria of this chapter, The Flood Plain Management Act (32 P. S. §§ 679.101—679.601) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(3) The proposed project or action will not threaten public health, safety and welfare.

(b) Any permit issued under this chapter shall be subject to such general and special conditions regarding construction, operation, maintenance, inspection and monitoring of a project or action as the Department may deem necessary to assure compliance with the requirements and purposes of this chapter, The Flood Plain Management Act (32 P. S. §§ 679.101—679.601) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

§ 106.22. Denial of permits.

The reason for denial of any permit application will be communicated in writing to the applicant. A denial shall be subject to the procedure for appeal and hearing before the Environmental Hearing Board as provided by section 503(b) of The Flood Plain Management Act (32 P. S. § 679.503), section 1921-A of The Administrative Code of 1929 (71 P. S. § 510.21) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

§ 106.23. Compliance with other applicable statutes.

Receipt of a permit under this chapter shall not relieve the permittee of the obligation of complying with all Federal, Interstate compact and State laws, regulations and standards applicable to the construction, operation or maintenance of the highway obstruction or obstruction.

§ 106.24. Coordination of permits.

(a) The Department will establish a system to coordinate the application for and issuance of permits under this chapter with permit processes conducted under other statutes and regulations administered by the Department and with permit processes administered by other Federal and State agencies.

(b) Where possible, the Department will develop joint permit application forms to facilitate the submission of information on related activities of a project regulated under statutes and regulations administered by the Department and other Federal and State agencies, in order to reduce duplicate and repetitious application requirements. At the option of the applicant, such joint application forms may be used in lieu of individual applications for the required permits.

§ 106.25. Transfer of permits.

(a) Permits may be reissued in a new name if there is a change in the name of the owner.

(b) A permit may be transferred to a new owner only upon application to, and approval by, the Department upon forms provided by the Department.

(c) No permit may be transferred to a new owner if a violation of this chapter exists at the time of application for transfer unless the transfer will expedite correction of the violation.

(d) The original permittee shall not be relieved of the obligation to comply with this chapter, the terms and conditions of the permit or an order issued by the Department until the transfer has been approved.

§ 106.26. Modification, revocation and suspension of permits.

(a) The Department may modify, suspend or revoke any permit issued under the act if it finds that the permittee has violated the permit terms and conditions, the provisions of the act, or the provisions of this chapter, or that any change has occurred in the physical condition of the site which will materially affect safe construction and maintenance of the structure or activity.

(b) The Department will issue to the permittee a written notice of the modification, suspension or revocation of a permit. Any such notice shall be subject to the procedure for appeal and hearing before the Environmental Hearing Board as provided by section 503(b) of The Flood Plain Management Act (32 P. S. § 679.503) section 1921-A of The Administrative Code of 1929 (71 P. S. § 510.21) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

DESIGN CRITERIA FOR CONSTRUCTION OR MODIFICATION OF HIGHWAYS OR OBSTRUCTIONS

§ 106.31. Hydraulic capacity.

(a) Highway obstructions or obstructions shall be designed and constructed in accordance with the following criteria:

(1) The highway obstruction or obstruction shall not significantly increase the 100-year flood height or stream velocity.

(2) The highway obstruction or obstruction shall pass flood flows without loss of structural stability, flotation, lateral movement, collapse or damage to the structure itself or to its mechanical equipment or contents below the 100-year flood elevation.

(3) The highway obstruction or obstruction shall not create or constitute a flood hazard to life or property.

(4) The highway obstruction or obstruction shall not significantly alter the floodplain.

(5) The highway obstruction or obstruction shall not increase velocity or direct flow so as to result in erosion of the floodplain.

(b) In determining flood flows and frequencies for purposes of this chapter, hydrologic analysis shall be by methods generally accepted in the engineering profession.

(c) In addition to requirements of subsections (a) and (b), the following general criteria apply to buildings providing for permanent residence, staffed by public employees daily or open to the general public including, but not limited to, hospitals, nursing homes, jails or similar confined residential facilities, emergency services centers and communication centers:

(1) The lowest floor shall be a minimum of 1 1/2 feet above the 100-year flood elevation.

(2) There must be provisions for the safe evacuation of occupants any time during a 100-year flood.

(3) There must be provisions for continuous access during the 100-year flood.

