

PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 77]

Noncoal Mining Fees; Notice of Public Comment Period

The Department of Environmental Protection (Department) is soliciting additional public comment on proposed amendments to 25 Pa. Code Chapter 77 (relating to noncoal mining) encompassing noncoal mining fees. The proposed rulemaking amends existing permit application fees and establishes an annual administrative fee for the noncoal mining program. The proposed rulemaking was published by the Environmental Quality Board (Board) for public comment at 40 Pa.B. 4963 (August 28, 2010). During the public comment period, 19 commentators provided comments to the Board on the proposed rulemaking. In addition, the Independent Regulatory Review Commission issued comments on the proposed rulemaking on October 27, 2010. To seek further input by the public prior to the development of the final rulemaking, the Department is requesting additional comment on the proposed rulemaking, which remains unchanged from its initial publication at 40 Pa.B. 4963.

Interested persons are invited to submit electronic or written comments on the proposed rulemaking by February 27, 2012. The Department will not accept comments submitted by facsimile. Comments should be submitted to Thomas Callaghan, Director, Bureau of Mining Programs, Department of Environmental Protection, Rachel Carson State Office Building, P. O. Box 8461, Harrisburg, PA 17105-8461, tcallaghan@pa.gov. Comments submitted electronically should reference the proposed rulemaking in the subject line of the e-mail and include the name and address of the commentator. If an acknowledgement of electronic comments is not received by the sender within 2 business days, the comments should be retransmitted to ensure receipt.

For further information or to request a copy of the proposed rulemaking, interested individuals should contact Thomas Callaghan, (717) 787-5015, tcallaghan@pa.gov. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The proposed rulemaking is also available on the Department's web site at www.depweb.state.pa.us (select "Public Participation," then "Public Participation Center," then select "Proposals Currently Open for Comment").

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-141. Filed for public inspection January 27, 2012, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 105]

Dam Safety and Waterway Management Fees

The Environmental Quality Board (Board) proposes to amend Chapter 105 (relating to dam safety and waterway

management). The amendments update existing fees and include additional fees for activities performed by the Department of Environmental Protection (Department).

This proposed rulemaking was adopted by the Board at its meeting of December 21, 2010.

A. *Effective Date*

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information regarding Dam Safety, contact Roger P. Adams, P.E., Chief, Division of Dam Safety, P. O. Box 8460, Harrisburg, PA 17105-8460; or Patricia A. McSparran, Director, Bureau of Waterways Engineering and Wetlands, P. O. Box 8460, Rachel Carson State Office Building, Harrisburg, PA 17105-8460, (717) 787-3411.

For further information regarding Water Obstruction and Encroachments (WO&E), contact Kenneth F. Murin, Chief, Division of Wetlands, Encroachment and Training, P. O. Box 8460, Harrisburg, PA 17105-8460; or Patricia A. McSparran, Director, Bureau of Waterways Engineering and Wetlands, P. O. Box 8460, Rachel Carson State Office Building, Harrisburg, PA 17105-8460, (717) 787-3411.

Information regarding submitting comments on this proposed rulemaking appears in section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at <http://www.depweb.state.pa.us>.

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (Dam Safety Act) (32 P. S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17), which grants the Board the authority to adopt 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; 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 proposed rulemaking 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 enough revenue to support existing program functions. These amendments were developed to offset a portion of the operating costs of the WO&E Program and the Dam Safety Program. The new fees included in the proposed 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 (EAP), inspection reports, transfers and amendments.

Dam Safety Program

The Department oversees the construction and operation of dams through the Dam Safety Program. The Dam Safety Program historically has been and continues to be a model for similar state programs across the country. This is evidenced by the Commonwealth's leadership role in the Association of State Dam Safety Officials (ASDSO). The Commonwealth was part of the Organizing Committee for the Association of State Dam Safety Officials in 1983, which led to its formation in 1984. The Commonwealth's leadership has served on the ASDSO Board of Directors for most of the years of its existence. The Commonwealth and ASDSO took a leadership role along with Federal agencies in formulating the National Dam Safety Program. The Commonwealth's leadership was also recommended by ASDSO to the United States Department of Homeland Security and serves as one of only eight states representing state dam safety programs on the United States Department of Homeland Security's Dams Sector—Government Coordinating Council in its mission to improve and protect the Nation's dam infrastructure as part of the National Infrastructure Protection Plan. In 2009, the Department was appointed by the National Dam Safety Review Board as the co-chair of the Federal Emergency Management Agency/National Dam Safety Program Emergency Action Plans workgroup. The Commonwealth's EAP Guidelines were selected to be used as one of two model EAPs for dam safety programs to use across the country. The Commonwealth has been recognized as a leader on the issues of the need for Federal dam rehabilitation and repair funding for aging infrastructure as well as the need for a second National dam inspection program. Through its partnership with the Pennsylvania Emergency Management Agency and county emergency management personnel, the EAP guidelines were revised in 2009 in a manner that ensured the most up-to-date information is available to emergency responders.

