

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 105]

Dam Safety and Waterway Management

The Environmental Quality Board (Board) amends Chapter 105 (relating to dam safety and waterway management) to read as set forth in Annex A. The final-form rulemaking updates existing fees and includes additional fees for activities performed by the Department of Environmental Protection (Department).

This order was adopted by the Board at its meeting of October 16, 2012.

A. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Jeffrey Means, Director, Bureau of Waterways Engineering and Wetlands, P. O. Box 8460, Rachel Carson State Office Building, Harrisburg, PA 17105-8460, (717) 787-3411; or Curtis 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 on the Department's web site at 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 (Dam Safety Act) (32 P. S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17), which grant 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. Section 5 of the Dam Safety Act specifically provides that regulations must include 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 the Dam Safety Act.

The final-form rulemaking is also being made under 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 this final-form 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 sufficient revenue to support existing program functions. These amendments were developed 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 this final-form 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. 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 the Association of State Dam Safety Officials 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%.

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 or maintenance, or both, 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 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 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 Fees will have the ancillary benefit of

encouraging 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 the 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 and 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
New Hampshire ¹	\$2,000—Nonhigh 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 this Commonwealth.

WO&E Program

WO&E regulations and fees vary widely across the United States making it very difficult to compare. The Commonwealth'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 fees for Maryland, Ohio, New Jersey and Virginia are available for reference.

<i>State</i>	<i>Administration Filing Fee</i>	<i>General Permit</i>
Pennsylvania	\$1,750 + \$400/0.1 ac of temporary disturbance \$1,750 + \$800/0.1 ac of permanent disturbance	\$50-\$750 based upon General Permit* *Some General Permits have additional disturbance fee
Maryland	\$750 + ≤ \$7,500/ac of disturbance	\$750 for <5,000 sf
Ohio	\$200	None found

<i>State</i>	<i>Administration Filing Fee</i>	<i>General Permit</i>
New Jersey	\$2,400	\$600 + \$240/additional General Permit
Virginia	\$2,400	≤ \$2,400 based upon acreage

SLLA

SLLA charges vary across the United States. The Commonwealth’s 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 incorporates these amendments into the dam safety and waterway management regulations to update existing and develop new sections.

The amendments in the final-form rulemaking were presented to the Water Resources Advisory Committee (WRAC) for review and discussion at the May 16, 2012, meeting. The amendments were approved by WRAC with the condition that State, county and municipal agencies and authorities’ are no longer exempt from the fees.

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

E. Summary of Changes to the Proposed Rulemaking

The amendments to the final-form rulemaking update existing fees and include additional fees for activities performed by the Department. There are not companion Federal regulations.

Section 105.13(a) (relating to regulated activities—information and fees) was amended in the final-form rulemaking to restore existing language that was proposed to be deleted in the proposed rulemaking.

Section 105.13(b) was amended in the final-form 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 in the final-form rulemaking to clarify that entities that pay royalties to the Commonwealth under 58 Pa. Code § 51.92 (relating to royalty rates) will be excluded from the requirement to pay Disturbance Review Fees.

Section 105.13(c)(viii)—(vi) was amended in the final-form rulemaking to clarify the applicability of small projects to the fees in the proposed 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 in the final-form rulemaking to clarify the applicability of the fees in the proposed rulemaking to all WO&Es.

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

Section 105.13(e)(5) was added 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 Board 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 at 42 Pa.B. 553 (January 28, 2012). During the comment period, 30 commentators provided comments to the Board on the proposed rulemaking, including the Independent Regulatory Review Commission (IRRC).

Commentators who represented 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 at 58 Pa. Code § 51.92. To address these comments, the Board added § 105.13(d)(2)(iii)(B) in this 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 added § 105.13(d)(2)(ii)(B) in this final-form rulemaking to specify that 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 that the change in the minimum annual charge for SLLAs from \$250 to \$750 appears to be excessive. The Board did not make changes to the proposed SLLA fees in this final-form rulemaking. Charges for the use and occupation of submerged lands of

the Commonwealth—Licenses and Annual Charges were carefully reviewed by the Department prior to raising fees. SLLA charges vary across the United States and the Commonwealth's amendments are comparable to Ohio.

