Chapter 105 Dam Safety and Waterway Management

Overview of Proposed Regulation Revisions
Water Resources Advisory Committee Meeting
January 30, 2020
Department is proposing amendments to:

- Clarify existing requirements
- Delete or update obsolete requirements and references
- Incorporate new or revised sections and definitions to codify existing practices
- Correct typographical errors
Summary of Proposed Revisions

- Adds, revises, deletes definitions in Section 105.1
  - Abandonment
  - Aquatic resource functions
  - Aquatic resource restoration
  - Conservation district
  - Crop production
  - Cross-Section
  - Maintenance
  - Probable Maximum Flood (PMF)
• Section 105.1 Definitions (Cont.)
  • Probable Maximum Precipitation (PMP)
  • Project
  • Project purpose
  • Reservoir
  • Stormwater management facilities
  • Water dependent
  • Wetland functions
Summary of Proposed Revisions

• Section 105.2 Purposes
  • Revises language by adding “restore and improve” to conserve and protect.
  • Adds aquatic resource functions and geomorphic stability to water quality, natural regime and carrying capacity.
  • Adds language referencing “regulated waters of this Commonwealth”

• Section 105.3 Scope
  • Adds language to update and allow for future updates to NOAA’s National Geodetic Survey (NGS) International Great Lakes Datum elevation criteria.
Summary of Proposed Revisions

- Section 105.12 Waiver of permit requirements
  - Clarifies subsections (a)(1), (2), (3), (11), (16) and (b)(1).
  - Adds new waivers:
    - Streambank fencing conservation practice associated with crop production (i.e. grazing)
    - Passive, low impact, and non-motorized recreational activities
    - Elevated boardwalks in wetlands for educational and interpretive trails
    - Emergency water withdrawal for agricultural and fire protection
    - Temporary environmental testing, monitoring or investigative activities
    - Temporary mats and pads in wetlands
Summary of Proposed Revisions

• Section 105.13 Regulated activities—information and fees
  • Adds additional payment methods
  • Corrects fees related to Dam Permit Transfers
  • Provides an option for submission of disturbance fee
  • Adds reference of “multiple” counties in subsection (d)
  • Revises subsection (e) and (e)(1) for clarity and organization of application information
Summary of Proposed Revisions

- Section 105.13, Subsection (e)(1) requirements
  - Clarifies demarcation of floodplains, floodways and regulated waters
  - Clarifies scale and cross-section standards
  - Adds details on water dependency for clarification
  - Updates stormwater and floodplain management
  - Adds alternatives analysis description
  - Updates mitigation plan terms
  - Adds antidegradation demonstration
  - Clarifies impacts and cumulative impacts analysis
  - Revises information regarding incomplete applications
Summary of Proposed Revisions

- Section 105.13 continued
  - Updates references to Chapter 102
  - Clarifies requirements for partnerships and political subdivisions
  - Provides a reference for electronic permit application submissions
  - Adds new requirement related to geologic information
  - Revises subsection (k) to identify the Department’s discretion on waiving application information
  - Clarifies the reference of the EQB.
Summary of Proposed Revisions

• Section 105.13a. Complete applications
  • Adds clarifying language
  • Adds references to conservation district
  • Adds new language requiring the confirmation of extensions in writing

• Section 105.13b. Proof of financial responsibility
  • Adds enrollment to the Private Dam Financial Assurance Program as an option.
• Section 105.14. Review of applications.
  • Adds references for consistency and clarity
  • New subsection clarifying review requirements for proposed impacts to wetlands
• Section 105.15. Environmental assessment.
  • Corrects reference and cross references
  • New criteria for aquatic resource restoration activities
• Section 105.16. Environmental, social and economic balancing
Summary of Proposed Revisions

- Section 105.20a. Compensation for impacts to regulated waters of this Commonwealth
  - Revisions to address compensation of impacted aquatic resources and no net loss of wetlands
  - Revisions to siting criteria for consistency with mitigation banking, in lieu fee, and permittee responsible compensation
  - Establishes compensation factors
  - Deletes antiquated guidance and provided reference to technical guidance documents/methodologies
Summary of Proposed Revisions

• Section 105.21. Criteria for permit issuance and denial

• Section 105.25. Transfer of permits.
  • Adds clarifying language
  • Adds new subsection (f) relating to include transfer of ownership of dams not needing permits.
Summary of Proposed Revisions

- Section 105.35 Charges for use and occupation of submerged lands of this Commonwealth
  - Clarifies mooring areas are associated with barge fleeting only.
  - Clarifies general permits are for recreational docks/ramps.
  - Adds clarifying language in (c)(6) and (7).
  - Adds new exemptions (c)(8) and (c)(9):
    - Environmental remediation, reclamation, restoration and protection activities
    - Temporary activities
Summary of Proposed Revisions

• Section 105.43. Time limits.
  • Revises Subsection (c) relating to dams
• Section 105.47. Removal of dams and removal or abandonment of water obstructions and encroachments.
  • Clarifies removal of public health, safety and environment concerns
• Section 105.53. Inspections by permittees or owners and inspection reports.
  • Clarifies inspection requirement for conduits
Summary of Proposed Revisions

• Sections 105.81, 105.82, and 105.89
  • Corrects citations
  • Revises 105.82(a)(9) to clarify need for easements
• Section 105.96. Outlet Works
  • Revises section to clarify drawdown requirements
  • Adds ability to waive or modify drawdown requirements
• Section 105.97. Stability of structures:
  • Revises the terminology used in this Section for consistency with the U.S. Corps of Engineer’s standard design terminology.
• Section 105.98. Design flood criteria:
  • Revises section to clarify the design flood criteria.
Summary of Proposed Revisions

- Sections 105.121, 105.122, 105.123, 105.171
  - Removes or updates antiquated references.
- Section 105.134. EAP
  - Updates information to be submitted
- Section 105.161. Hydraulic capacity
  - Updates references
Summary of Proposed Revisions

• Section 105.401. Permit applications
  • Revises and updates
• Section 105.411. General criteria
  • Revises reference
• Section 105.446. Procedure for issuance
  • Adds new section on periodic reviews
• Section 105.451. Identification and delineation of wetlands – statement of policy
  • Updates references
• Section 105.452. Status of prior converted cropland—statement of policy
  • Updates and clarifies policy
Stakeholder Outreach Efforts

- Chapter 105 Agricultural Workgroup
- State agency representatives
- Major dam owners
- Water Resources Advisory Committee (WRAC)
- Agricultural Advisory Board (AAB)
- State Conservation Commission (SCC)
- Citizens Advisory Committee (CAC)
- County Conservation District Workgroup
- Formal Process
  - Environmental Quality Board (EQB)
  - Public Notice in the *Pennsylvania Bulletin*
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