The Dam Safety Program oversees the regulation and safety of approximately 3,200 dams and reservoirs throughout this Commonwealth 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. The Dam Safety Program also oversees removal of dams that are no longer needed by their owners. The Commonwealth'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 ASDSO lists the National average for percentage of high hazard dams with an approved EAP at 61%. The Commonwealth is currently at 87% and with those EAPs in the review process it is expected to increase to 98%.

To carry out the responsibilities mentioned previously and remain a National leader, the Department must ensure adequate funding for the Dam Safety Program. 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 restore key positions in the Dam Safety Program to better protect the public. Recently the Dam Safety Program lost one of two critical geotechnical engineering positions due to budget cuts to the Department. The person in this position was responsible to review 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. Also, there is a concern for public safety due to the position's direct involvement with dams of special concern in this Commonwealth. The fees collected from this proposed rulemaking will also allow the Department to fund eight full-time dam inspectors located in and under the supervision of the six regional offices. With budget cuts to the Department, the number of engineers in the section that performs the dam inspections in each of the regional offices has been reduced so there no longer are eight full-time inspectors. By restoring engineering positions for geotechnical review and dam inspections through this proposed rulemaking, it 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.

WO&E Program

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 WO&E 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 Fee will encourage applicants to avoid and minimize impacts to the maximum extent possible on their initial applications.

Submerged Lands License Agreements

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 this Commonwealth. Those entities shall 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 following table:

<i>State</i>	<i>Application / Review Fees</i>	<i>Annual Fees</i>
Pennsylvania	\$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 \$1,500—Category 1 or 2

<i>State</i>	<i>Application / Review Fees</i>	<i>Annual Fees</i>
New Hampshire ¹	\$2,000—Non-high Hazard \$3,000—Low Hazard \$4,000—Significant Hazard \$4,000—High Hazard	\$400—Low Hazard \$750—Significant Hazard \$1,500—High Hazard
New York	None	None
New Jersey	None	None
Delaware	\$500	N/A
Maryland	\$750—Does not apply to Federal, state or local government	None
West Virginia	\$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
Ohio	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
Michigan ²	\$500—Construction, reconstruction, or enlargement—dam height 6'–<10' \$1,000—Construction, reconstruction, or enlargement—dam height 10'–<20' \$3,000—Construction, reconstruction, or enlargement—dam height ≥20' \$100—Minor project	None
Texas 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. The proposed 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.

<i>State</i>	<i>Admin Filing Fee</i>	<i>GP</i>
Pennsylvania	1,750 + \$400 / 0.1 ac of temporary disturbance 1,750 + \$800 / 0.1 ac of permanent disturbance	\$50-\$750 based upon GP* * Some general permits have additional disturbance fee
Maryland	\$750 + ≤ \$7,500 / ac of disturbance	\$750 for <5,000 sf
Ohio	\$200	none found
New Jersey	\$2,400	\$600 + \$240 / additional GP
Virginia	\$2,400	≤ \$2,400 based upon acreage

SLLA

SLLA charges vary across the United States. The proposed amendments to the regulations are comparable to Ohio. Ohio, Florida and Maine’s SLLA regulations are available for reference.

<i>State</i>	<i>Annual Charge (acreage based)</i>
Pennsylvania	\$0.04 / sf this is an average of fees
Ohio	\$0.03 / sf for small facilities \$0.04 / sf for large facilities
Florida	\$0.1413 / sf
Maine	% of gross income of lessee

In summary, the Board proposes to incorporate these amendments into the Dam Safety and Waterway Management regulations to update existing and develop new sections.