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 this final-form rulemaking to address the comment. A work load analysis was conducted by the Department 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. Times and wages for each individual were added together giving a total for the review of a specific project. This allowed the Department to establish a fee for each activity reviewed by staff.

Furthermore, the Dam Safety 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." Federal agencies were not included in the definition of "person" under section 3 of the Dam Safety Act (32 P. S. § 693.3) and were therefore exempt. When Chapter 105 was promulgated 1 year later, State and local governments were excluded. The Department chose to maintain the existing exemptions in the regulations; 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 program costs associated with the exemptions as this final-form 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 regarding 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 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 Department 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 final-form rulemaking. In response to these comments, the Board revised § 105.13(d)(2) to provide clarity. The regulations are the responsibility of the Department and certain portions of the WO&E Program are delegated to 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 (that is, 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 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 nonhigh hazard dams and inspect Category 4 dams once every 5 years. Two of the purposes listed in the Dam Safety Act are to: (1) provide for the regulation of dams and reservoirs, water obstructions and encroachments in this Commonwealth to protect the health, safety and welfare of the people and property; and (2) assure proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs, including 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.

Section 105.53 (relating to inspections by permittees or owners and inspection reports) requires 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 dams to the Department. The dual inspection schedule has been in place since the promulgation of Chapter 105 in 1979. With high hazard dams in this Commonwealth 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

This final-form 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 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 Disturbance Review Fees 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 final-form rulemaking applies to existing or potential dam owners and individuals or entities seeking authorization to perform activities regulated under Chapter 105.

Final-Form Rulemaking

The additional costs in the final-form rulemaking 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 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 annual approximate cost for SLLAs is based on the current amount collected and updated to reflect new fees.

Commonwealth

Dam Safety Program

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate 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.

WO&E Program

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate Cost</i>
Administrative	\$0	WO&E Permit Application	\$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 with SLLA	n/a
Administrative	Unknown*	Transfer without SLLA	n/a
WO&E Permit Total	\$0		\$0

* Currently there is not a 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 in the final-form rulemaking. 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 in the final-form rulemaking.

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SLLA

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate 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 charges are not in the final-form rulemaking.

***Municipal
Dam Safety Program***

<i>Expenditures</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate 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

There is not a 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 and fees are not in the final-form rulemaking.

WO&E Program

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate Cost</i>
Administrative	\$0	WO&E Permit	\$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 with SLLA	n/a
Administrative	Unknown*	Transfer without 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 in the final-form rulemaking.

SLLA

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate Cost</i>
Monitoring	\$0	SLLA	\$0
SLLA Total	\$0		\$0

There is not a cost to the local municipalities with the final-form rulemaking for SLLA since charges are not currently associated with municipal projects requiring authorizations under this program and charges are not in the final-form rulemaking.

***Private
Dam Safety Program***

<i>Business</i>	<i>Expenditures</i>	<i>Annual Approximate Cost</i>	<i>Source</i>
Company 1	Monitoring	\$51,000	Annual Registration
Company 2	Monitoring	\$18,000	Annual Registration

<i>Business</i>	<i>Expenditures</i>	<i>Annual Approximate Cost</i>	<i>Source</i>
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 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

<i>Business</i>	<i>Expenditures</i>	<i>Annual Approximate 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>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate Cost</i>
Administrative	\$212,500	Dam Permit	\$28,000
Monitoring	\$795,000	Annual Registration	n/a
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 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 \$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>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate Cost</i>
Administrative	\$497,613	WO&E Permit Application	\$47,850
Administrative	\$1,925,748	Disturbance Fees	n/a
Administrative	Unknown*	Env. Assessment	n/a
Administrative	\$529,251	Gen Permit Avg.	n/a
Administrative	Unknown*	Major Amendment	n/a
Administrative	Unknown**	Minor Amendment	n/a
Administrative	Unknown**	Transfer with SLLA	n/a
Administrative	Unknown**	Transfer without SLLA	n/a
WO&E Permit Total	\$2,952,612		\$47,850

* Currently Environmental Assessments and Major Amendments are included with WO&E permit applications.

