CHAPTER 105 DAM SAFETY AND WATERWAY MANAGEMENT
FINAL TECHNICAL GUIDANCE: PENNSYLVANIA LACUSTRINE CONDITION
LEVEL 2 RAPID ASSESSMENT
(DEP ID: 310-2137-004)

COMMENT RESPONSE DOCUMENT

January 24, 2017
defartment of environmental protection

BUREAU OF WATERWAYS ENGINEERING AND WETLANDS
LIST OF COMMENTATORS

The proposed Chapter 105 Dam Safety and Waterway Management technical guidance Pennsylvania Lacustrine Condition Level 2 Rapid Assessment (Document ID: 310-2137-004) was published in the Pennsylvania Bulletin at 44 Pa.B. 1396 on March 8, 2014. This publication date marked the beginning of a 60-day public comment period. An extension of the public comment period was published in the Pennsylvania Bulletin at 44 Pa.B. 2705 on May 3, 2014. This publication extended the public comment period 45 days until June 23, 2014. The Department received comments from the following 17 individual commentators. This document provides the Department’s responses to those comments.

1. Bradley Hagel, P.E. Pennsylvania Turnpike Commission
2. Regina Poeske Environmental Protection Agency Region 3
3. David J. Spigelmyer Marcellus Shale Coalition
4. William Cluck Law Offices of William Cluck
5. Erik Hanniman Philadelphia Water Department
6. Mark Haibach Civil & Environmental Consultants, Inc.
7. Mark Gutshall LandStudies, Inc.
8. Mark Haibach ARM Group Inc.
9. David E. Spotts PFBC - Division of Environmental Services
10. Linda Kenney Evergreen Environmental, LLC
11. Gene Barr Pennsylvania Chamber of Business and Industry
12. Kevin J. Moody PA Independent Oil & Gas Association
13. Liz Garland Deardorff Pennsylvania Campaign for Clean Water
15. Tom Page Williams Companies
16. Bryon Ruhl Pennsylvania Department of Transportation
17. William P. Seib U.S. Department of the Army, Baltimore District Corps of Engineers
COMMENTS AND RESPONSES

GENERAL

Support

1. **Comment:** We have reviewed the March 7, 2014 Draft Pennsylvania Aquatic Resource Functional Compensation Protocol and the accompanying Rapid Assessment Protocols (Protocol) and find the documents represent an important step forward in the science of aquatic resource assessment. (2)

   **Response:** The Department acknowledges the comment.

2. **Comment:** We recognize that years of scientific research underpin these protocols and we fully support Pennsylvania Department of Environmental Protection’s (PADEP) efforts to incorporate standardized ecological assessments into aquatic resource compensation determinations. (2)

   **Response:** The Department acknowledges the comment.

3. **Comment:** The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) 2008 Compensatory Mitigation Rule emphasizes “improved science and results-oriented standards to increase the quality and effectiveness of wetland and stream restoration and conservation practices”. We believe that appropriate use of PADEP Protocols meets the intent of the Rule because it employs best available science, promotes innovation and focuses on ecological results. (2)

   **Response:** The Department acknowledges the comment.

4. **Comment:** The development of the Level 2 Rapid Assessment Protocols addresses the long-missing ecological connection between habitat types associated with impacts to aquatic resources in Pennsylvania in the Chapter I05 Dam Safety and Waterway Management Regulations. (9)

   **Response:** The Department acknowledges the comment.

Other

5. **Comment:** Thorough training and quality assurance of regulatory personnel and the consultant community should be an institutionalized component of the roll out and eventual implementation of the Protocol. (2) (3) (12)

   **Response:** An education and outreach plan is being developed as part of the finalization of the technical guidance and will include training and outreach for consultants, DEP staff, and other interested parties.