The proposed amendments to the regulations were submitted to the Water Resources Advisory Committee (WRAC) for review and discussion at its May 11, 2010,

meeting. Comments from WRAC were addressed and the revised rulemaking package was presented to WRAC at its July 14, 2010, meeting with a request for a formal record of WRAC’s recommendations. The proposed amendments were approved by WRAC on July 14, 2010.

The proposed amendments were also submitted to the Agricultural Advisory Board for review and discussion at its June 16, 2010, meeting.

E. Summary of Regulatory Requirements

The proposed rulemaking updates existing fees and includes additional fees for activities performed by the Department. There are not companion Federal regulations.

§ 105.13. Regulated activities—information and fees

The heading of § 105.13 is proposed to be amended to “regulated activities—information and fees” to better define the information contained within this section. The amendments to this section include updated fees, new fees and specify the appropriate restricted revenue ac-

counts where the fees will be deposited for each program administering Chapter 105. The proposed rulemaking maintains fee exemptions, including Federal, State, county or municipal agencies or municipal authorities for the WO&E Program. The proposed rulemaking maintains a fee exemption for Federal and State agencies for the Dam Safety Program. Additionally, in the final-form rulemaking, the Department will include counties and municipalities within the Dam Safety Program's fee exemption in § 105.13(a)(1). In addition, the Department will review the adequacy of the fees once every 3 years and provide a written report to the Board.

§ 105.35. *Charges for use and occupation of submerged lands of this Commonwealth*

Section 105.35 is proposed to be amended to reflect new charges for SLLAs.

§ 105.131a. *Annual dam registration*

Proposed § 105.131a was developed to establish annual dam registration fees for the Department's administration of specific categories of dams regulated under the Dam Safety Act.

§ 105.444. *Contents of general permits*

This section is proposed to be amended to require the submission of registration or general permit fees.

§ 105.448. *Determination of applicability of a general permit*

This section is proposed to be amended to clarify the Department's ability to charge a registration or general permit fee.

In addition to the summary of the proposed rulemaking, the Board, upon the advice of WRAC, seeks comment on modifying the proposed rule to incorporate flexibility in the WO&E fee proposal to accommodate multiple structures in one project.

F. *Benefits, Costs and Compliance*

Benefits

The proposed 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 enough revenue to support existing program functions. These amendments were developed 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 WO&E 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 Fee will encourage applicants to avoid and minimize impacts to the maximum extent possible on their initial application. In doing so, the applicant can reduce the Disturbance Review Fee and the possibility of additional review fees if a resubmission 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 proposed rulemaking will apply to any existing or potential dam owners and individuals or entities seeking authorization to perform activities regulated under Chapter 105.

Proposed Rulemaking

The additional costs in the proposed rulemaking are for 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 noncompliance with the new regulations resulting in fines or attorney fees, or both. The values noted in the following charts are based on an average of 3 years of activities performed by the Department (Dam Safety and WO&E Programs) and the new fee applied to each activity. The proposed annual approximate cost for SLLAs is based on the current amount collected updated to reflect new fees.

Commonwealth

Dam Safety Program

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

The cost to the Commonwealth with the new Dam Safety regulations will be \$0. The benefits should offset a portion of the Dam Safety Program’s operating cost.

WO&E Program

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$0	WO&E Permits	\$0
Administrative	\$0	Disturbance Fees	n/a
Administrative	\$0	Env Assessment	n/a
Administrative	\$0	Gen Permit Avg.	n/a
Administrative	\$0	Major Amendment	n/a
Administrative	Unknown*	Minor Amendment	n/a
Administrative	\$0	Transfer w/ SLLA	n/a
Administrative	Unknown*	Transfer w/o SLLA	n/a
WO&E 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 fees are not currently associated with Commonwealth projects requiring authorizations under the WO&E Program and no fees are proposed in the new regulations. The benefits should offset a portion of the WO&E Program’s permitting operating cost; fees are not currently associated with Commonwealth projects requiring authorizations under the WO&E Program and fees are not proposed in the new regulations.

SLLA

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Monitoring	\$0	SLLA	\$0
SLLA 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 charges are not currently associated with Commonwealth projects requiring authorizations under this program and no charges are proposed in the new regulations.

