

FEE REPORT FORM

Department of Environmental Protection
Agency

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Date

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PROGRAM COSTS:

Dam Safety:

<u>Prior Year</u>	<u>Current Year</u>	<u>Projected</u>
FY 2007-08	FY 2008-09	FY 2011-12 FY 2012-13 FY 2013-14
\$2,039,637	\$2,353,637	\$3,287,132

Water Obstruction and Encroachment:

<u>Prior Year</u>	<u>Current Year</u>	<u>Projected</u>
FY 2007-08	FY 2008-09	FY 2011-12 FY 2012-13 FY 2013-14
\$1,812,330	\$2,563,080	\$9,615,470*

* \$5,581,060 permitting activities + \$4,034,410 non-permitting

FEE COLLECTIONS:

Dam Safety:

	<u>Prior Year</u>	<u>Current Year</u>	<u>Projected</u>
	FY 2007-08	FY 2008-09	FY 2011-12 FY 2012-13 FY 2013-14
Current	\$30,500	\$28,000	
Proposed			\$1,760,150

Water Obstruction and Encroachment:

	<u>Prior Year</u>	<u>Current Year</u>	<u>Projected</u>
	FY 2007-08	FY 2008-09	FY 2011-12 FY 2012-13 FY 2013-14
Current Permitting	\$ 30,950	\$33,450	-----
Current SLLAs* (<i>\$0.01/sqft</i>)	\$ 391,000*	\$ 391,000*	-----
Proposed Permitting	-----	-----	\$2,952,470
Proposed SLLAs* <i>using \$0.040/sqft as program proposes</i>			\$1,564,000*
<i>using \$5.00/sqft as suggested by DGS</i>			\$195,500,000*

* - SLLA fees are highly variable and there are currently several thousand SLLAs. \$391,000 is the current amount collected, but many SLLAs do not have fees and those that do have fees are calculated at several different rates. In order to develop some sort of proposed fee without recalculated all several thousand SLLAs, \$391,000 was divided by \$0.01/sqft to get 39,100,000 sq ft. The same 39,100,000 sq ft was then multiplied by \$0.040 and \$5.00 for proposed amounts.

FEE TITLE AND RATE:

Dam Safety:

Current See Attached Table

Proposed See Attached Table

Water Obstruction and Encroachment:

Current Permitting n/a

Current SLLA See attached SLLA document

Proposed Permitting See attached Table

Proposed SLLA See attached SLLA document

FEE OBJECTIVE:

Dam Safety:

The fees established in the proposed rulemaking are calculated to cover the reasonable costs for the Department to administer the Chapter 105 Dam Safety Program including permit application reviews; letter of amendment or authorization reviews; construction inspections; major dam design revision reviews; environmental assessment (EA) reviews; emergency action plan (EAP) reviews; transfer of permit; lifetime monitoring inspections; and periodic dam condition assessments. Currently, the \$28,000 (FY08-09) collected in permit filing fees does not cover the \$3,287,132 costs of these program activities for the Department.

Water Obstruction and Encroachment:

The fees established in the proposed rulemaking are calculated to cover the reasonable costs for the Department to administer the permitting portion of Chapter 105 Water Obstruction and Encroachment Program including permit application reviews for General Permits (GPs), Emergency Permits, and Individual Water Obstruction and Encroachment Permits; environmental assessment (EA) reviews; letter of amendment or authorization reviews; transfer of permit; Submerged Lands License Agreements (SLLAs); Pennsylvania Wetland Replacement Project (PWRP); and Central Office oversight. Currently, the \$33,450 (FY08-09) collected in permit fees does not cover the \$5,581,060 cost of these program activities for the Department. Additionally, the increased fees will only offset 53% of the above mentioned permitting component costs of the program, due to the fee exemptions for Federal, State, county or municipal agencies or municipal authorities, which would otherwise have accounted for \$2,415,773 in fee revenue. The permitting portion of the program does not include additional inspections, complaints, compliance/enforcement activities, conservation district assistance,

training or associated management tasks which equate to more than \$4,000,000 in additional costs. The total program cost is \$9,615,470, 31% of which will be offset by the fees proposed in this rulemaking.