6. **Comment:** There is a high degree of variability created when using the Protocol’s indices, stressors, and other qualitative parameters - which may not create results that are replicable from one professional to another. For example, in the Riverine Protocol, there are five conditional indices (channel/floodplain, riparian vegetation, riparian Zone of influence, instream habitat,
and channel alteration) and three categories (channel geometry, channel stability, and active floodplain connectivity). An applicant would then be required to consider results from 15 to 35 individual factors which are ultimately reduced to a number from one to 20. The Protocol does not provide information about how to achieve this single number (relies on the person making qualitative field judgments). We believe this could result in substantial variation in results - up to as much as 50% variability among individual applicants and reviewers. DEP should follow the goal of the Protocol by providing a less subjective approach for consistency.

3) (4)

**Response:** The Department has not encountered unacceptable levels of variability that the commentator suggests may occur when testing and using the guidance. When the technical guidance protocols are followed without bias, and a professional applies the condition criteria in the protocol based on their BPJ taking into account on-the-ground visual estimates and field measurements, the potential levels of variability are within acceptable limits. Further, the technical guidance protocol provides a professional with descriptions of the criteria, which if present, constitute each Condition Category ranging from optimal to poor. The protocol then provides objective formulas and instructions to be used by the assessor when determining each Condition Index as well as the Overall Lacustrine Condition Index score. In developing the technical guidance protocols, the Department utilized existing peer-reviewed methodologies, current environmental principles, Department resource knowledge and applicable scientific literature to standardize the collection and presentation of the information deemed necessary for assessing the lacustrine resource’s condition for the purposes of meeting regulatory requirements contained in 25 Pa. Code Chapter 105.

**Comment:** DEP should coordinate with the United States Army Corps of Engineers (USACE) for approval of the Protocol and the applicability to specific watercourses. Differences in interpretation, definition, and applicability between the DEP and the USACE would result in inconsistent and unpredictable reviews and permit times. (3)

**Response:** The Department has coordinated the development of the technical guidance protocol with the USACE and EPA. The Department has State law requirements under the Dam Safety and Encroachments Act, 32 P.S. §§ 693.1 et seq. and its implementing regulations (25 Pa. Code Chapter 105), which are separate and distinct from federal regulations. The technical guidance has been developed to assess existing lacustrine conditions for the purpose of complying with State law requirements.

The USACE is responsible for determining the applicability of the technical guidance protocol as it relates to federal regulatory requirements, under Section 404 of the Clean Water Act, 33 U.S.C. § 1344. The technical guidance protocol is consistent with both applicable State and federal regulations and the Department anticipates that the USACE and EPA will accept the use of the final technical guidance protocol. See Comment 3 from EPA.

Regarding applicability to specific watercourses, this technical guidance protocol intends to provide a consistent method for determining the existing condition of all lacustrine resources impacted by a proposed project, regardless of the type.

**Comment:** The Protocol is intended to be guideline and streamline aquatic resource investigations to determine compensation and mitigation requirements; however the tables, calculations and methodologies are extremely complex. The Protocol references several studies,
however they appear to be unpublished and not subject to scientific review. DEP should provide background on how the methodologies for the calculations, index scores, ranges and other information were developed. DEP should reference juried, scientific logic for each index and weighting within the models presented in the Protocols. (3)

Response: The Department has provided step-by-step instructions for the application of the rapid assessment protocol, which persons qualified to conduct resource assessments should be able to readily follow. The Department utilized existing peer-reviewed methodologies, current environmental principles, Department resource knowledge, and applicable scientific literature to develop the methods for collection and presentation of the information deemed necessary for assessing the resource’s condition. Primary sources utilized in the development of the technical guidance have been added to the Bibliography Section of the technical guidance document.

9. Comment: According to the webinar the PADEP held on April 10, 2014, the use of the draft rapid assessment protocols will replace the narrative portion of the Environmental Assessment (EA) Form that is currently required for Joint Permit Applications. The EA form currently used with Joint Permit Applications requires that all on-site resources are to be characterized (Enclosure C). Therefore, PADEP should clarify whether the methods outlined in the draft protocols will be required for all on-site resources or only the resources proposed to be affected by the project. We suggest that it is appropriate to require characterization of only the resources proposed to be affected by the project. (12)

Response: The Department is revising the Environmental Assessment Form and other applicable documents to incorporate the assessment results, as appropriate, and will include directions on how to utilize the assessment results in the Environmental Assessment. The technical guidance clarifies that the methodology can be used to assess existing resource conditions whether or not the resource will be impacted by the proposed project.