Municipal

Dam Safety Program

<i>Expenditures</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$0	Dam Permits	\$0
Monitoring	\$0	Annual Registration	
Administrative	\$0	Major Amend/Auth	
Administrative	\$0	Minor Amend/Auth	n/a
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 fees are not currently associated with municipal projects requiring authorizations under the Dam Safety Program. In the final-form rulemaking, the Department will include counties and municipalities within the Dam Safety Program’s fee exemption in § 105.13(a)(1).

WO&E Program

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$0	WO&E Permit	\$0
Administrative	\$0	Disturbance Fees	n/a

PROPOSED RULEMAKING

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$0	Env Assessment	n/a
Administrative	\$0	Gen Permit Avg	n/a
Administrative	\$0	Major Amendment	n/a
Administrative	Unknown*	Minor Amendment	n/a
Administrative	\$0	Transfer w/ SLLA	n/a
Administrative	Unknown*	Transfer w/o SLLA	n/a
WO&E 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 fees are not currently associated with municipal projects requiring authorizations under the WO&E Program and fees are not proposed in the new regulations.

SLLA

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Monitoring	\$0	SLLA	\$0
SLLA Total	\$0		\$0

There is no cost to the local municipalities with the new regulations for SLLA since charges are not currently associated with municipal projects requiring authorizations under this program and charges are not proposed in the new regulations.

Private**Dam Safety Program**

<i>Business</i>	<i>Expenditures</i>	<i>Annual Approx. Cost</i>	<i>Source</i>
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 previously indicated. The only annual increase that can be accounted for is the proposed annual registration fee. It cannot be determined whether or not 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

<i>Business</i>	<i>Expenditures</i>	<i>Annual Approx. Cost</i>	<i>Source</i>
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 previously indicated. The only annual increase that can be accounted for is the increased annual SLLA charge.

Dam Safety Program

<i>Expenditures</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$212,500	Dam Permit	\$28,000
Monitoring	\$795,000	Annual Registration	n/a

<i>Expenditures</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$45,400	Major Amend/Auth	n/a
Administrative	\$22,300	Minor Amend/Auth	n/a
Administrative	\$27,500	Design Revision	n/a
Administrative	\$32,400	Env Assessment	n/a
Administrative	\$4,750	Transfer of Permit	n/a
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 or not 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 \$1,500, a hazard potential 3 dam will be \$800 and a hazard potential 4 dam will be \$0.

WO&E Program

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Administrative	\$497,613	WO&E Permit	\$47,850
Administrative	\$1,925,748	Disturbance Fees	n/a
Administrative	Unknown ¹	Env Assessment	n/a
Administrative	\$529,251	Gen Permit Avg	n/a
Administrative	Unknown ¹	Major Amendment	n/a
Administrative	Unknown ²	Minor Amendment	n/a
Administrative	Unknown ²	Transfer w/ SLLA	n/a
Administrative	Unknown ²	Transfer w/o SLLA	n/a
WO&E Permit Total	\$2,952,612		\$47,850

¹ Currently Environmental Assessments and Major Amendments are included with WO&E Permits.

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 proposed 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 proposed new and increased fees.

SLLA

<i>Expenditure</i>	<i>Proposed Annual Approx. Cost</i>	<i>Source</i>	<i>Existing Annual Approx. Cost</i>
Monitoring	\$1,564,000	SLLA	\$391,000
SLLA 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

Financial assistance is not 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, WO&E 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 proposed rulemaking will create additional compliance/legal, accounting, reporting, recordkeeping and paperwork for the Department above what is already required in the existing regulations. 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 proposed rulemaking will require the Department to develop and distribute new SLLA agreements to current SLLA licensees. The SLLA licensees will be required to sign and return the new agreements. Other additional paperwork will not be required for the SLLA licensees, WO&E applicants or permittees or the Department.

G. Sunset Review

The regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which the regulations were intended.

H. *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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comments*

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by February 27, 2012. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by February 27, 2012. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by February 27, 2012. A subject heading of the proposal and a return name and address must be included in each transmission.

MICHAEL L. KRANCER,
Chairperson

Fiscal Note: 7-466. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 105. DAM SAFETY AND WATERWAY MANAGEMENT

**Subchapter A. GENERAL PROVISIONS
PERMIT APPLICATIONS**

§ 105.13. [**Permit applications**] Regulated activities—information and fees.

