



DATE: December 7, 2010

SUBJECT: December 21, 2010, Environmental Quality Board Meeting

TO: EQB Members and Alternates

FROM: Michele L. Tate
Regulatory Coordinator

The next meeting of the Environmental Quality Board (Board) is scheduled for Tuesday, December 21, 2010, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board will consider the following items:

1. Consideration of Proposed Rulemaking: Dam Safety and Waterway Management Fees

(25 Pa Code Chapter 105): This proposed rulemaking amends the Department's Dam Safety and Waterway Management regulations in order to update existing fees and include new fees for activities performed by the Department, including the review of permit applications, general permit registration or other requests for approval, inspections, and review of permit-related submissions, emergency action plans, inspection reports, transfers and amendments. The amendments included in the rulemaking will generate fees to offset a portion of the operating costs of both the Dam Safety Program and Water Obstruction and Encroachment Program, thereby reducing each program's dependence on appropriations from the General Fund. The existing fees amended in this rulemaking package have not been adjusted by the Department since 1991. Upon promulgation, the Department will review the adequacy of the fees included in the rulemaking every three years and provide a written report to the Board.

Through its Dam Safety Program, the Department oversees the regulation and safety of approximately 3,200 dams and reservoirs throughout the Commonwealth. Key responsibilities of the program are to assure proper planning, design, construction, maintenance, operation, monitoring and supervision of dams and reservoirs, including the removal of dams that are no longer needed by their owners. The projected cost to the Department to administer the Dam Safety Program is approximately \$3.2 million; however, current permit fees generate only \$28,000. The amendments in the proposed rulemaking will generate approximately \$1.7 million in additional revenue, based on the annual average of the last three years of program activity. This amount includes fees assessed on local municipalities and municipal authorities, which are currently exempt from paying fees for projects requiring permit authorizations under the Dam Safety Program.

The Department's Water Obstruction and Encroachment Program conducts water obstruction and encroachment permit application reviews, which include the review of plans and specification for the construction of new water obstructions or encroachments, the modification of existing water obstruction and encroachments, and other activities which would change, expand or diminish the course, current or

cross section of a watercourse, floodway or waterbody, including wetlands. The projected cost to the Department for permit review-related activities under the program is \$5.5 million, in comparison to current fee collections of approximately \$33,450. Program costs associated with inspections, complaints, compliance/enforcement activities, conservation district assistance, training or associated management tasks add an additional \$4 million in costs, bringing total program costs to approximately \$9.6 million. The proposed regulatory amendments in the rulemaking will generate approximately \$4.5 million in additional revenue. Federal, State, county or municipal agencies or municipal authorities are exempt from fees imposed under the Water Obstruction and Encroachment Program.

The proposed amendments were submitted to the Water Resources Advisory Committee (WRAC) for review and discussion at their May 11, 2010 meeting. Comments from WRAC were addressed and the revised rulemaking package was presented to WRAC at its July 14, 2010 meeting, where the committee approved the rulemaking. The proposed amendments were also submitted to the Agricultural Advisory Board (AAB) for review and discussion at their June 16, 2010 meeting.

The Department recommends the Board's approval of the proposed rulemaking with a 30-day public comment period.

2. Consideration of Rulemaking Petition: Aquashicola Creek (Carbon and Monroe Counties):

On September 24, 2010, the Department of Environmental Protection received a rulemaking petition from the Aquashicola – Pohopoco Watershed Conservancy to amend 25 *Pa Code* § 93.9d in order to redesignate Aquashicola Creek in Carbon and Monroe Counties from High Quality-Cold Water Fishes, Migratory Fishes (HQ-CWF, MF) to Exceptional Value (EV). The petition application includes a number of maps and appendices, which are posted on the EQB's website and are available upon request by the Department.

Based upon the administrative completeness of the petition, including meeting the requirements for acceptability as defined in §23.2 of the Board's petition policy, the Department recommends the Board accept the petition for further study.

3. Withdrawal of Rulemaking Petition: South Fork of Tenmile Creek (Greene County): Upon recommendation by the Department, on August 19, 2008, the Board accepted for further study a rulemaking petition that was submitted by Foundation Mining L.P. of Waynesburg, PA. The petition requested the EQB redesignate the tributaries of the Southfork of Ten Mile Creek (including House Run, Hoge Run, and McCourtney Run in Greene County) from High Quality – Warm Water Fishes (WWF) to WWF. On November 23, 2010, the Department received notification from the petitioner which requested that the petition be withdrawn from further consideration by the Department and the Board. The petitioner's request is being provided to the Board as an informational item.

I will be contacting each Board member prior to the meeting to discuss any questions or concerns you may have regarding the agenda items for the December 21, 2010, EQB meeting.

If you have any immediate questions or concerns, please contact me at 783-8727 or by e-mail at mtate@state.pa.us.

Thank you.

Attachments