10. Comment: The draft rapid assessment protocols include numerous references to example photographs which are “TO BE ADDED LATER”. These photographs should be made available for review and comment prior to being finalized. (12)

Response: The reference to photographs “TO BE ADDED LATER” was removed from the guidance. The Department may provide photographs in the technical guidance in the future.

11. Comment: Since projects affecting water resources often require authorizations from the USACE, will the USACE accept the results of the application of these protocols and the mitigation index developed as a result of them? (1)

Response: See response to Comment 7.

12. Comment: In each of the protocols there is a disclaimer that DEP will exercise its administrative discretion to deviate from the policies if circumstances are warranted. What circumstances would warrant deviation? (1)

Response: The Department includes this disclaimer in all of its technical guidance to distinguish guidance issued to assist in the implementation of regulatory requirements from those regulatory requirements themselves. The Department develops technical guidelines based on commonly encountered circumstances and, therefore, may need to deviate from that guidance.
when other circumstances arise. The Department cannot develop technical guidance that addresses every circumstance or describes all circumstances that can be reasonably contemplated that may deviate from those commonly encountered.

13. **Comment:** The protocols include references to taking measurements that may be time-sensitive. The project development process may extend for multiple years so the timing of such studies may have an implication. (1)

**Response:** The assessor should take seasonal conditions into consideration when conducting an assessment; provide comments as appropriate on the field forms or supporting information, and accurately record the conditions. The Department considered the issue of timing when drafting the technical guidance and has not set any time of year restrictions related to performing the resource condition assessments. The applicant has the responsibility to ensure that the protocol evaluation results are reflective of the actual existing resource conditions.

14. **Comment:** We have found the permit application process very challenging in terms of meeting DEP’s requirement for submitting complete and administratively complete applications to qualify for the PDG. One of the items that need to be included in a complete application is a compensatory mitigation package. In each protocol, there is a disclaimer that DEP reserves the right to conduct its own evaluation during the permit application review phase. If DEP decides to conduct its own analysis during the permit application review phase, it could result in the need for additional mitigation. That in turn would necessitate additional design and perhaps additional right-of-way acquisition and would render the application incomplete. An applicant would be hard-pressed to ever be able to submit a complete application under the proposed scenarios. (1)

**Response:** An application would not be administratively incomplete because the Department may require additional mitigation pursuant to Chapter 105 regulations. The applicant could still qualify for permit review under the Policy of Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee (DEP 021-2100-001). The potential for mitigation requirements to change during the Department’s technical review of an application has always existed and any such change would occur after the completeness review. The Department anticipates that the use of resource assessment methodologies recommended in its technical guidance will reduce the likelihood of significant changes during the permit review process.

15. **Comment:** The protocols use a qualitative approach which results in quantitative scores. There are numerous references to making visual observations and using BPJ. Yet what information is the applicant to collect in order to preclude DEP from conducting their own assessment? (1)

**Response:** The Department provides the following for clarification. When completing the assessment protocol, the assessor will provide the Department with the assessment worksheets and any information utilized or collected to support the assessment. The technical guidance provides an assessor with descriptions of the criteria that should be considered for each Condition Category ranging from optimal to poor. An assessor will utilize these Condition Category criteria descriptions when determining which score to assign based on conducting a field assessment. Assessors should follow standard professional practices and use best professional judgment (BPJ) when conducting field assessments. As indicated in the Disclaimer
of this technical guidance, the Department reserves the discretion to deviate from this policy statement if circumstances warrant.