(4) The building should not create any significant possibility of pollution or debris which may endanger life and property.

(d) The determination of flood flows for design shall be made with reasonable consideration of development which may alter the runoff characteristics of the watershed during the anticipated life of the structure. Specific design criteria of this section may be waived or modified where the applicant demonstrates and the Department determines that:

(1) There are unique physical circumstances such as exceptional topography or other natural or man-made conditions such that the criteria cannot be reasonably applied.

(2) There will be no additional threat to public health and safety.

(3) There will be an exceptional hardship to the applicant if the criteria is not waived.

(4) There will be no conflict with other applicable laws or regulations, including local municipal floodplain management ordinances.

(5) In the case of emergency services or communication centers becoming inoperable during a flood, alternative facilities are provided for in the local or county emergency management plan.

(e) In addition to complying with the requirements of this chapter, hospitals, nursing homes, jails, and development which has been determined as dangerous to human life must also comply with 16 Pa. Code Chapter 38 (relating to floodplain management) adopted by the Department of Community Affairs under sections 207 and 301 of The Flood Plain Management Act (32 P. S. §§ 679.207 and 679.301).

Cross References

This section cited in 25 § 106.12 (relating to permit applications—information and fees).

§ 106.32. Placement of drainage structures.

All drainage structures shall be aligned with the existing flow patterns of the floodplain where possible to minimize ponding.

§ 106.33. Appurtenant structures.

Appurtenant structures, such as highway signs, control light supports and similar structures, shall be kept to a minimum in number and cross-sectional area and shall be designed to offer the least obstruction to the passage of water and ice, consistent with public safety.

CONSTRUCTION REQUIREMENTS AND PROCEDURES**§ 106.41. Notices and reports.**

- (a) The permittee shall notify the Department, in writing, of the proposed time for commencement of major above ground work at least 5 days prior to the commencement of work.
- (b) The Department may require submission of such reports as it deems necessary on the status of work.
- (c) The requirement to provide notice of commencement of work and status reports shall be identified in conditions of the permit or by order of the Department.

§ 106.42. Acknowledgement of conditions.

- (a) The permittee shall fully inform any engineer or contractor responsible for the supervision and conduct of work covered by any permit issued under this chapter of all terms, conditions, restrictions and covenants of the permit.
- (b) Prior to the commencement of any work, the permittee shall file with the Department a copy of the permit provided by the Department, and signed by the permittee acknowledging and accepting the general and special conditions contained in the permit. Unless such acknowledgement and acceptance have been filed, the permit shall be null and void.
- (c) A copy of the permit and the acknowledgement, or a certified notice of the location of the permit and acknowledgement, shall be available at the work site for inspection upon request by any officer or agent of the Department or any other Federal, State, county or municipal agency.

§ 106.43. Time limits.

- (a) The Department will set such time limits for the commencement and completion of work under any permit issued under this chapter as it deems reasonable and appropriate to carry out the purposes of this chapter.
- (b) If such work is not completed on or before the dates set by the Department, unless extended by the Department in writing, the permit shall become null and void without further notification being required.
- (c) It shall be the responsibility of the permittee to request an extension of time limits.

§ 106.44. Implementation of work according to specifications.

- (a) All work undertaken under a permit issued under this chapter shall be conducted in accordance with the maps, plans, profiles, and specifications as approved by the Department.
- (b) No changes in the maps, plans, profiles and specifications for work covered by a permit which would affect flood flows or structural stability of the project during flooding events shall be made except with the written approval of the Department. Upon written approval by the Department, such changes shall become part of the permit.
- (c) The Department may, during the progress of work, require such changes or modifications in the maps, plans, profiles and specifications for work covered under any permit as its may determine are necessary.

§ 106.45. Inspections.

All work, structures and land covered under a permit issued under this chapter shall at all times be subject to inspection by representatives of the Department, and the permittee shall allow any representative of the Department to enter any property, premises or place associated with such permit for the purposes of such inspection.

§ 106.46. Implementation of erosion and sedimentation control plans.

At all times during the construction of any highway obstruction or obstruction the permittee shall follow the erosion and sedimentation control plan prepared in accordance with Chapter 102 (relating to erosion control) and submitted as part of his application.

§ 106.47. Removal of highway obstructions or obstructions.

