

Bureau of Watershed Management

Regulatory Proposal for Fee Revisions

presentation to WRAC

Chapter 105

Dam Safety and Waterway Management (Water Obstruction & Encroachment Portion Only)



May 11, 2010



The Purpose of Today's Presentation

Review and answer questions on proposed revisions to Chapter 105 regulations for those sections relating to fees for Water Obstruction and Encroachment (WO&E) related activities



Purpose of Revisions

- Amend the Department's Dam Safety and Waterway Management regulations to update existing fees and include additional fees for activities performed by the Department.
- The fees for most activities have not been increased since 1991.
- To ensure all fees collected offset a reasonable portion of the operating costs of the WO&E Program.



Proposed Revisions

§ 105.13 Permit applications – information and fees.

The title of Section 105.13 was revised to “Regulated activities – information and fees” to better define the information contained within this section. This revised section includes updated fees, new fees and specifies the appropriate restricted revenue accounts where the fees will be deposited for each program administering Chapter 105. In addition, the Department will review the adequacy of the fees once every three years and provide a written report to the EQB.



Proposed Revisions

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

Section 105.35 was amended to reflect new fees for Submerged Lands License Agreements.

§ 105.444 Contents of general permits.

This section was amended to require the submission of any registration or general permit fees.

§ 105.448 Determination of applicability of general permit.

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



Steps to Develop New Fees

- An in-depth analysis of the WO&E Program's day-to-day workload was performed, identifying specific activities such as permit application reviews for General Permits (GPs), and Individual WO&E Permits; environmental assessment (EA) reviews; Submerged Lands License Agreements (SLLAs); and more.
- These activities performed were broken down into individual review process steps.
- The average salary of a Full-Time Employee was obtained from Fiscal Management; time required to perform each step of the review was estimated from historical knowledge; and the total cost, including salary, benefits and overhead, was then calculated.
- The above steps resulted in a fee for each activity the Dam Safety Program staff performs.



Steps to Develop New Fees

- Total numbers of each activity performed were determined from data contained in eFACTS for the years 2006, 2007 and 2008. The three-year totals for each activity were separated into state (18%), municipal (27%) and private (55%) permittees. These totals were then averaged to estimate the annual numbers of each activity type for each ownership category and multiplied by the previously calculated fees.
- The results were added together to provide a preliminary projected revenue for the WO&E Program.



Steps to Develop New Fees

- Future adjustments to the projected budget may be attributed to time utilized for:
 - Policy and planning activities
 - Compliance and enforcement activities
 - Field and office meetings conducted that do not result in submission of applications or other activities with proposed fees
 - Meetings with other DEP programs and Commonwealth agencies
 - Training given and training received



Proposed Revisions

Red is existing language proposed to be deleted. Blue is new proposed language.

§ 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)] (a) 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 administration under this chapter, [except applications submitted by Federal, State, county or municipal agencies or a municipal authority for a dam, water obstruction or encroachment] for a dam, water obstruction or encroachment shall be accompanied by a check payable to “Commonwealth of Pennsylvania” ”. [in accordance with the following schedule:] Fees collected by the Dam Safety and Water Obstruction and Encroachment Programs 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. The department may establish funding agreements with state agencies waiving the fees charge for applications submitted by the agencies covered under such agreements.



Proposed Revisions

Current WO&E fees

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



Proposed Revisions

Proposed WO&E fees

Program	Fee Title	Fee
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

* 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 tenth 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.



Proposed Revisions

§ 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 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 any registration or general permit fees established under Section 105.13 (relating to regulated activities - information and fees).



Proposed Revisions

§ 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. [, and no application fee will be charged].

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



Proposed Revisions

Proposed WO&E fees

Program	Fee Title	Fee
General Permits		
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
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 tenth 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.



Proposed Revisions

SLLA fee modifications

§ 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**.
 - (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.



Proposed Revisions

SLLA fee modifications

(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:

<u>Length of Crossings(in feet)</u>	<u>Charges(in dollars)</u>	
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



SLLA language remains the same in § 105.35 (c) – (f)

- (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 the 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 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.
- (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).



QUESTIONS?