

Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 105)
(Dam Safety and Waterway Management)

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 105 (relating to Dam Safety and Waterway Management). The amendments update existing fees and include additional fees for activities performed by the Department.

This order was adopted by the Board at its meeting of _____.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Jeffrey Means, Acting Director, Bureau of Waterways Engineering and Wetlands, P.O. Box 8460, Rachel Carson State Office Building, Harrisburg, PA 17105-8460, (717) 787-3411 or Curt Sullivan and Jason Oyler, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060.

This final-form rulemaking is available electronically through the Department of Environmental Protection's ("Department") website at <http://www.depweb.state.pa.us>.

C. Statutory Authority

The final-form rulemaking is being made under the authority of sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (32 P.S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17) (Dam Safety Act), which grants the Board the authority to adopt such regulations and standards for the design, construction, operation, monitoring, maintenance, modification, repair and removal of dams and reservoirs, water obstructions and encroachments as are necessary and proper to carry out the purposes of the Dam Safety Act. The Dam Safety Act specifically provides that regulations shall include, but are not limited to, rules establishing reasonable fees for the processing of applications and periodic inspections, for the purpose of reimbursing the Commonwealth for the costs of administration of this act. 32 P.S. § 693.5.

Sections 5, 6, 8 and 402 of The Clean Streams Law (35 P. S. §§ 691.5, 691.6, 691.8 and 691.402); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and sections 302 and 402 of the Flood Plain Management Act (32 P. S. §§ 679.302 and 679.402).

D. Background and Purpose

The purpose of the final rulemaking package is to amend the Department's 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. The new fees included in the final rulemaking are associated with: 1) review of permit applications, general permit registration or other requests for approval; 2) inspections; and 3) review of permit related submissions, such as Emergency Action Plans (EAPs), inspection reports, transfers, and amendments.

Dam Safety Program

The Department oversees the construction and operation of dams through the Dam Safety Program. This program historically has been and continues to be a model for similar state programs across the country. The Dam Safety Program oversees the regulation and safety of approximately 3,200 dams and reservoirs throughout the Commonwealth in order to protect the health, safety and welfare of its citizens and property downstream of dams. The goal is to assure proper planning, design, construction, maintenance, operation, monitoring and supervision of dams and reservoirs. Dam Safety also oversees removal of dams that are no longer needed by their owners. Pennsylvania's Dam Safety Program is leading the nation in its review and approval of EAPs from owners of high hazard dams through a very successful enforcement initiative begun in 2004. The most recent report available from the Association of State Dam Safety Officials ("ASDSO") lists the national average for percentage of high hazard dams with an approved EAP at 61%. Pennsylvania is currently at 87% and with those EAPs in the review process, is expected to increase to 98%.

The revenue generated by the Department will ensure that adequate and consistent monitoring, compliance and inspection of dams will occur, and reviews will be accomplished in a timely manner. The revenue from this fee package will help to restore one of two critical geotechnical engineering positions to the Department along with other key positions in the Dam Safety Program to better protect and serve the public. The geotechnical engineering position will be responsible for the review of the geotechnical aspects of new dam projects, perform inspections of unsafe, high hazard dams, and investigate deficiencies and recommend corrective action to unsafe high hazard dams. The loss of this position has increased the workload on the remaining geotechnical engineer and has significantly delayed dam permit application processing and project review times.

WO&E Program

The Chapter 105 Waterways and Wetland Program is implemented jointly by the Department's Regional Offices that are responsible for reviewing and issuing permits and the Department's Central Office providing oversight, clarifying policy and guidance for program implementation, revising regulations as necessary, and undertaking research to further wetland and waterway sciences for program improvement. Permit types include General Permits, Emergency Permits, and Individual Water Obstruction and Encroachment Permits. The Department conducts

application reviews, which include the review of plans and specifications for the construction of new facilities, the modification and/or maintenance of existing facilities, and other activities which would change, expand or diminish the course, current or cross section of a watercourse, floodway or waterbody, including wetlands. Assistance is provided by County Conservation Districts, through Delegation Agreements, to acknowledge general permits and all Chapter 105 authorizations are coordinated with state and federal agencies including the Federal Army Corp of Engineers State Programmatic General Permit (PASPGP) issued to the Commonwealth.