** 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

<i>Expenditure</i>	<i>Annual Approximate Cost</i>	<i>Source</i>	<i>Existing Annual Approximate 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 final-form 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 final-form rulemaking will require the Department to develop and distribute new SLLA invoices to current SLLA licensees. The existing SLLA licensees will be given a 1-year notice of the new SLLA charge. Additional paperwork will not be required for the SLLA licensees, WO&E applicants or permittees or the Department.

H. 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.

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 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 House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 30, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 13, 2012, and approved the final-form rulemaking.

J. Findings

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, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 42 Pa.B. 553.

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

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 105, are amended by adding § 105.131a and by amending §§ 105.13, 105.35, 105.444 and 105.448 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 IRRC and the Senate and House Environmental Resources and Energy Committees as required under 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.

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For a notice relating to this final-form rulemaking, see 43 Pa.B. 1049 (February 16, 2013).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7877 (December 29, 2012).)

Fiscal Note: Fiscal Note 7-466 remains valid for the final adoption of the subject regulations.

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 WATER MANAGEMENT

Subchapter A. GENERAL PROVISIONS

PERMIT APPLICATIONS

§ 105.13. 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. 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 shall be accompanied by a check for the applicable fees except for submissions by Federal, State, county or municipal agencies or a municipal authority.

(b) Fees collected by the Dam Safety Program and Water Obstruction and Encroachment Program, including delegations to local agencies, 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).*

(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 equal or 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.*

Fee Title/Type		Fee
<i>Water Obstruction and Encroachment Permit Application Fees</i>		
Joint application	Administrative filing fee (* plus applicable disturbance review fees)	\$1,750
<i>General Permit</i>		<i>Registration Fees</i>
GP-1	Fish habitat enhancement structures	\$50
GP-2	Small docks and boat launching ramps	\$175
GP-3	Bank rehabilitation, bank protection and gravel bar removal	\$250
GP-4	Intake and outfall structures	\$200
GP-5	Utility line stream crossings	\$250
GP-6	Agricultural crossings and ramps	\$50
GP-7	Minor road crossings	\$350
GP-8	Temporary road crossings	\$175
GP-9	Agricultural activities	\$50
GP-10	Abandoned mine reclamation	\$500
GP-11*	Maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments	\$750
GP-15*	Private residential construction in wetlands	\$750
* Disturbance review fees added to application, registration or other fees where applicable		
Permanent disturbance	Waterways, floodways/floodplains and wetlands per tenth acre, minimum 0.1 acre	\$800
Temporary disturbance	Waterways, floodways/floodplains and wetlands per tenth acre, minimum 0.1 acre	\$400
<i>Other Fees not Added to Initial Application or Registration Fees</i>		
	Environmental assessment for waived activities (§ 105.12(a)(11) and (16) per § 105.15(d))	\$500
	Major amendment to Water Obstruction and Encroachment Permit*	\$500
	Minor amendment to Water Obstruction and Encroachment Permit	\$250

<i>Fee Title / Type</i>		<i>Fee</i>
	Transfer of permit with Submerged Lands License Agreement (SLLA)	\$200
	Transfer of permit without SLLA	\$100

(i) Small projects require a joint application for a Water Obstruction and Encroachment Permit and follow the same fee requirements.

(ii) Additional General Permit registration requirements are as follows:

(A) General Permit registration for GP-11 and GP-15 also requires disturbance review fees when applicable.

