

Executive Summary

Amendments to Title 25, Pa. Code Chapter 105 Dam Safety and Waterway Management

Purpose of Final Rulemaking:

The purpose of the final rulemaking package is to amend the Department of Environmental Protection's (Department) Dam Safety and Waterway Management regulations to update existing fees and include additional fees for activities performed by the Department as the current fees for most activities have not been increased since 1991 and do not provide sufficient revenue to support existing program functions. These amendments were developed in order to offset a portion of the operating costs of the Water Obstruction and Encroachment (WO&E) Program and the Dam Safety Program thereby reducing each program's dependence on the General Fund.

The revenue generated by the Department for the Dam Safety Program will ensure that adequate and consistent monitoring, compliance and inspection of dams will occur, and reviews will be accomplished in a timely manner. This will ensure that dams are maintained as designed and will help protect the public safety of the communities located downstream and assist the public who depend on dams for water supply, flood control, or recreation.

The revenue generated for the WO&E Program from these fees will be used to continue to administer the WO&E Program. The fee increases will allow the Department to continue to provide timely and thorough review of permit applications ensuring the protection of surface waters and wetlands. In addition, a significant amount of time has been spent by Department staff and applicants working through several application submissions to determine the minimum amount of impacts to aquatic resources. The increased review fees and additional Disturbance Review Fees will have the ancillary benefit of encouraging applicants to avoid and minimize impacts to the maximum extent possible on their initial application.

Summary of Amendments to Final Rulemaking:

The proposed rulemaking was adopted by the Environmental Quality Board on December 21, 2010, and published in the *Pennsylvania Bulletin* on January 28, 2012, at 42 *Pa.B.* 553. During the comment period, 30 commentators provided comments to the Board on the proposal, including the Independent Regulatory Review Commission.

Section 105.13(a) was amended at final rulemaking to restore existing language that was proposed to be deleted at proposed rulemaking.

Section 105.13(b) was amended at final rulemaking to include that fees collected by delegations to local agencies will be deposited into the Clean Water Fund.

Section 105.13(c)(2)(iii)(B) was amended at final rulemaking to clarify that entities which pay royalties to the Commonwealth under 58 Pa. Code § 51.92 will be excluded from the requirement to pay Disturbance Review Fees.

Sections 105.13(c)(viii)-(vi) were amended at final rulemaking to clarify the applicability of small projects to the fees proposed in the rulemaking, to identify additional General Permit registration requirements, to explain how disturbance review fees are calculated, to clarify the applicability of Environmental Assessment for Waived Activities Fee, and to clarify what a Minor or Major Amendment associated with an existing water obstruction and encroachment permit, permit authorization or water quality certificate is before its expiration.

Section 105.13(d) was amended at final rulemaking to clarify the applicability of the fees proposed in the rulemaking to all Water Obstruction and Encroachments.

Section 105.13(e)(4) was amended at final rulemaking to account for the submission of an incomplete or insufficient application.

Section 105.13(e)(5) was developed to advise that fees would not be refunded if an application has been withdrawn.

Section 105.13(l) was amended to clarify that the Department's report to the EQB will contain recommendations to adjust fees, when disparities exist between program income generated by the fees and the cost to administer the programs.

Advisory Committee Review:

The amendments were submitted to the Water Resources Advisory Committee (WRAC) for review and discussion at their May 16, 2012 meeting. The amendments were approved by WRAC with the condition that state, county and municipal agencies and authorities' no longer be exempt from the fees included in the rulemaking.

The amendments were also submitted to the Agricultural Advisory Board (AAB) for review and discussion at their June 20, 2012 meeting.

Adoption Deadline:

The Department recommends the Board's approval of the final rulemaking, which amends the Dam Safety and Waterway Management Regulations (25 Pa. Code Chapter 105).