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 Program 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.

SLLA

The Department, on behalf of the Commonwealth, processes grant leases, licenses, easements and rights-of-ways in submerged lands in the form of Submerged Lands License Agreements (SLLA) to entities wishing to occupy submerged lands of the Commonwealth. Those entities must obtain an SLLA and pay the appropriate charge. These charges have not been increased since 1991.

Dam Safety Program

Dam Safety regulations vary greatly across the United States as indicated in the table below.

State	Application/Review Fees	Annual Fees
PA	\$6,000-\$26,500 – Permits (New, Modification, Operation & Maintenance) \$650-\$14,700 – Letter of Amendment/Authorization \$1,700-\$4,700 – Major Dam Design Revision \$900-\$1,400 – Environmental Assessment \$300-\$550 – Transfer of Permit	\$0 – Category 4 \$800 – Category 3 \$1500 – Category 1 or 2
NH ¹	\$2000 – Non-high Hazard \$3000 – Low Hazard \$4000 – Significant Hazard \$4000 – High Hazard	\$400 – Low Hazard \$750 – Significant Hazard \$1500 – High Hazard
NY	None	None
NJ	None	None
DE	\$500	N/A
MD	\$750 – Does not apply to federal, state or local government	None
WV	\$300 – Construction or modification \$200 – Breaching or Abandonment \$100 – Removal	\$25 – Class 4 Dam \$50 – Class 3 Dam \$75 – Class 2 Dam \$100 – Class 1 Dam
OH	Based on estimated construction costs - 4% up to \$100,000, 3% for next \$400,000, 2% for next \$500,000 and 0.5% for costs in excess of \$1 million	Based on class and height, length, and storage of dam
MI ²	\$500 – Construction, reconstruction, or enlargement – dam height 6’-<10’ \$1000 - Construction, reconstruction, or enlargement – dam height 10’-<20’ \$3000 - Construction, reconstruction, or enlargement – dam height ≥20’	

	\$100 – Minor project	None
TX ²	None	None

1 Dam Safety program is 60% funded by fees.

2 States with similar number of dams as Pennsylvania.

WO&E Program

WO&E regulations and fees vary widely across the United States making it very difficult to compare. Pennsylvania’s amendments to the regulations are comparable to other states given the wide variety of what actions are regulated and require fees. Additional WO&E Maryland, Ohio, New Jersey and Virginia fees are available for reference.

State	Admin Filing Fee	GP
PA	\$1,750 + \$400 / 0.1 ac of temporary disturbance + \$800 / 0.1 ac of permanent disturbance	\$50-\$750 based upon GP* <i>* some GPs have additional disturbance fee</i>
MD	\$750 + ≤ \$7,500 / ac of disturbance	\$750 for <5,000sf
OH	\$200	none found
NJ	\$2,400	\$600 + \$240 / additional GP
VA	\$2,400	≤ \$2,400 based upon acreage

SLLA

SLLA charges vary across the United States. Pennsylvania’s amendments to the regulations are comparable to Ohio, a neighbor state. Ohio, Florida, and Maine’s SLLA regulations are available for reference.

State	Annual Charge (acreage based)
PA	\$0.04 / sf <i>this is an average of fees</i>
OH	\$0.03 / sf for small facilities
	\$0.04 / sf for large facilities
FL	\$0.1413 / sf
ME	% of gross income of Lessee

In summary, the Board proposes to incorporate these amendments into the Dam Safety and Waterway Management Regulations (25 Pa. Code Chapter 105) to update existing and develop new sections.

The amendments in the final rulemaking were presented 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.

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

E. Summary of Changes to the Proposed Rulemaking

The amendments to the final rulemaking update existing fees and include additional fees for activities performed by the Department. There are no companion federal regulations.

