

DCNR Rulemaking Process – Conservation of Pennsylvania’s Native Wild Plants

Authority

The Wild Resource Conservation Act (“Act”) gives the Department of Conservation and Natural Resources (“DCNR” or “Department”) the authority to manage plants in the Commonwealth of Pennsylvania. The purpose of the Act is to enhance the protection of native wild plants and non-game animals in the Commonwealth. The Act requires DCNR (as successor agency to the Department of Environmental Resources) “with cooperation from taxonomists, biologists and other interested persons [to] conduct investigations on wild plants in order to ascertain information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to classify plants and to determine management measures necessary for their continued ability to sustain themselves successfully.”¹

Additionally, the Act directs DCNR to establish a classification procedure that classifies plants into different categories based on the status of their populations throughout Pennsylvania.²

In 1988, pursuant to the Act, the Environmental Quality Board (the rulemaking body for the Department of Environmental Resources), promulgated 25 Pa. Code Chapter 82 (relating to conservation of Pennsylvania native wild plants). Chapter 82 contained lists of wild plant species in various classifications established in the chapter. The Environmental Quality Board revised Chapter 82 in 1992 to add and delete species from various classifications. Then in 1996, the Conservation and Natural Resources Act (“CNRA”) transferred authority to carry out the provisions of the Act from the Department of Environmental Resources to DCNR and transferred the authority to promulgate rulemakings under the Act from the Environmental Quality Board to DCNR. Additionally, the CNRA, renumbered 25 Pa. Code Chapter 82 to 17 Pa. Code Chapter 45.³

DCNR’s Wild Plant Program, which operates within the Department’s Bureau of Forestry, is responsible for managing the regulatory status updates to Pennsylvania’s native wild plants.

Rulemaking Changes

DCNR begins its rulemaking process for classifying native wild plants by researching plant species or families. The Department assesses current species data and requests further information from experts as needed; such information may include population information, field, taxonomic, genetic and/or nomenclatural data. DCNR assimilates, evaluates and interprets the information it obtains, and makes a final decision for classifying native wild plants. Any citizen or interested party may suggest plant classification updates to DCNR, and the Department will evaluate the potential status change for that species.

DCNR receives technical, species-specific guidance from the Pennsylvania Biological Survey’s, Vascular Plant Technical Committee and Rare Plant Forum. These groups are made up of technical experts from the public and private sectors (consultants, non-profits, universities, arboreta and herbaria), who all follow standardized data collection methods.

- **The Pennsylvania Biological Survey (PABS)** began in 1979 and is “a nonprofit organization whose purpose is ‘to increase the knowledge of and foster the perpetuation of the natural biological diversity of the Commonwealth of Pennsylvania.’ Membership includes scientists from throughout the state, representatives of state and federal agencies concerned with natural resource management, representatives of Pennsylvania’s major natural history museums and scientific institutions, and interested individuals.” PABS is the umbrella organization to the Vascular Plant Technical Committee and provides the overarching framework for committees that focus on specific taxa in Pennsylvania.⁴
- **The Vascular Plant Technical Committee (VPTC)** is the technical committee of PABS that focuses specifically on vascular plants. The VPTC was one of the original committees that began with PABS in 1979; its members include botanists from universities, natural history museums and conservation organizations, as well as private consultants. The VPTC convenes twice a year and provides recommendations about native wild plant species to DCNR for further consideration.
- **The Rare Plant Forum (RPF)** is the public function of the VPTC and is open to the public. This is a venue for anyone in the state, who has an interest and expertise in plants, to share information. The plant classification proposals made by members of the RPF are voted on by the VPTC for acceptance, and the recommendations are then provided to DCNR.

The Department’s Wild Plant Program carefully reviews the VPTC’s recommendations, considering all of the information and data submitted, before determining the appropriateness of a specific plant’s proposed classification. If the Program

¹ 32 P.S. § 5307

² *Id.*

³ 72 P.S. 1340.313(g)

⁴ <http://www.pabiologicalsurvey.org/>

determines that a recommendation is appropriate and has sufficient data to support its decision, then it will move forward by recommending the classification update to DCNR's Secretary; otherwise, the Program will call for more work or research to be done. Once DCNR's Secretary approves the classification update, the Program may begin drafting a proposed rulemaking.

Proposed Rulemaking

The first step to promulgating a regulation, is drafting the proposed rulemaking. The proposed rulemaking contains 3 documents: the Regulatory Analysis Form, the Preamble, and the Annex. The Wild Plant Program works with the Department's legal and policy offices to prepare these documents for review by the Independent Regulatory Review Commission ("IRRC") and legislative committees of the General Assembly.

The Regulatory Review Act requires DCNR to submit a Regulatory Analysis Form ("RAF") to IRRC. The RAF contains 30 questions that DCNR must answer, in order to inform IRRC of the substance of the regulation and the need for the change it is making. The RAF also addresses the economic impact of the regulation, any new compliance measures that the regulation imposes and the Department's public outreach to stakeholders, informing them of the regulation.

The Preamble mirrors the information in the RAF, but presents it in a narrative format that explains the purpose and background of the regulation, rather than answering a set of specific questions. The Preamble includes the statutory authority, purpose, and summary of the regulation in non-technical terms.

Finally, the Annex is the complete text of the regulation as it will look once promulgated.

Once DCNR's Secretary approves the proposed rulemaking, DCNR routes it to the Office of General Counsel, the Governor's Budget Office, the Office of the Attorney General and the Governor's Office of Policy and Planning, for further review and approval; DCNR also posts the proposed rulemaking on its website (on the Wild Plants page). After receiving these additional approvals, DCNR delivers the proposed rulemaking to IRRC, the legislative committees and the Legislative Reference Bureau ("LRB") for comment and publication in the *Pennsylvania Bulletin*.

The LRB publishes the proposed rulemaking in the *Pennsylvania Bulletin*, which provides notice of the proposed rulemaking to the public and an opportunity to comment on it. The public has at least 30 days to comment on the proposed rulemaking, during the public comment period; IRRC has an additional 30 days after the close of the public comment period to comment on the proposed rulemaking. IRRC reviews the proposed rulemaking to determine whether DCNR has the statutory authority to promulgate the regulation and whether it conforms to the legislative intent of the statutory authority. The legislative committees may comment on the proposed rulemaking at any time prior to DCNR's delivery of the final-form regulation.

In addition to the public comment period, the Department provides many other opportunities for the public to comment on its proposed rulemakings; including, webinars, public meetings through the Rare Plant Forum, DCNR's Wild Plant Program website, the Department's advisory committees or simply by calling or emailing the Department (contact information for the Department will be posted on the website, and in the *Pennsylvania Bulletin*).

Final Rulemaking

The Department responds to the comments it receives, and has two years to address all comments and finalize the rulemaking. The Department values the public comment period and uses it as a tool to promulgate sound regulations. It also allows the Department to engage the public's varying concerns, if any, with the rulemaking.

After the Department has addressed all the comments, it resubmits the final rulemaking for review by IRRC and the legislative committees. Once approved, the rulemaking is published by LRB in the *Pennsylvania Bulletin*, where it is effective upon the date of publication, or another date specified by the Department.

Timeline

The process may take up to two years, or as little as six months. Once the regulation has been promulgated, it has the force and effect of law and is binding on the Department, the courts and the public.

DCNR's Rulemaking Process