In addition to program costs assumed by the Department, the Pennsylvania Fish & Boat Commission (PFBC) supports the Chapter 105 Program by reviewing and providing recommendations to the Department on stream and wetland encroachment applications and other encroachment-related matters. The PFBC estimates its total annual Chapter 105 staffing needs, including its Division of Environmental Services, Waterways Conservation Officers, and projected increases in permit activity, to be three full-time equivalents (FTEs), with a total annual estimated cost of \$334,945. All expenses related to the PFBC's Chapter 105 work are currently being paid for by revenues generated by fishing license sales and boat registrations and federal funds directly related to fishing and boating. While this fee package does not recover costs of the PFBC, the Department and the PFBC will be working cooperatively to identify potential opportunities in future regulatory fee revisions to cover these costs as well.

FEE RELATED ACTIVITIES AND COSTS:

Dam Safety:

Examples of Chapter 105 Dam Safety program activities supported by the fees include:

Permit Application Reviews – The Department conducts permit application reviews, which include the review of plans and specifications for the construction of new dams, the modification of existing dams, and the operation and maintenance of existing dams. Depending on the scope of the project, an EA review and construction inspections may or may not be required.

Letter of Amendment or Authorization Reviews - The Department conducts plan reviews for permitted dams or dams meeting the permit waiver requirement approving major maintenance, repair or improvement projects which do not involve modification to the top of dam elevation or modification of the normal pool reservoir elevation of a dam via a written Letter of Amendment or Authorization. Depending on the scope of the project, an EA review and construction inspections may or may not be required.

Major Design Revision Reviews - The Department conducts plan reviews for major design revisions for a previously approved or permitted dam design which requires either the Department's review or modeling of a revised hydrologic and hydraulic analysis of the dam and reservoir's capacity to pass or store, or both, the required spillway design flood; the Department's review or modeling of an analysis to determine the ability of the dam's spillway or decant to dewater after runoff events; or the Department's review or modeling of a stability analysis of the revised dam design.

EA Reviews - The Department conducts reviews of EAs as part of the permit application process. EAs are also reviewed for dams requiring a written Letter of Amendment or

Authorization, for non-jurisdictional dams requiring EAs, and for dams being breached or removed.

Transfer of Permit – The Department transfers a permit to a new dam owner for existing permitted dams.

Oversight and Monitoring:

- EAP Reviews – The Department conducts reviews of EAPs for hazard potential category 1, 2 or 3 dams as part of the permit application process. The Department also reviews EAPs required to be updated every 5 years.
- Monitoring Inspections – The Department conducts annual inspections of high hazard dams, inspections of significant hazard dams every other year, and inspection of low hazard dams once every five years.
- Dam Condition Assessments – The owner of a high hazard dam is responsible to retain the services of a registered professional engineer and have their dam inspected annually. A report is developed and submitted to the Department for review. The Department assesses the condition of the dam through a review of the owner's annual inspection and a review of the regional office inspection. A letter summarizing the dam condition assessment is developed and sent to the dam owner and their engineer. The dam condition assessment includes a file review to identify any other compliance issues which are then also incorporated into the Department's response letter.

Water Obstruction and Encroachment (WO&E):

Examples of Chapter 105 Waterway and Wetland Program activities supported by the fees include:

Permit Application Reviews – The Department conducts water obstruction and encroachment permit application reviews, which includes the review of plans and specifications for the construction of new water obstructions or encroachments, the modification of existing water obstructions and encroachments, and other activities which would change, expand or diminish the course, current or cross section of a watercourse, floodway or waterbody, including wetlands. Permit types include GPs, Emergency Permits, and Individual Water Obstruction and Encroachment Permits.

EA Reviews - The Department conducts reviews of EAs as part of the permit application process but also in certain situations where a permit authorization is not required in order to issue 401 Water Quality Certification.