(a) [**Application for permits under this chapter shall be submitted to the Department, in writing, upon forms provided by the Department. Applicants are encouraged to request a meeting with the Department prior to submission of their applications.**

(b) [**An application for a permit, registration for a general permit, request for permit amendment, major or minor letter of amendment or authorization, major dam design revision, environmental assessments, permit transfer or annual dam registration under this chapter [, except applications submitted by Federal, State, county or municipal agencies or a municipal authority for a dam, water obstruction or encroachment] shall be accompanied by a check payable to “Commonwealth of Pennsylvania” [in accordance with the following schedule] except for submissions by the following:**

- (1) **Federal or State agencies related to a dam.**
- (2) **Federal, State, county or municipal agencies or a municipal authority related to a water obstruction or encroachment.**

(b) **Fees collected by the Dam Safety Program and Water Obstruction and Encroachment Program will be deposited into a restricted revenue account known as the Clean Water Fund and utilized to offset the operating costs to implement respective programs.**

(c) **The fees are as follows:**

(1) **Dams based on size and hazard potential category as defined in § 105.91 (relating to classification of dams and reservoirs).**

[**Class A \$3000** (Based on Size Category as defined in § 105.91)
Class B \$2500
Class C \$1500]

(i) **Dam permit application fees for new dam construction.**

Size Category	Hazard Potential Category			
	1	2	3	4
A	\$26,500	\$26,500	\$25,500	\$23,500
B	\$19,000	\$19,000	\$18,500	\$17,000
C	\$10,500	\$10,500	\$10,000	\$8,000

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.

(B) Staged construction requires an additional 90% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(ii) *Dam permit application fees for modification of existing dams.*

Size Category	Hazard Potential Category			
	1	2	3	4
A	\$18,500	\$18,500	\$18,500	\$18,000
B	\$12,000	\$12,000	\$12,000	\$11,500
C	\$7,500	\$7,500	\$7,500	\$7,500

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.

(B) Staged construction requires an additional 85% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(iii) *Dam permit application fees for operation and maintenance of existing dams.*

Size Category	Hazard Potential Category			
	1	2	3	4
A	\$12,500	\$12,500	\$12,000	\$10,000
B	\$10,000	\$10,000	\$9,500	\$8,500
C	\$7,000	\$7,000	\$6,500	\$6,000

(iv) *Letter of amendment or authorization review fees.*

Size Category	Major Project	Minor Project
A	\$14,700	\$1,300
B	\$8,700	\$1,000
C	\$4,400	\$650

(A) The estimated total construction cost of the project shall be provided to the Department with the submission of the letter of amendment or authorization request.

(B) A major project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 (relating to definitions) whose total construction costs equal or exceed \$250,000. If, after completion of the project, the total construction costs do not exceed \$250,000, the Department will refund the difference between major and minor project review fees upon approval of the completion certification as required under § 105.108 (relating to completion, certification and project costs).

(C) A minor project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 whose total construction costs are less than \$250,000. If, after completion of the project, the total construction costs exceed \$250,000, the difference in review fees between major and minor projects must be submitted to the Department with the completion certification as required under § 105.108.

(v) *Major dam design revision review fees based on major dam design revision as defined in § 105.1.*

Size Category	Fee
A	\$4,700
B	\$3,200
C	\$1,700

(vi) *Environmental assessment review fees for nonjurisdictional dams, letters of amendment or letters of authorization.*

Size Category	Fee
A	\$1,400
B	\$1,000
C	\$900

(vii) *Transfer of dam permit as required under § 105.25 (relating to transfer of permits).*

Type of Dam Permit Transfer	Fee
No Proof of Financial Responsibility Required	\$550
Proof of Financial Responsibility Required	\$300

(viii) *Annual dam registration fees as required under § 105.131a (relating to annual dam registration).*

Size Category	Hazard Potential Category			
	1	2	3	4
A	\$1,500	\$1,500	\$800	\$0
B	\$1,500	\$1,500	\$800	\$0
C	\$1,500	\$1,500	\$800	\$0

(A) Annual registration fees are due by July 1 of each year.

(B) If the annual registration fee is not received by July 1, dams regulated by the Department are subject to a temporary suspension of the dam permit, if applicable, and the owner or operator may be required to drain the reservoir at a rate not to exceed 1 foot per day.