16. **Comment:** The condition categories often have a multiple point spread, such as an Optimal rating ranging from 17 to 20. It would seem that different assessors could assign different scores. Again, this is another area where DEP could decide to conduct their own assessment during the permit application review phase. Would DEP consider providing additional information to discern the differences? (1)

**Response:** See response to Comment 12. Providing additional information would not likely change the circumstances when the Department needs to provide its own assessment. The scoring ranges within a given condition category allow the assessor to assign the score within the condition category range incorporating the assessor’s BPJ when conducting field assessments using standard professional practices. The condition categories range from optimal to poor and contain a description of criteria to assist the assessor when conducting field assessments.

17. **Comment:** In several protocols, the required assessment areas may extend beyond the limits of the proposed roadway improvements. While using aerial mapping, etc., to initially assess those areas is reasonable, field verification of things like aerial cover, etc., would necessitate the assessor entering private property. Has the Department considered the consequences of this matter? (1)

**Response:** The Department understands that assessing the impacts of a proposed project may require field verification of resource conditions on property not owned or controlled by the applicant. If access to adjoining property is necessary to adequately assess the potential impacts to the lacustrine resources, the applicant is responsible for negotiating the needed access with the adjoining property owner. The Joint Permit application currently requires the applicant to consider resources and potential project impacts beyond the immediate project vicinity and the application of these guidelines is consistent with this existing requirement.

18. **Comment:** The vegetative cover assessment may also be time-sensitive because of season. Will DEP accept the results from the time of evaluation by the applicant? (1)

**Response:** See response to Comment 13.

19. **Comment:** We respect your right to refute the LCI scores reported as part of an application, but this action should not be taken lightly and should be considered only as a last resort. Every effort should be made to work with the assessor to adjust the LCI scores, as necessary, based on site conditions and other relevant data. This joint effort will provide learning opportunities for the assessors and PADEP staff and will lead to more consistent results. Therefore, a process should be developed that details the criteria PADEP will use to determine when the original assessment does not adequately represent the lacustrine condition and the steps PADEP staff should take prior to rejecting submitted LCI scores. (12)

**Response:** See response to Comment 15. The discretion to refute the results and provide a substitute rating or concur with the results is the Department’s responsibility as part of the technical review. The overall review of applications would not benefit from developing such a process as described by the commentator. When refuting an applicant’s results and providing
substitute results, the DEP application reviewer is responsible for providing justification as part of the record of decision.

Introduction

20. **Comment:** This section states that the associated condition indices “do not consider the abundance or types of organisms present, nor do they consider the water quality of the lacustrine environment.” and that “natural lakes, impoundments and large rivers differ in terms of behavior, structure and function, however, this rapid assessment emphasizes the shared physical attributes characterizing these varied aquatic resources.” Any evaluation of aquatic habitat or resource function for the purpose of valuation for mitigation must consider also chemical and biological composition. (13)

**Response:** The protocol provides a method for the rapid assessment of the existing physical condition of a lacustrine resource and is not intended to provide a valuation of a resource for mitigation purposes. When compensation is required to provide mitigation for a lacustrine impact, the Department will consider additional information, as necessary, such as water quality and the presence of threatened or endangered species.

Section 1.0 Project Site Assessment Area

21. **Comment:** The example provided appears to be related to a boat dock, ramp or wharf. It’s not clear how a linear project such as a highway project that might involve a major river crossing involving bridge pier installation would be assessed under this protocol. (1)

**Response:** The guidance was revised by the Department in response to the comment to include language in Section 1.1 Project Assessment Area Examples to instruct the assessor on how to establish an assessment area and conduct an assessment for an example of a linear project such as that described by the commentator.

