



# Environmental Issues in Real Estate and Business Transactions

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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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# Key Topics

- Describe Basic Wetlands Permitting Program
- Highlight Differences between Federal and State Programs
- Discuss Special Protection Waters

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# Basic Wetlands Permitting Program

- **Wetlands:** Areas that are inundated or saturated by surface or groundwater 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, including swamps, marshes, bogs and similar areas.
  - ⊗ See 33 C.F.R. § 328.3(b), 25 Pa. Code § 105.1.



# Basic Wetlands Permitting Program (cont'd.)

- Two Permits are needed to fill wetlands and waters in Pennsylvania
  - ✧ Federal - Section 404
  - ✧ Pennsylvania - Section 105
- Joint Permit Application, but no “Joint Permit”



# Basic Wetlands Permitting Program (cont'd.)

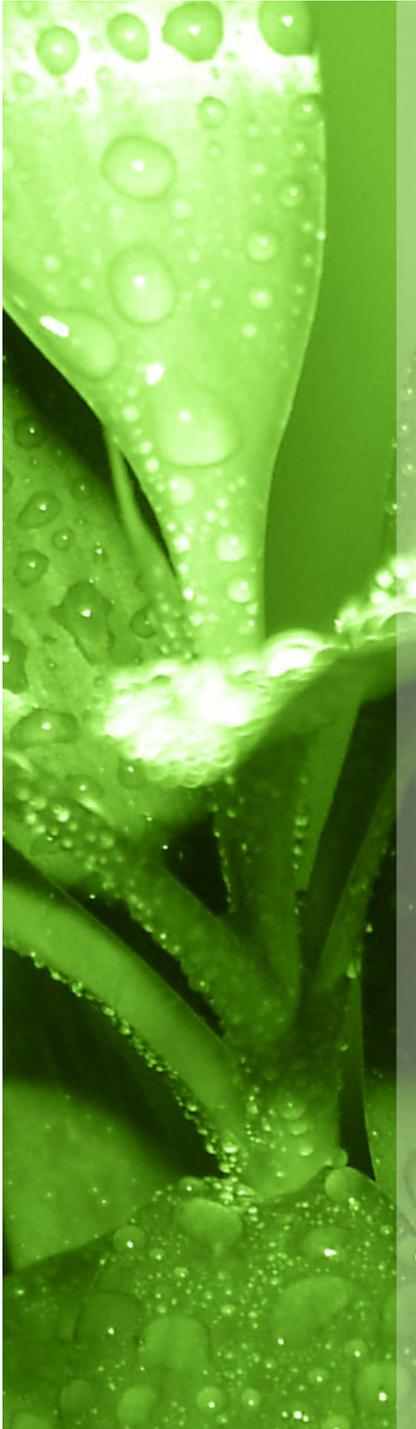
- Permits will only be issued if project:
  1. Avoids,
  2. Minimizes, and
  3. Mitigates wetlands impacts.
  
- In that order!

# Federal Permitting Program

- Clean Water Act allows the Corps, pursuant to Section 404, to issue permits for the dredging and filling of “navigable waters”
- Generally, projects that fill in less than 1 acre of wetlands will be able to receive a general permit called the Pennsylvania State Programmatic General Permit – 3 (“PASPGP-3”)
- Recent developments regarding scope of federal jurisdiction

# State Permitting Program

- Dam Safety and Encroachments Act provides that no person shall construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without a DEP permit
- 12 General Permits available for relatively minor impacts (e.g., small docks, intake and outfall structures, utility line stream crossings, temporary road crossings, etc.), as long as project meets permit conditions
- If General Permits unavailable, seek Individual Permit



# Differences between Federal and State Programs

- DEP has jurisdiction over isolated wetlands
- Different triggers: federal is “discharge of dredged or fill material,” state is a structure “located in, along, or across or projecting into” a watercourse
- State Program offers permit waivers
- State Program defines wetlands as either “Exceptional Value” or “Other”

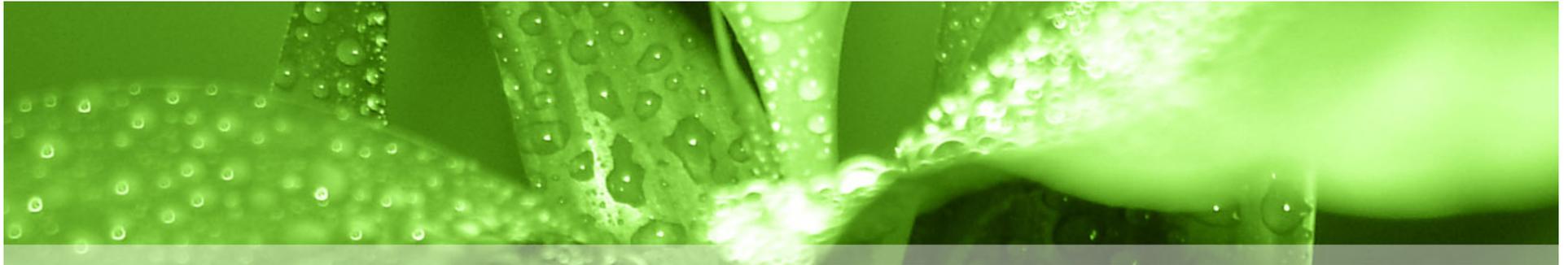
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# Special Protection Waters

- Either “High Quality” (meeting certain chemical or biological factors) or “Exceptional Value” (recreational, ecological, resource significance), see 25 Pa. Code § 93.4(b)
- Heightened permitting requirements
- Water’s classification can change while permit is pending



# Thank You

## Any questions?

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