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.

F. Summary of Comments and Responses on the Proposed Rulemaking

The proposed rulemaking was adopted by the 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.

Commentators who represent dredging operations provided calculations to the Board demonstrating that application of the fees to their operations could result in permit fees of \$1.4 million for a single permit and the disturbance fee could cost over \$48 million for their operations. Fees of this magnitude, according to the commentators, would be unaffordable. The Department and the Fish and Boat Commission recently developed increased royalty fees applicable to the sand and gravel dredging industry and codified in Title 58 of the *Pennsylvania Code*. To address these comments, the Board has added §105.13(d)(2)(iii)(B) at final-form rulemaking to clarify that permit applicants subject to payment of royalties to the

Commonwealth under 58 *Pa. Code* § 51.92, will not be required to pay the Disturbance Review Fees for the area of disturbance subject to the royalty payment.

In response to questions raised by commentators concerning whether applicants will be required to obtain an approved Erosion and Sediment Control Plan and pay the associated fees in addition to the proposed permit fees, the Board has added §105.13(d)(2)(ii)(B) at final-form rulemaking to specify that the Conservation Districts have the authority to charge additional review fees.

Commentators expressed that careful review should occur before fees associated with the use and occupation of the Commonwealth's submerged lands are raised. Some commentators felt that the change in the minimum annual charge for SLLAs from \$250 to \$750 appears to be excessive. At final-form rulemaking, the Board has not made changes to the proposed SLLA fees. Charges for the use and occupation of submerged lands of this Commonwealth - Licenses and Annual Charges were carefully reviewed by the Department prior to raising fees. SLLA charges vary across the United States and Pennsylvania's amendments are comparable to Ohio, a neighbor state.

Some commentators expressed that the fee proposal should be adjusted so that permit application fees are applicable to Federal, State, county, municipal agencies and authorities. They noted the issue is of fundamental fairness and would enable the real program costs to be spread over the entire group of permit applicants, not just the private sector. While the Board acknowledges the comment, it respectfully disagrees and has not amended the rulemaking to address the comment. A work load analysis was conducted by the DEP for all activities performed by staff members. The average time spent for each aspect of the review was determined and multiplied by the wage of the specific individual performing the review thus giving a total for the review. All of the times and wages for each individual were added together giving a total for the review of a specific project. This allowed the DEP to establish a fee for each activity reviewed by staff.

Furthermore, The Dam Safety and Encroachment Act was passed in 1978 and allowed, "reasonable fees for the processing of applications and periodic inspections, for the purpose of reimbursing the Commonwealth for the costs of administration of this act." The federal agencies were not included in the definition of "Person" for this Act and were therefore exempt. When the Chapter 105 regulations were promulgated one year later, state and local governments were excluded. The Department has chosen to maintain the existing exemptions in the regulation; recognizing complete cost recovery is not possible with the included exemptions. The Department has not inflated the fees to the private sector in an attempt to offset the cost of the Federal, State, county, municipal agencies and authorities. The private sector is not bearing any program costs associated with the exemptions as this rulemaking does not seek a full cost recovery of all the program administration costs.

The State Conservation Commission (SCC) collectively submitted comments from 25 county conservation districts. The SCC comments raised concerns with what it describes as excessive fees, issues related to implementation of the fees, services provided by county conservation districts, whether county conservation districts will receive part of the fees and delegation agreements. While the Board recognizes the interest in the answers to these questions and has made several clarifications in the final-form rulemaking to address them, it is held that the details

of program implementation should not be determined by regulation but rather through DEP policy and delegation agreements.