22. **Comment:** In example AA, 4, the AA extends a total distance of 100 feet landward from the shoreline, and is divided into two areas; the Riparian Shoreline Vegetation Zone and the Riparian Zone of Influence Vegetation. The second example depicts a proposed AA 100 feet landward of the lake to be impacted. In this example, a roadway crosses through the AA. The area from the road to the impact site is sloped towards the lake (the road is located uphill/upslope of the lake). The portion of the AA on the other side of the roadway (left side) slopes away from the road and the lake. As a result, the AA includes an area which does not drain/slope towards the lake. Clarification is needed to address this situation. If areas are being included within the AA which would not appear to directly have an influence on an aquatic resource, then a justification for doing so needs to be included. (17)

**Response:** Unless the land adjoining the lacustrine resource involves a feature such as a cliff or high wall, the boundaries would be established by following the standards in the technical guidance. The riparian shoreline vegetation zone and the riparian zone of influence vegetation conditions need to be assessed even if the land surface slopes vary or have man-made structures present. The condition index intends to take into consideration more than just surface flow paths. Adjoining riparian areas usually have a direct influence on lacustrine resources when considering above and below ground processes. Therefore, the Department did not include exceptions to this scenario in the technical guidance.
Section 2.0 Average Depth Condition Index

23. **Comment:** An example of the time-sensitive nature of measurements is when the average depth is determined. Obviously, there are seasonal fluctuations in depth on major river systems. Will DEP accept the results from the time of evaluation by the applicant? (1)

**Response:** See responses to Comments 12, 15 and 18. An assessor needs to provide comments and supporting information as appropriate on the field forms when using this assessment protocol. For example, the average depth measurements should not be taken by the assessor during extreme high or low flow conditions. An assessor should document whether the water level/depth has been affected by seasonal fluctuations and estimate the extent, if possible, on the field forms.

24. **Comment:** This section notes that “sanctuaries, refuges, mud flats and emergent wetlands (occurring within the defined limits of the lake, reservoir or large river) should be avoided and scored optimally as special aquatic habitats.” This section also notes “complex habitats should be avoided as they are difficult to replicate and among the most diverse aquatic environments.” Clarification must be provided with regard to the consideration these complex habitats are given in the valuation process to ensure they are adequately protected in order to maintain this aquatic resource function. (1) (13)

**Response:** The technical guidance was revised by the Department in response to the comment to include language instructing the assessor on condition category placement and scoring. Language regarding avoidance was removed from Section 2.2 of the technical guidance since the language is not related to assessing the lacustrine condition.

Section 3.0 Riparian Shoreline Vegetation Condition Index and Section 4.0 Riparian Zone of Influence Vegetation Condition Index

25. **Comment:** Riparian Shoreline Vegetation Condition Index and Riparian Zone of Influence (ZOI) Vegetation Condition Index state that the use of wetlands does not differentiate with regard to the condition of the wetlands; thus allowing for a monoculture of invasive species in an emergent wetland to be scored optimal. Streams affected by acid mine drainage would also be considered optimal. If such areas are to be included as an optimal finding, then justification for doing so should be provided. Justification for the determination that a mature hardwood/coniferous forest occupying 100% of the assessment area is an ideal Riparian Zone of Influence should be provided. (17)

**Response:** The condition assessment is not intended to assess the water quality of contributing resource areas such as wetlands. The presence of wetlands along the shoreline regardless of their vegetative nativity provides benefits to the associated lacustrine resource. If the area still meets wetland delineative criteria, it is a wetland and provides functions that benefit or serve to protect the lacustrine resource. The assessor does have the ability to select a score on the lower end of the scoring range for the condition category when areas such as those described by the commentator are present and such a decision should be based on an assessor’s BPJ when conducting the field assessment. Mature hardwood/coniferous forests are the cover type native to the shorelines of most lacustrine resources in Pennsylvania and, therefore, are considered to be an optimal condition.
26. Comment: Please clarify the use of the terms land cover, percent canopy cover and percent areal coverage since the same language is used in multiple sections and condition category descriptions. What documentation is needed to verify the qualitative assessment? Will DEP accept results of a vegetative cover assessment from the time of the evaluation? (1)

Response: The terms are intended for use as they are commonly defined. The technical guidance was revised by the Department in response to the comment to include language providing further clarification for the assessor in regards to the documentation needed when performing an assessment using this protocol. The Department has not set any time of year restrictions related to performing the assessment; however, it should be representative of normal or average resource conditions. See responses to Comments 12 and 15 in regards to the Department’s acceptance of vegetative cover assessment results from the time of evaluation.