(a) If all construction work has not been completed within the time specified in the permit and the time limit specified in the permit has not been extended in writing by the Department or if a permit has been revoked for any reason, the permittee shall, at his own expense and in such manner as the Department may prescribe, remove all or any portion of the work as the Department requires and restore the floodplain to its former condition.

(b) Prior to abandonment, the owner of any highway or obstruction covered by this chapter, regardless of whether or not it was constructed under a permit from this Department or its predecessors, shall remove all or part of the facility and take other actions as are necessary to protect safety and the public natural resources in accordance with a permit issued by the Department.

OPERATION, MAINTENANCE AND INSPECTION**§ 106.51. Operation and maintenance.**

The permittee or owner of a highway obstruction or obstruction shall operate and maintain the highway obstruction or obstruction and appurtenant structures in a safe condition under this chapter and applicable permit terms and conditions.

§ 106.52. Inspections by owners.

(a) The owner of any highway obstruction or obstruction shall conduct inspections to ensure the safe operation and maintenance of the facility in accordance with the provisions of this chapter.

(b) The owner shall retain records of such inspections, including records of actions taken to correct conditions found in such inspections. Copies of such records shall be provided to the Department on request.

(c) The Department may, through terms and conditions of the permit or by request at any time, require the owner to submit certified reports regarding the condition of the facility to the Department. In lieu of inspections conducted by the owner and certified reports submitted by the owner, the Department may accept reports of equivalent inspections conducted and prepared by other governmental agencies. In addition, the Department may accept equivalent inspection reports certified by the owner and submitted to other governmental agencies.

§ 106.53. Inadequate or collapsed structures.

(a) The owner or permittee of any highway obstruction or obstruction shall immediately inform the Department of the collapse of the highway obstruction or obstruction or any portion thereof or of the existence of any unusual conditions threatening the structural integrity of the highway obstruction or obstruction, where the collapse of the highway or structure would adversely affect the passage of floodwaters.

(b) Whenever a highway obstruction or obstruction, or any portion thereof has collapsed or is in imminent danger of collapse, and the collapsed portions may adversely affect passage of floodwaters or endanger health and safety, the owner or permittee shall immediately remove any and all collapsed portions to an area outside the floodplain of the stream and either:

- (1) Completely remove the highway obstruction or obstruction.
- (2) Repair the highway obstruction or obstruction under plans submitted to and approved by the Department.

**INVESTIGATION AND CORRECTION OF UNSAFE CONDITIONS—
EMERGENCY PROCEDURES****§ 106.61. Procedures for investigations.**

The Department may, if it finds there is reasonable cause to suspect the existence of conditions which could cause floodwaters or materials carried by flood-

waters to endanger or cause damages to people or property, order the owner to conduct such investigations, studies, tests and analyses as may be required to properly evaluate the safety of the structure. Such investigations, studies, tests and analyses shall be accomplished under the supervision of a registered professional engineer or other licensed professional as may be appropriate, experienced in the design, construction, operation and maintenance of such facilities and approved by the Department, and shall be accomplished in accordance with such methods and within the time limits as the Department may prescribe. Failure to provide such investigative results to the Department on request will constitute adequate grounds for revocation or suspension of a permit.

§ 106.62. Correction of unsafe conditions.

If the Department determines that any highway or obstruction could cause floodwaters or material carried by floodwaters to endanger or cause damage to people or property, it may require the owner of the facility to repair, alter, maintain or remove the facility or take such other action as necessary to carry out the purposes of this chapter within such time as prescribed by the Department.

§ 106.63. Emergency procedures.

The following procedures apply to emergency conditions as they relate to flood damage potential or water pollution:

(1) The permittee or owner of a highway obstruction or obstruction shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition of the facility which may threaten public health and safety and shall take necessary actions to protect life and property, including action required by order issued by the Department under the act.

(2) The permittee or owner of a highway obstruction or obstruction shall immediately notify the Department of new or temporary construction, modification, removal, or destruction of a highway obstruction or obstruction necessitated by an emergency condition. In addition, within 30 days after notification, the permittee or owner shall file with the Department a written report describing the emergency condition and the necessary remedial action.

(3) Calls should be directed to the Department's Harrisburg Central Office at (717) 787-6826 or (717) 783-1384, (717) 787-4343 (Department's 24-hour emergency number), or to the Pennsylvania Emergency Management Agency at (717) 783-8150.

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