Several commentators representing various County Conservation Districts expressed concern that the proposed rulemaking did not address if or how the fees will be distributed between the Department and delegated Conservation Districts. They further noted that delegated Conservation Districts should receive most if not all of the fees collected as a result of the rulemaking. In response to these comments, the Board has revised §105.13(d)(2) to provide clarity. The regulations are the responsibility of the Department and then certain portions of the Water Obstruction and Encroachment (WO&E) Program are delegated to those Conservation Districts that chose to take on those responsibilities. In counties where the Conservation District is delegated responsibilities under Chapter 105, those Conservation Districts will retain the fees for acknowledging General Permit registrations, as will be outlined in the delegation agreement with the Department

Commentators requested that the Department avoid duplication of inspection efforts by Dam Safety Program personnel by recognizing the value of inspections performed by licensed professionals. They further requested relief (*i.e.* reduced annual fees) from the Department for entities that engage professionals in performing inspections at a specified frequency and to specified standards. In response to these comments, the Board has not made any changes to the final-form rulemaking. The Department's standard practice is to annually inspect Hazard Potential Category 1 and Category 2 high hazard dams, biennially inspect Category 3 non-high hazard dams, and inspect Category 4 dams once every 5 years. Two of the purposes listed in the Dam Safety and Encroachments Act of 1978, P.L. 1375, No. 325 (Act) are to:

- (1) Provide for the regulation of dams and reservoirs, water obstructions and encroachments in the Commonwealth, in order to protect the health, safety and welfare of the people and property.
- (2) Assure proper planning, design, construction, maintenance, monitoring, and supervision of dams and reservoirs, including such preventative measures as necessary to provide an adequate margin of safety.

The Department cannot assure proper design, construction, maintenance, and monitoring of dams and ultimately protect the health, safety, and welfare of the people if it were not inspecting dams. The Department relies heavily on the inspections conducted by regional office staff to identify deficiencies. The inspections performed by the Department's regional offices for high hazard dams are timely and are mostly completed by the same inspector who is very familiar with the dam and would notice subtle changes in the condition of the dam. Dam Safety engineers review the annual inspection reports in conjunction with the dam file to determine if a high hazard dam has an acceptable rating or if it should be added to the Unsafe Dam list.

Department regulations, at 25 Pa. Code Section 105.53, require the owners of Hazard Potential Category 1 and 2 high hazard dams to submit annual reports certified by a registered professional engineer regarding the condition of the dam to the Department. The dual inspection schedule has been in place since the promulgation of the Chapter 105 regulations in 1979. With

Pennsylvania's high hazard dams continuing to age, it would be imprudent to reduce the inspection and monitoring of these dams which have a loss of life probability with their failure.

G. Benefits, Costs and Compliance

Benefits

The rulemaking amends the Department's 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 WO&E Program and the Dam Safety Program thereby reducing each program's dependency on the General Fund.

The revenue generated by the Department for the Dam Safety Program (an estimated \$1,139,850) 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 (an estimated \$2,952,612 annually) will be used to continue to administer the WO&E Program. Traditionally 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 encourage applicants to avoid and minimize impacts to the maximum extent possible on their initial application. In doing so, the applicant can reduce their Disturbance Review Fees and the possibility of additional review fees if a re-submission is required. While the review time for each application will not change, the applicant can expect a significant time savings overall due to a decrease in applications being submitted several times.

Compliance Costs

The amendments to the regulations will apply to any existing or potential dam owners and individuals or entities seeking authorization to perform activities regulated under Chapter 105.

Final Regulations

The additional costs in the amendments to the regulations consist of increased permitting fees, increased SLLA charges, and the addition of annual dam registration, major and minor amendment or authorization, design revision, environmental assessment review and transfer of permit fees. Additional costs could also be incurred for non-compliance with the new regulations resulting in fines and/or attorney fees. The values noted in the charts below are based on an average of three years of activities performed by the Department (Dam Safety and

WO&E Programs) and the new fee applied to each activity. The annual approximate cost for SLLAs is based on the current amount collected and updated to reflect new fees.

Commonwealth

Dam Safety Program

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$0	Dam Permits	\$0
Monitoring	\$0	Annual Registration	n/a
Administrative	\$0	Major Amend/Auth	
Administrative	\$0	Minor Amend/Auth	
Administrative	\$0	Design Revision	
Administrative	\$0	Env Assessment	
Administrative	\$0	Transfer of Permit	
Dam Safety Total	\$0		

The cost to the Commonwealth with the new Dam Safety regulations will be \$0.