27. Comment: This section includes “trails” in the “Poor” “Low Poor” category. Consideration should be given to trails constructed of pervious materials. (13)

Response: The guidance was revised to address the comment. Pervious trails were added as a specific item to the High Poor Condition Category description. This revision was implemented across all three condition assessment technical guidance documents.

28. Comment: This section requires observation and recordation of vegetative condition. Photos must also be provided to support selected rating. (13)

Response: The technical guidance was revised in response to the comment to include language further instructing the assessor to provide supporting information and photographic documentation as appropriate or to reference such material provided in the application.

29. Comment: The Protocol requires a “Riparian Zone of Influence” assessment that is greater than the project impact itself. If a wetland impact exceeds one acre, the assessment area (through connectivity) could be unlimited in scope, particularly if the wetland is in a topographically flat area. If the connectivity is estimated to be 25 acres, the assessment requirements would be for 25 acres. This represents a substantial increase in assessment requirements and will result in higher upfront costs for analysis. Similarly, the proposed guidance requires 500 linear feet of assessment on Stream Reaches, regardless of the impact. DEP should provide evidence of statutory authority for non-impacted areas that extend outside of the areas proposed to be impacted, and revise the Protocol to regulate impacted areas within the project area. (4)

Response: The language regarding the establishment of the Zone of Influence boundaries is clearly stated in each of the resource condition assessments and always comprises a finite area. The Zone of Influence boundaries are determined by the extent of the proposed impact. The purpose of the rapid condition assessments is to establish the condition of the resource proposed to be affected by a project relatively quickly and inexpensively. The assessment areas are not established to define areas regulated under Chapter 105 nor do they have that effect. Areas subject to jurisdiction are defined by Chapter 105 regulations. The assessment of a resource’s condition is not bound by jurisdictional limits, but instead applicable environmental principles, similar to engineering best practices. The DEP has the regulatory authority to establish a Zone of Influence under Chapters 105.13, 105.14 and 105.15, respectively.
30. **Comment:** “Each condition index score should result in a value from 0.05 - 1.0.” (Page 14). The calculation of the condition index score does not appear to be well explained. Since each condition index score should result in a value from 0.05 - 1.0, the scores for each index would need to be divided by 20 to calculate the condition index score. However, the Shoreline and Near-shore Human Alterations Index does not specify how to calculate the condition index score either in the narrative or on the Lacustrine Condition Assessment Form. We believe the overall score from this index is meant to be divided by 20 to calculate the condition index score. We understand the form is intended to be used electronically and the calculations are provided in the electronic form. However, the method to calculate the condition index scores should also be explained on the form and not just included in the narrative. Please revise the narrative and the assessment form to provide the required calculation of the condition index scores for all indices. (12)

**Response:** The technical guidance was revised by the Department in response to the comment to include language further instructing the assessor on how to calculate indices by providing equations, explanations, and inclusion of the formulas on the assessment form.

31. **Comment:** The consideration of human activity is reasonable in the assessment, but there is uncertainty again in that it states that while aerial photography may be used, actual measurements may be necessary. Who makes the determination whether measurements are necessary and when does that determination occur? (1)

**Response:** The assessor is responsible for determining, in their best professional judgment, when field measurements are necessary to confirm the estimated percentage of human alteration. As with any aspect of a resource condition assessment provided to the Department to comply with requirements in Chapter 105, the Department may conclude that additional information is necessary to effectively review a submission and take an action.

32. **Comment:** There is no mention of natural alteration, i.e., erosion of slopes due to wave action or natural erosion. Such alterations affect the overall condition of the aquatic resource and should be taken into account when developing a conditional scoring. (17)

**Response:** The purpose of the index is to factor resource alterations that result from human interactions and not natural processes. An assessor would consider human actions that accelerate natural erosion processes as a human alteration and record these instances as such.