(C) If the annual registration fee is not received by July 1, dams regulated by the Department qualifying for waiver of permit provisions in § 105.12 (relating to waiver of permit requirements) may be subject to a temporary draining of the reservoir at a rate not to exceed 1 foot per day.

(D) If annual registration fees are not remitted as specified, interest will accrue on the entire amount from the original date payment was due, at a rate of 12% per annum until payment is remitted.

(2) *Water obstructions and encroachments.*

[Stream enclosures	\$350
Channel changes	\$300
Commercial dredging	\$300
Peat extraction	\$750
Fills, levees, floodwalls	\$350
Bridges and other water obstructions and encroachments	\$200
Small projects	\$100]

<i>Program</i>	<i>Fee Title</i>	<i>Fee</i>
Obstructions and Encroachments	Administrative Filing Fee (Application fees)*	\$1,750
Obstructions and Encroachments	Permanent Disturbance (waterways, floodways/plains and wetlands per tenth acre, minimum 0.1 acre)*	\$800
Obstructions and Encroachments	Temporary Disturbance (waterways, floodways/plains and wetlands per tenth acre, minimum 0.1 acre)*	\$400
Obstructions and Encroachments	Environmental Assessment for Waived Activities	\$500
Obstructions and Encroachments	General Permits (fees based upon specific general permit activity see section below for listing)	See below
Obstructions and Encroachments	Major Amendment*	\$500
Obstructions and Encroachments	Minor Amendment	\$250
Obstructions and Encroachments	Transfer with SLLA	\$200
Obstructions and Encroachments	Transfer without SLLA	\$100
<i>General Permits</i>		
BDWW-GP-1	Fish Habitat Enhancement Structures	\$50
BDWW-GP-2	Small Docks and Boat Launching Ramps	\$175
BDWW-GP-3	Bank Rehabilitation, Bank Protection and Gravel Bar Removal	\$250
BDWM-GP-4	Intake and Outfall Structures	\$200
BDWM-GP-5	Utility Line Stream Crossings	\$250
BDWM-GP-6	Agricultural Crossings and Ramps	\$50
BDWM-GP-7	Minor Road Crossings	\$350
BDWM-GP-8	Temporary Road Crossings	\$175
BDWM-GP-9	Agricultural Activities	\$50
BDWW-GP-10	Abandoned Mine Reclamation	\$500

<i>Program</i>	<i>Fee Title</i>	<i>Fee</i>
BWM-GP-11	Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments*	\$750
BWQP-GP-15	Private Residential Construction in Wetlands*	\$750

* The Disturbance Review Fee is calculated by adding all permanent and temporary impacts to waterways, floodways/plains and bodies of water including wetlands to the next highest 10th acre and multiplied by the respective fee for either permanent impacts or temporary impacts and then this amount is added to the other applicable fee.

[(c)] (d) A single application may be submitted or a single permit may be issued for multiple structures and activities which are part of a single project or facility or part of related projects and facilities, located in a single county, constructed, operated or maintained by the same persons. When a single application covers multiple structures or activities other than a single structure and related maintenance dredging, the application fee shall be the sum of fees in subsection [(b)] (c) for the applicable structures and activities. Stream crossings located within a single county for the installation of a public service line shall be treated as a single structure or activity but the application fee shall be the sum of fees for each stream crossing.

[(d)] (e) An application for a permit shall be accompanied by information, maps, plans, specifications, design analyses, test reports and other data specifically required under this chapter and additional information as required by the Department to determine compliance with this chapter.

* * * * *

[(e)] (f) A permit application for small projects located in streams or floodplains shall be accompanied by the following information. This permit application may not be used for projects located in wetlands. If upon review the Department determines that more information is required to determine whether a small project will have an insignificant impact on safety and protection of life, health, property or the environment, the Department may require the applicant to submit additional information and processing fees required under this chapter.

* * * * *

[(f)] (g) Except for small projects, an application for a permit under this chapter shall be accompanied by proof of an application for an Earth Disturbance Permit or an erosion and sedimentation control plan for activities in the stream and earthmoving activities. The plan must conform to requirements in Chapter 102 (relating to erosion and sediment control) and must include a copy of a letter from the conservation district in the county where the project is located indicating that the district has reviewed the erosion and sediment control plan of the applicant and considered it to be satisfactory, if applicable. Earthmoving activities, including small projects, shall be conducted pursuant to an earth disturbance plan.