(B) Conservation districts may charge additional review fees in accordance with section 9(13) of the Conservation District Law (3 P. S. § 857(13)).

(C) Registration fees for coverage under a General Permit issued under Subchapter L (relating to general permits) not otherwise specified in this section will be established in the General Permit. The applicability of the disturbance review fees will also be established in the General Permit.

(iii) Disturbance review fees are calculated by individually adding all of the permanent and temporary impacts to waterways, floodways, floodplains and bodies of water including wetlands to the next highest tenth acre and multiplying the permanent and temporary impacts by the respective fees and then these amounts are added to the other applicable fees.

(A) The disturbance review fees are added to the joint application administrative filing fee, applicable General Permit registration fees and major amendments to Water Obstruction and Encroachment Permits.

(B) If a permit applicant is subject to payment of royalties to the Commonwealth under 58 Pa. Code § 51.92 (relating to royalty rates), the disturbance review fees are not required for the area of disturbance subject to the royalty payment.

(iv) Environmental Assessment for waived activities fee applies to use of the waivers at § 105.12(a)(11) and (16). Environmental Assessment for these waivers is required under § 105.15(d) (relating to environmental assessment).

(v) A minor amendment of an existing Water Obstruction and Encroachment Permit, permit authorization or water quality certificate before its expiration is an amendment that does not require an extensive review and evaluation and includes the following:

(A) Changes that do not substantially alter permit conditions, increase the amount of surface water impacts, increase the size of the operation or reduce the capacity of the facility to protect human health, safety or the environment.

(B) Requests for time extensions.

(C) Aquatic resource mitigation credit transfers from an approved mitigation bank.

(vi) A major amendment of an existing Water Obstruction and Encroachment Permit, permit authorization or water quality certificate before its expiration is an amendment that is not a minor amendment.

(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 (c) for the applicable structures and activities. Water obstructions and encroachments located within a single county shall be treated as a single structure or activity but the application fee shall be the sum of fees for each water obstruction and encroachment.

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

(1) For all permit applications, except small projects, this information includes, but is not limited to, the following:

(i) A site plan. A site plan must include:

(A) A complete demarcation of the floodplains and regulated waters of this Commonwealth on the site. The wetlands shall be identified and delineated in accordance with the Department's Wetland Delineation Policy in § 105.451 (relating to identification and delineation of wetlands—statement of policy).

(B) Existing roads, utility lines, lots, other manmade structures and natural features such as contour lines and drainage patterns.

(C) Proposed structures or activities included in the project, which shall be identified by labeling.

(D) A scale of one inch equals 200 feet or larger.

(E) A north arrow.

(F) The name of the persons who prepared the plan, and the date and name of the applicants.

(G) A cross sectional view of the regulated waters to be impacted before and after the structure or activity is constructed.

(ii) A location map. The location map must be of a scale factor of 1:24000 (standard U.S.G.S. Topographic Map). The location map must show all natural features including the names and boundaries of regulated waters of this Commonwealth, natural areas, wildlife sanctuaries, natural landmarks, political boundaries, locations of public water supplies and other geographical or physical features including cultural, archeological and historical landmarks within 1 mile of the site. U.S.G.S. maps may be reviewed at County Conservation District Offices or obtained by writing to United States Geological Survey Map Distribution, Box 25286 Federal Center, Denver, CO 80225.

(iii) Project description. A narrative of the project shall be provided which includes, but is not limited to:

(A) A description of the proposed structure or activity.

(B) The project purpose.

(C) The effect the project will have on public health, safety or the environment.

(D) A statement on water dependency. A project is water dependent when the project requires access or proximity to or siting within water to fulfill the basic purposes of the project.

(iv) Color photographs. Color photographs of the proposed site shall be submitted. The photos must accurately depict the project area and provide a relative scale of the project to the surrounding area and a map showing the location and orientation of each photograph.