**Section 6.0 Qualitative Condition Rating (QCR)**

33. **Comment:** Who determines what other sites in the region, should be used to make this comparison? This is the only section that refers to the use of BPJ; however, it is also the only section which is not used in calculating the Overall Lacustrine Condition Index score. Is it implied that all of the other Condition Categories are not to include BPJ because the assessor has to take measurements to quantify their rating? If that is the case, the qualitative nature of the protocol comes into question. (1)

**Response:** The Department originally included this section for informational purposes only. This section was removed from the technical guidance.
34. **Comment:** This section requires assessors to use professional judgment to assign a single numerical Qualitative Condition Rating based on the Tiered Aquatic Life Use Conceptual Model. Documentation of justification and photos supporting the assigned rating must be provided. (13)

**Response:** The Department originally included this section for informational purposes only. This section was removed from the technical guidance.

35. **Comment:** It is unclear how the Qualitative Condition Rating is used in assessment for impact and/or compensatory mitigation valuation. Clarification is requested. (13)

**Response:** The Department originally included this section for informational purposes only. This section was removed from the technical guidance.

36. **Comment:** It is unclear how aquatic life is accounted for in assessment for impact and/or compensatory mitigation valuation. Clarification is requested. (13)

**Response:** The Department originally included this section for informational purposes only. This section was removed from the technical guidance.

37. **Comment:** Indicates that best professional judgment should be used to rate the condition of the resource. These Qualitative Condition Categories should be further defined instead of relying on BPJ. (17)

**Response:** The Department originally included this section for informational purposes only. This section was removed from the technical guidance.

**Section 7.0 Overall Lacustrine Condition Index** (renumbered as Section 6.0 in final guidance)

38. **Comment:** The Lacustrine Condition Index (LCI) should be used instead of the RECI because this is for the Lacustrine Condition Index. (12) (17)

**Response:** The technical guidance was revised by the Department to use the term Lacustrine Condition Index (LCI).

39. **Comment:** As an applicant, we are to submit complete permit applications. Under this protocol, we would have to include the assessment of functional impacts as part of the application. The applications are to include mitigation plans for unavoidable impacts. If the Department refutes an evaluation and does their own, it could alter the compensatory mitigation plan contained in the application. Such a change could alter our plans and require redesign and right-of-way acquisition and affect project schedules. Would the Department review and approve the evaluations prior to permit submission in order to negate that potential? If there are banks or an in-lieu fee program available, an adjustment would theoretically be simple. However, to date those opportunities are limited or non-existent. (1)

**Response:** The applicant can submit a complete application in the scenario presented by the commentator. The potential for mitigation requirements to change during the technical review of an application has always existed and any such change would occur during post completeness
review. The Department anticipates that the use of the rapid assessment protocol in its technical guidance will reduce the likelihood of significant changes in the assessment of the existing resource conditions submitted as part of the permit application.

40. **Comment:** “NOTE: DEP reserves the right to refute the RECI scores reported as part of an application and provide its own rating for use in reviewing the permit application and for determining any compensatory requirements.” (Page 14). We respectfully request you add “if the original assessment does not adequately represent the lacustrine condition” to the statement above (as PADEP has done in the corresponding provision of the wetland Level 2 Rapid Assessment Protocol) and change “DEP” to “The Department”. (1) (12) (14)

**Response:** The language was revised accordingly by the Department.

41. **Comment:** Lacustrine Condition Assessment Form (p. 2) - The Overall Condition Score directions state that the four indices are to be summed and divided by 6, but the directions in Section 7.0 state the denominator should be 4. (1)

**Response:** This language was revised accordingly by the Department to correct the value of the denominator to four (4) on the form. Therefore, the overall LCI score is determined by adding up the index scores from each condition index and then dividing by the total number of condition indices, four (4).