[(g)] (h) An application shall be submitted by the person who owns or has primary responsibility for the proposed dam or reservoir, water obstruction or encroachment. If an application is submitted by a person with primary responsibility for the structure or activity, the owner of a dam or reservoir, water obstruction or encroachment will not thereby be relieved of legal duties or responsibilities for the structure or activity as imposed by the act or this chapter.

[(h)] (i) An application shall be signed by the owners of the dam or reservoir, water obstruction or encroachment, or the persons exercising primary responsibility for the dam or reservoir, water obstruction or encroachment. In the case of a partnership, one or more members of the partnership authorized to sign on behalf of the entire partnership shall sign the application. In the case of a corporation, it shall be signed by the president, vice president or other responsible official empowered to sign for the corporation. In the case of a political subdivision, it shall be signed by the chief officers of the political subdivision or other responsible official empowered to sign for the political subdivision, with the seal affixed and attested by the clerk.

[(i)] (j) Plans, specifications and reports accompanying applications for any category of dams, or for bridges and other water obstructions or encroachments which would pose a threat to human life or substantial potential risk to property shall be affixed with the seal of a registered professional engineer and a certification, signed by the registered professional engineer, which shall read as follows:

* * * * *

[(j)] (k) The Department may waive the specific information requirements of this section in writing, in the record of decision, if upon review of the permit application, the Department finds that specific information is not necessary to review the application.

(l) The Department will review the adequacy of the fees at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

SUBMERGED LANDS OF THE COMMONWEALTH—LICENSES AND ANNUAL CHARGES

§ 105.35. Charges for use and occupation of submerged lands of this Commonwealth.

(a) Except as provided in subsections (b) and (c), the following charges apply to the granting of an easement, right-of-way, license or lease to occupy submerged lands of this Commonwealth issued under section 15 of the act (32 P. S. § 693.15) and § 105.32 (relating to projects—proper purpose):

(1) For commercial utility and other dams, water obstructions and encroachments except as listed in subsection (c), annual license charges:

(i) For areas occupied by facilities, [\$50] \$150 per tenth of an acre.

(ii) For barge fleeting and mooring areas, [\$10] \$30 per tenth of an acre.

(iii) Minimum annual charge, [\$250] \$750.

* * * * *

(b) Licenses for public service lines crossing or occupying submerged lands of this Commonwealth, issued under section 15 of the act or section 514 of The Administrative Code of 1929 (71 P. S. § 194) are subject to the following schedule of annual charges:

<i>Length of Crossings (in feet)</i>	<i>Charges (in dollars)</i>
Less than 500	[\$250] 750
500 to 999	[500] 1,500
1000 to 1499	[1000] 3,000
1500 to 1999	[1500] 4,500
2000 to 2499	[2000] 6,000
2500 to 2999	[2500] 7,500
3000 to 3499	[3000] 9,000
3500 to 3999	[3500] 10,500
4000 to 4499	[4000] 12,000
4500 to 4999	[4500] 13,500
5000 and over	[5000] 15,000

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**Subchapter B. DAMS AND RESERVOIRS
OPERATION, MAINTENANCE AND EMERGENCIES**

§ 105.131a. Annual dam registration.

This chapter establishes annual dam registration fees according to § 105.13(c)(viii) (relating to regulated activities—information and fees) for the Department’s administration of the act.

Subchapter L. GENERAL PERMITS

§ 105.444. Contents of general permits.

Each general permit issued by the Department will include, but not be limited to, the following contents:

* * * * *

(5) A specification of registration requirements if any, established under § 105.447 (relating to registration requirements) **and registration or general permit fees established under § 105.13 (relating to regulated activities—information and fees).**

§ 105.448. Determination of applicability of a general permit.

* * * * *

(b) A request for a determination of the applicability of a general permit may not be considered a permit application for purposes of this chapter[, **and no application fee will be charged**].

(c) **A project requiring registration under § 105.447 (relating to registration requirements) may be charged an application fee as set forth in the general permit governing each category of dam, water obstruction or encroachment.**

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