

Executive Summary
Dam Safety and Waterway Management
25 Pa. Code Chapter 105

Purpose of Proposed Rulemaking:

The Department of Environmental Protection (Department) is proposing this rulemaking to revise 25 Pa. Code Chapter 105 through amendments that would: clarify existing requirements; add new requirements to provide clarity to existing waivers; delete or update obsolete and antiquated requirements and references; revise or add definitions; incorporate new or revised sections that cross-reference existing requirements; and correct previous typographical errors discovered in certain sections of these regulations. The proposed regulatory revisions would allow the Department's resources to be focused on the most important activities and threats to public health, welfare, safety and the environment, while providing general management, oversight, and review for the more routine activities to ensure compliance with the objectives of the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27). Improving clarity in the Chapter 105 regulations is driving a need for the Department to evaluate the effectiveness of its current implementation of the rules and regulations of Chapter 105. Sections of the regulations that are being proposed or updated will clarify and incorporate existing practices which address application requirements for State Water Quality Certifications, alternatives analysis, cumulative impacts, environmentally beneficial aquatic resource restoration, and aquatic resource assessment and replacement criteria. Other than an amendment in February 15, 2013 to update fees, and specific technical revisions regarding Dam Safety in January 7, 2011, the Department's Dam Safety and Waterway Management regulations have not been substantively revised since October 11, 1991.

Summary of Amendments:

Update definitions

The Department is proposing amendments to clarify some existing definitions and to provide new definitions introduced in the amended rulemaking that support existing or proposed new language in the body of the regulations.

Waiver of permit requirements

Proposed amendments include revised and new requirements to clarify existing waivers, and to develop new permit waivers for certain low-risk activities.

Clarification of existing requirements for complete permit applications

Revisions clarify permit application information and plan requirements, cumulative impact analysis, water dependency, alternatives analysis, Chapter 93 antidegradation implementation requirements, cross-reference to the permit application review requirements, and transfer of dam permits by category.

Restoration projects

The Department proposes to introduce new provisions to clearly outline the environmental assessment requirements associated with an aquatic resource restoration project such as a stream

restoration or a floodplain restoration project. These provisions are needed to differentiate application requirements for these types of projects that reestablish or rehabilitate aquatic resources to natural characteristics and aquatic resource functions from the application requirements for other projects with permanent impacts to waters of the Commonwealth.

Compensation for aquatic resource impacts

This proposed amendment addresses the compensatory mitigation actions required to offset unavoidable adverse impacts to wetlands, streams and other aquatic resources. In addition, the Department has referenced the Aquatic Resource Functional Assessment Protocols/Compensatory Mitigation Technical Guidance Documents along with other demonstrated methodology acceptable to the Department. These methodologies clarify the process to assess the functions and values of aquatic resources, and to assess and evaluate the appropriate compensatory mitigation actions necessary to protect, maintain and improve the Commonwealth's aquatic resources.

Update licenses and charges for Submerged Lands License Agreements (SLLA)

The Department proposes amendments where charges apply which: clarify that mooring areas are for barge fleeting; clarify that private recreational docks include small docks and boat ramps; and add a reduced annual charge for groin structures in or along the Lake Erie shoreline which is equal to the annual charge for private recreational docks and boat ramps. Under the subsection where annual charges may not be imposed, the Department is proposing to include charge exemptions for environmentally beneficial projects and temporary projects where there are no long-term environmental impacts.

Update dam safety criteria

The Department proposes amendments which: clarify the design flood criteria for dams of Hazard Potential Category 1 or 2 to be based on the results of an Incremental Dam Breach Analysis or the Probable Maximum Flood; require an internal conduit inspection of all piping systems passing through or under the dam shall be performed at least once every 10 years for Hazard Potential Category 1 and 2 dams; specify that outlet works for a dam must be sized properly; and clarify drawdown specifications for earth fill dams.

Update criteria relating to dredged or fill material

The rulemaking proposes to update application information and criteria for discharges of dredged or fill material into aquatic resources. The existing requirements do not explicitly address the location of water supply wells, and the existing language does not reflect current applicable state requirements. The proposed revisions require identification of nearby water supply wells and update references to applicable Department requirements and regulations concerning the release of regulated substances to ensure that fill material does not cause an adverse impact to human health, safety or the environment.

Status of prior converted cropland

The proposed rulemaking includes an update to the status of prior converted cropland-statement of policy for coordination with the United States Department of Agriculture, Natural Resource Conservation Service (USDA NRCS) and an updated reference to the *National Food Security Act Manual* as it relates to determining prior converted cropland for agricultural crop production

purposes. This update improves consistency with Federal agency determinations relating to prior converted cropland, including the United States Army Corps of Engineers and the United States Environmental Protection Agency, and the implementation of best management practices for agricultural crop production purposes. The proposed revisions also provide clarifications regarding the Department's implementation of policy on prior converted croplands for making wetland determinations and circumstances where areas have been abandoned and reverted to wetlands.

Advisory Committee Review:

The Department met with the Water Resources Advisory Committee (WRAC) on July 25, 2019 and on October 30, 2019, and the Agricultural Advisory Board (AAB) on November 7, 2019 to provide an update of the regulatory revisions. The draft proposed amendments were presented for review and discussion to, and approved by, the AAB January 27, 2020. The draft proposed amendments were also presented for review and discussion to, and approved by, WRAC on January 30, 2020. The Department also provided an update and shared information regarding the draft proposed amendments with the State Conservation Commission on November 12, 2019, February 11, 2020, and March 10, 2020; and with the Citizens Advisory Council on November 19, 2019 and February 18, 2020.

Recommendation:

The Department recommends the adoption of the proposed rulemaking, which amends the 25 Pa. Code Chapter 105. The proposed amendments will make these regulations easier to understand and will help assure proper planning, design, construction, operation, maintenance and monitoring of water obstructions, encroachments, dams and reservoirs to protect the health, safety, welfare and property of the public and protection of the water quality and natural regime of watercourses and bodies of water including wetlands.

The Department also recommends a 60-day public comment period.