WO&E Program

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$0	WO&EP App	\$0
Administrative	\$0	Disturbance Fees	n/a
Administrative	\$0	Env Assessment	
Administrative	\$0	Gen Permit Avg.	
Administrative	\$0	Major Amendment	
Administrative	Unknown*	Minor Amendment	
Administrative	\$0	Transfer w/ SLLA	
Administrative	Unknown*	Transfer w/o SLLA	
Water Obstruction & Encroachments Permit Total	\$0		\$0

* Currently there is no record of Minor Amendments or Transfers without SLLA.

There is a benefit to the Commonwealth with the new WO&E regulations since the increased fees add revenue to the Commonwealth. There is no cost to the Commonwealth as no fees are currently associated with Commonwealth projects requiring authorizations under this program and no fees are contained in the new regulations. The benefits should offset a portion of the WO&E Program's permitting operating cost; no fees are currently associated with Commonwealth projects requiring authorizations under this program and no fees are contained in the new regulations.

SLLA

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Monitoring	\$0	SLLA	\$0
Submerged Lands License Agreements Total	\$0		\$0

There is a benefit to the Commonwealth with the new regulations for SLLA since the increased charges add revenue to the Commonwealth. There is no cost to the Commonwealth as no charges are currently associated with Commonwealth projects requiring authorizations under this program and no charges are contained in the new regulations.

Municipal

Dam Safety Program

Expenditures	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$0	Dam Permits	\$0
Monitoring	\$0	Annual Registration	n/a
Administrative	\$0	Major Amend/Auth	
Administrative	\$0	Minor Amend/Auth	
Administrative	\$0	Design Revision	
Administrative	\$0	Env Assessment	
Administrative	\$0	Transfer of Permit	
Dam Safety Total	\$0		\$0

There is no cost to the local municipalities with the new Dam Safety regulations since no fees are currently associated with municipal projects requiring authorizations under this program and no fees are contained in the new regulations.

WO&E Program

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$0	WO&EP App	\$0
Administrative	\$0	Disturbance Fees	n/a
Administrative	\$0	Env Assessment	
Administrative	\$0	Gen Permit Avg	
Administrative	\$0	Major Amendment	
Administrative	Unknown*	Minor Amendment	
Administrative	\$0	Transfer w/ SLLA	
Administrative	Unknown*	Transfer w/o SLLA	
Water Obstruction & Encroachments Permit Total	\$0		\$0

* Currently there is no record of Minor Amendments or Transfers without SLLA.

There is no cost to the local municipalities with the new WO&E regulations since no fees are currently associated with municipal projects requiring authorizations under this program and no fees are contained in the new regulations.

SLLA

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Monitoring	\$0	SLLA	\$0
Submerged Lands License Agreements Total	\$0		\$0

There is no cost to the local municipalities with the new regulations for SLLA since no charges are currently associated with municipal projects requiring authorizations under this program and no charges are contained in the new regulations.

Private

Dam Safety Program

Business	Expenditures	Annual Approx Cost	Source
Company 1	Monitoring	\$51,000	Annual Registration
Company 2	Monitoring	\$18,000	Annual Registration
Company 3	Monitoring	\$15,800	Annual Registration
Company 4	Monitoring	\$10,500	Annual Registration
Company 5	Monitoring	\$9,000	Annual Registration
Total		\$104,300	

The cost to the five largest affected corporations based on annual approximate cost with the new Dam Safety regulations is indicated above. The only annual increase that can be accounted for is the annual registration fee. It cannot be determined whether these businesses will need to perform necessary projects to upgrade their facilities at this time.

WO&E Program

The cost to the five largest affected corporations with the new WO&E regulations cannot be addressed since WO&E permits are not reoccurring authorizations and identifying affected corporations is not possible.