(v) Stormwater management analysis. If a watershed stormwater management plan has been prepared or adopted under the Storm Water Management Act (32 P. S. §§ 680.1—680.17), an analysis of the project's impact on the Stormwater Management Plan and a letter from the county or municipality commenting on the analysis shall be included.

(vi) Floodplain management analysis. If the proposed dam, water obstruction or encroachment is located within a floodway delineated on a FEMA map, include an analysis of the project's impact on the floodway delineation and water surface profiles and a letter from the municipality commenting on the analysis.

(vii) Risk assessment. If the stormwater or the floodplain management analysis conducted in subparagraphs (v) and (vi) indicates increases in peak rates of runoff or flood elevations, include a description of property and land uses which may be affected and an analysis of the degree of increased risk to life, property and the environment.

(viii) Alternatives analysis. A detailed analysis of alternatives to the proposed action, including alternative locations, routings or designs to avoid or minimize adverse environmental impacts.

(ix) Mitigation plan. Actions to be taken in accordance with the definition of mitigation in this chapter.

(x) Impacts analysis. A detailed analysis of the potential impacts, to the extent applicable, of the proposed project on water quality, stream flow, fish and wildlife, aquatic habitat, Federal and State forests, parks, recreation, instream and downstream water uses, prime farmlands, areas or structures of historic significance, streams which are identified candidates for or are included within the Federal or State wild and scenic river systems and other relevant significant environmental factors. If a project will affect wetlands the project description shall also include:

(A) A narrative of the delineation process supported by the appropriate data sheets and copies of appropriate soil maps and descriptions from soil conservation service soil surveys. Soil conservation service soil surveys may be obtained from the county conservation district offices.

(B) An analysis of whether the wetland is exceptional value as classified in § 105.17 (relating to wetlands).

(C) A statement on water dependency. A project is water dependent when the project requires access or proximity to or siting within water to fulfill the basic purposes of the project.

(2) An application for a project which will affect less than 1 acre of wetland where the wetland is not exceptional value wetland shall also include a description of functions and values of the existing wetlands to be impacted by the project, as defined in § 105.1.

(3) An application for a project which may have an effect on an exceptional value wetland or on 1 or more acres of wetland must also include an assessment of the

wetland functions and values using a methodology accepted by the Department and a survey, conducted by a licensed professional land surveyor, of the wetland boundary as delineated and of the property lines of the parcel where the project is located.

(4) When the Department or delegated local agency determines that an application or registration is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have 60 days to provide the information necessary to complete the application or registration. Thereafter, the Department or delegated local agency will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or registration is considered withdrawn. When an application or registration is considered withdrawn, the Department or local agency will close the application file and will not take action to review the file.

(5) If the application has been withdrawn in accordance with paragraph (4), the fees associated with filing the application will not be refunded.

(f) A permit application for small projects located in streams or floodplains must 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.

(1) A site plan. A site plan must include:

(i) The floodplains and regulated waters of this Commonwealth on the site, including wetlands, existing roads, utility lines, lots, other manmade structures, natural features such as slopes and drainage patterns, proposed structures or activities included in the project.

(ii) The names of the persons who prepared the plan.

(iii) The date and the name of applicants.

(iv) A north arrow.

(2) A cross sectional view. A cross sectional view of the affected regulated waters of this Commonwealth before and after the structure or activity is constructed.

(3) A location map. A map showing the geographic location of the project. U.S.G.S. topographic maps, FEMA maps or municipal maps are acceptable. FEMA and municipal maps may be obtained from local government offices. U.S.G.S. maps may be reviewed at county conservation district offices or obtained by writing to United States Geological Survey Map Distribution, Box 25286 Federal Center, Denver, CO 80225.

(4) Project description. A narrative of the project shall be provided which includes, but is not limited to:

(i) A description of the proposed structure or activity.

(ii) The project purpose.

(iii) The effect the project will have on public health, safety or the environment.

(iv) The project's need to be in or in close proximity to water.

