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DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Waterways Engineering and Wetlands

Chapter 105 Dam Safety and Waterway Management

Overview of Proposed Regulation Revisions

Agricultural Advisory Board Meeting

January 27, 2020

Purpose

Department is proposing amendments to:

- Clarify existing requirements
- Delete or update obsolete requirements and references
- Incorporate new or revised sections and definitions to codify existing practices
- Correct typographical errors

Summary of Proposed Revisions

- Adds, revises or deletes definitions in Section 105.1
 - Abandonment
 - Aquatic resource functions
 - Aquatic resource restoration
 - Conservation district
 - Crop production
 - Cross-Section
 - Maintenance
 - Probable Maximum Flood (PMF)

Summary of Proposed Revisions

- Section 105.1 Definitions (Cont.)
 - Probable Maximum Precipitation (PMP)
 - Project
 - Project purpose
 - Reservoir
 - Stormwater management facilities
 - Water dependent
 - Wetland functions

Summary of Proposed Revisions

- **Section 105.2 Purposes**
 - Revises language by adding “restore and improve” to conserve and protect.
 - Adds aquatic resource functions and geomorphic stability to water quality, natural regime and carrying capacity.
 - Adds language referencing “regulated waters of this Commonwealth”
- **Section 105.3 Scope**
 - Adds language to update and allow for future updates to NOAA’s National Geodetic Survey (NGS) International Great Lakes Datum elevation criteria.

Summary of Proposed Revisions

- Section 105.12 Waiver of permit requirements
 - Clarifies subsections (a)(1)-(3), (11), (16) and (b)(1).
 - Adds new waivers :
 - Streambank fencing conservation practice associated with crop production (i.e. grazing)
 - Passive, low impact, and non-motorized recreational activities
 - Elevated boardwalks in wetlands for educational and interpretive trails
 - Emergency water withdrawal for agricultural and fire protection
 - Temporary environmental testing, monitoring or investigative activities
 - Temporary mats and pads in wetlands

Summary of Proposed Revisions

- Section 105.13 Regulated activities—information and fees
 - Adds additional payment methods
 - Corrects fees related to Dam Permit Transfers
 - Provides an option for submission of disturbance fee
 - Adds reference of “multiple” counties in subsection (d)
 - Revises subsection (e) for clarity and organization of application information

Summary of Proposed Revisions

- Section 105.13, Subsection (e)(1) requirements
 - Clarifies demarcation of floodplains, floodways and regulated waters
 - Clarifies scale and cross section standards
 - Adds details on water dependency for clarification
 - Updates stormwater and floodplain management
 - Adds alternatives analysis description
 - Updates mitigation plan terms
 - Adds antidegradation demonstration
 - Clarifies impacts and cumulative impacts analysis
 - Revises information regarding incomplete applications

Summary of Proposed Revisions

- Section 105.13 continued
 - Updates references to Chapter 102
 - Clarifies requirements for partnerships and political subdivisions
 - Provides a reference for electronic permit application submissions
 - Adds new requirement related to geologic information
 - Revises subsection (k) to identify the Department's discretion on waiving application information
 - Clarifies the reference of the EQB.

Summary of Proposed Revisions

- Section 105.13a. Complete applications
 - Adds clarifying language
 - Adds references to conservation district
 - Adds new language requiring the confirmation of extensions in writing
- Section 105.13b. Proof of financial responsibility
 - Adds enrollment to the Private Dam Financial Assurance Program as an option.

Summary of Proposed Revisions

- Section 105.14. Review of applications.
 - Adds references for consistency and clarity
 - Adds a subsection clarifying review requirements for proposed impacts to wetlands
- Section 105.15. Environmental assessment.
 - Corrects references and cross references
 - Adds criteria for aquatic resource restoration activities
- Section 105.16. Environmental, social and economic balancing

Summary of Proposed Revisions

- Section 105.20a. Compensation for impacts to regulated waters of this Commonwealth
 - Makes revisions to address compensation of impacted aquatic resources and no net loss of wetlands
 - Revises siting criteria for consistency with mitigation banking, in lieu fee, and permittee responsible compensation
 - Establishes compensation factors
 - Deletes antiquated guidance and provides reference to technical guidance documents/methodologies

Summary of Proposed Revisions

- Section 105.21. Criteria for permit issuance and denial
- Section 105.25. Transfer of permits.
 - Adds clarifying language
 - Adds new subsection (f) relating to include transfer of ownership of dams not needing permits.

Summary of Proposed Revisions

- Section 105.35 Charges for use and occupation of submerged lands of this Commonwealth
 - Clarifies mooring areas are associated with barge fleeting only.
 - Clarifies general permits are for recreational docks/ramps.
 - Clarifies language in subsections (c)(6) and (7).
 - Adds new exemptions in subsections (c)(8) and (c)(9):
 - Environmental remediation, reclamation, restoration and protection activities
 - Temporary activities

Summary of Proposed Revisions

- Section 105.43. Time limits.
 - Revises subsection (c) relating to dams
- Section 105.47. Removal of dams and removal or abandonment of water obstructions and encroachments.
 - Clarifies removal of public health, safety and environment concerns
- Section 105.53. Inspections by permittees or owners and inspection reports.
 - Clarifies inspection requirement for conduits

Summary of Proposed Revisions

- Sections 105.81, 105.82 and 105.89
 - Corrects citations
 - Revises subsection 105.82(a)(9) to clarify need for easements
- Section 105.96. Outlet Works
 - Revises section to clarify drawdown requirements
 - Adds ability to waive or modify drawdown requirements
- Section 105.97. Stability of structures:
 - Revises this section for consistency with the Army Corps of Engineer's standard design terminology.
- Section 105.98. Design flood criteria:
 - Revises this section to clarify the design flood criteria.

Summary of Proposed Revisions

- Sections 105.121, 105.122, 105.123, 105.171
 - Removes or updates antiquated references.
- Section 105.134. EAP
 - Updates information to be submitted
- Section 105.161. Hydraulic capacity
 - Updates references

Summary of Proposed Revisions

- Section 105.401. Permit applications
 - Revises and updates
- Section 105.411. General criteria
 - Revises reference
- Section 105.446. Procedure for issuance
 - Adds new section on periodic reviews
- Section 105.451. Identification and delineation of wetlands – statement of policy
 - Updates references
- Section 105.452. Status of prior converted cropland—statement of policy
 - Updates and clarifies policy

Stakeholder Outreach Efforts

- Chapter 105 Agricultural Workgroup
- State agency representatives
- Major dam owners
- Water Resources Advisory Committee (WRAC)
- Agricultural Advisory Board (AAB)
- State Conservation Commission (SCC)
- Citizens Advisory Committee (CAC)
- County Conservation District Workgroup
- Formal Process
 - Environmental Quality Board (EQB)
 - Public Notice in the *Pennsylvania Bulletin*



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