SLLA

Business	Expenditures	Annual Approx Cost	Source
Company 1	Monitoring	\$22,873	SLLA
Company 2	Monitoring	\$18,727	SLLA
Company 3	Monitoring	\$18,727	SLLA
Company 4	Monitoring	\$16,727	SLLA
Company 5	Monitoring	\$15,600	SLLA
Total		\$92,654	

The cost to the five largest affected corporations based on average annual cost with the new regulations is indicated above. The only annual increase that can be accounted for is the increased annual SLLA charge.

Dam Safety Program

Expenditures	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$212,500	Dam Permit	\$28,000
Monitoring	\$795,000	Annual Registration	n/a
Administrative	\$45,400	Major Amend/Auth	
Administrative	\$22,300	Minor Amend/Auth	
Administrative	\$27,500	Design Revision	
Administrative	\$32,400	Env Assessment	
Administrative	\$4,750	Transfer of Permit	
Dam Safety Total	\$1,139,850		\$28,000

The cost to private entities affected with the new Dam Safety regulations is the proposed annual registration fee. It cannot be determined whether these individuals will need to perform necessary projects to upgrade their facilities at this time. The cost to individuals owning a hazard potential 1 or 2 dam will be assessed an annual fee of \$1500, a hazard potential 3 dam will be \$800 and a hazard potential 4 dam will be \$0.

WO&E Program

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Administrative	\$497,613	WO&EP App	\$47,850
Administrative	\$1,925,748	Disturbance Fees	n/a
Administrative	Unknown ¹	Env Assessment	
Administrative	\$529,251	Gen Permit Avg	
Administrative	Unknown ¹	Major Amendment	
Administrative	Unknown ²	Minor Amendment	
Administrative	Unknown ²	Transfer w/ SLLA	
Administrative	Unknown ²	Transfer w/o SLLA	
Water Obstruction & Encroachments Permit Total	\$2,952,612		\$47,850

¹ Currently Environmental Assessments and Major Amendments are included with WO&EP Applications.

² Currently there is no record of Minor Amendments or Transfers.

The cost to private entities affected with the new WO&E regulations is the cost of the new and increased fees. The cost to individuals will be highly variable. Cumulatively, activities requiring a review fee will increase from \$47,850 to an estimated \$2,952,612 because there are new and increased fees.

SLLA

Expenditure	Annual Approx Cost	Source	Existing Annual Approx Cost
Monitoring	\$1,564,000	SLLA	\$391,000
Submerged Lands License Agreements Total	\$1,564,000		\$391,000

The cost to individuals affected with the new regulations for SLLAs is the cost of the increased annual charge. SLLA charges will increase from \$0.010/sf to \$0.040/sf to reflect an increase in value as these charges have not been updated since 1991.

Compliance Assistance Plan

No financial assistance is necessary. Dam owners will be notified by letter advising of the revisions and how to comply. SLLA licensees will also be notified by letter advising them of the new fee and how to comply. The regulated community will be notified of all Dam Safety, Water Obstruction and Encroachment, and SLLA fee changes by public notice in the *Pennsylvania Bulletin*.

Paperwork Requirements

The additional paperwork required for the dam owner would be the submission of the annual registration fee for dams and the new review and transfer of permit fees for dams. The revisions to the existing regulation will create additional compliance/legal, accounting, reporting, record keeping and paperwork for the Department above what is already required in the existing regulation. This will occur for the collection of the new fees for dams including review fees, transfer of permit fees, and annual registration fees from dam owners.

The amendments to the regulations will require the Department to develop and distribute new SLLA invoices-to current SLLA licensees. The existing SLLA licensees will be given a one year notice of the new SLLA charge. No other additional paperwork will be required for the SLLA licensees, WO&E applicants or permittees, or the Department.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 18, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 *Pa.B.* 553, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on _____, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at *42 Pennsylvania Bulletin* 553 (January 28, 2012).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 105, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

MICHAEL L. KRANCER
Chairperson
Environmental Quality Board