(5) Color photographs. Color photographs of the proposed site must be submitted. The photos must accurately

depict the project area and provide a relative scale of the project to the surrounding area and a map showing the location and orientation of each photograph.

(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.

(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.

(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.

(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:

“I (name) do hereby certify pursuant to the penalties of 18 Pa.C.S.A. Sec. 4904 to the best of my knowledge, information and belief, that the information contained in the accompanying plans, specifications and reports has been prepared in accordance with accepted engineering practice, is true and correct, and is in conformance with Chapter 105 of the rules and regulations of the Department of Environmental Protection.”

(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 in this section 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

adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

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, \$150 per tenth of an acre.

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

(iii) Minimum annual charge, \$750.

(2) For private recreation docks, owned and used solely by the owners of adjacent riparian property, unless the project is otherwise authorized by a general permit issued under section 7 of the act (32 P. S. § 693.7), an annual charge of \$250.

(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	750
500 to 999	1,500
1000 to 1499	3,000
1500 to 1999	4,500
2000 to 2499	6,000
2500 to 2999	7,500
3000 to 3499	9,000
3500 to 3999	10,500
4000 to 4499	12,000
4500 to 4999	13,500
5000 and over	15,000

(c) Charges may not be imposed under section 15 of the act or section 514 of The Administrative Code of 1929 for the following categories of activities and structures:

(1) An activity or structure constructed, owned or operated by a department, commission or agency of the Commonwealth or the Federal government.

(2) A project or activity constructed, or operated primarily for the benefit of a State building or a State institution.

(3) A flood control project constructed, owned or operated by an agency of the Commonwealth, the Federal government or a municipality.

(4) A project or activity constructed, owned or operated by a political subdivision of this Commonwealth which

provides potable water supply, sewage disposal or other similar services necessary for public health and welfare, or in connection with a service for which no fees or charges other than general taxes are imposed.

(5) A facility to provide access to the general public to water for recreational boating, fishing, hunting, swimming or other recreation where the access is provided without charge or on a nonprofit basis.

(6) A structure or facility constructed and operated exclusively to improve fish habitat, under a cooperative agreement with the Fish and Boat Commission.

(7) A private recreational dock constructed under a general permit.

(d) The annual charges imposed in subsections (a) and (b) may be revised by the EQB after approval by the Governor and reasonable notice to the holder of a license issued under this section.

(e) This section does not apply to a crossing contiguous to or in a State park or State forest lands. Easements for the crossings shall be administered in accordance with section 514 of The Administrative Code of 1929 and the park and forest land management practices of the Department of Conservation and Natural Resources.

(f) The removal of sand, gravel and other valuable minerals from submerged lands of this Commonwealth are subject to the royalty and agreement provisions established under section 1908-A of The Administrative Code of 1929 (71 P. S. § 510-8).

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)(1)(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:

(1) A concise description of the category of dam, water obstruction or encroachment covered by the general permit, including exceptions to that category.

(2) A specification of the watersheds, streams or geographic areas where the general permit is effective.

(3) A set of standardized specifications or plans for the particular category of dam, water obstruction or encroachment or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulates the particular category of dam, water obstruction or encroachment.

(4) A set of conditions governing the construction, operation, maintenance, inspection and monitoring of the projects covered by the general permit as are necessary to assure compliance with the act and this chapter and with other laws administered by the Department, the Fish and Boat Commission and a river basin commission created by interstate compact.

(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.

(a) A person who desires to utilize a general permit issued under this subchapter, but is uncertain as to the potential application of the general permit to a particular proposed dam, water obstruction or encroachment, should consult with the Department. The Department may issue a determination as to whether the general permit applies to the proposed dam, water obstruction or encroachment.

(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.

(c) A project requiring registration under § 105.447 (relating to registration requirements) may be charged an application fee as set forth in § 105.13 (relating to regulated activities—information and fees).

[Pa.B. Doc. No. 13-270. Filed for public inspection February 15, 2013, 9:00 a.m.]