Minor and Major Amendment of Authorization Reviews - The Department conducts plan reviews for permitted water obstructions and encroachments approving minor and major modifications of the previously authorized project. Depending on the scope of the modification proposed, determines whether a minor or major modification is required. Minor

modifications are handled via letter authorization where as Major modifications are processed similar to a new project application.

Transfer of Permit – The Department transfers a permit to a new owner for existing permitted water obstructions and encroachments.

Submerged Lands License Agreements (SLLAs) – In Pennsylvania, submerged lands of the Commonwealth are defined as “waters and permanently or periodically inundated lands owned by the Commonwealth, including lands in the beds of navigable lakes and rivers and beds of streams declared public highways which are held in trust by the Commonwealth.” Public ownership generally extends only as far landward as the low water mark, and as far from shore as the boundaries of other states and nations. Submerged lands may only be transferred by action of the state legislature, however, the Commonwealth may grant leases, licenses, easements and rights-of-ways in submerged lands. SLLAs are issued by Central Office in coordination with Regional Office staff. These duties are included with WO&E tasks because they are done by the same staff.

Pennsylvania Wetland Replacement Project (PWRP) – PWRP is DEP’s in-lieu-fee program fund which works with volunteer landowners to restore wetlands. During the permit application review, if the applicant has avoided and minimized to the maximum extent possible, the wetland impacts are less than 0.5 acres and on-site mitigation is not practicable, DEP may determine that the applicant is eligible to contribute to the fund to satisfy wetland replacement requirements. By allowing the applicant to make a monetary contribution to the fund, it relieves the applicant of any further wetland mitigation responsibility and puts the responsibility on the Department. DEP utilizes the fund to support private and public wetland restoration projects. Central Office staff manages every aspect of the records keeping and reporting for the fund. Both Central Office engineering and environment staff search for suitable wetland projects with volunteer landowners and partners, design the project with both earth moving and plantings, hire a contractor, supervise construction, and conduct post-construction inspections for each site. Staff continually answer inquiries from interested landowners, answer questions from other agencies, present data on the status of the fund and coordinate annual monitoring visits with landowners and other agencies and write annual monitoring reports. In light of the Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (33 CFR Parts 325 and 332) and the findings of an EPA mitigation grant awarded to the Program, the Program is anticipating expanding and redesigning this program to include waterways as well as wetlands. This in-lieu-fee program provides a significant benefit to the regulated community through time and cost savings by alleviating the applicant from the burden of spending significant capital trying to locate sites, evaluate suitability and developing design plans prior to applying to the department. The applicant realizes additional cost savings since they are also relieved of legal responsibilities for monitoring sites for up to five years post construction.

Central Office oversight – The Chapter 105 Waterways and Wetlands Program is performed jointly by the Regional Office staff reviewing and issuing permits and Central Office providing oversight, policy decisions and new program initiative implementation. Central Office staff develops guidance for program implementation, revise regulations as necessary,

and undertake research to further wetland and waterway sciences for program improvement. Central Office represents the Commonwealth's interests on regional and national workgroups and professional organizations. Staff is responsible for the coordination of program changes and other initiatives with state and federal agencies, negotiation of the Federal Army Corp of Engineers State Programmatic General Permit (SPGP) issued to the Commonwealth.

ANALYSIS:

Dam Safety:

For the Department to implement the Chapter 105 Dam Safety Program activities listed above, the costs will vary depending on the number of permitted projects and plan reviews submitted in a given year. The fee increase is an attempt to better meet the needs of the Department. While the permit fees have been chosen to assume a portion of the cost of implementation of project review and authorization activities; construction inspections; and lifetime monitoring and dam condition activities, the increase may not necessarily fully meet the needs of the Department. Additional time accounting codes must be developed and utilized to adequately identify staff time spent on all activities to properly distribute those costs to appropriate fee categories.

It is estimated that the proposed fees will cover 54% of the cost for program activities identified above. These fees have not been increased since 1991.

The estimated cost to the Department to administer the Chapter 105 Dam Safety Program for fiscal years 2011-12, 2012-13 and 2013-14 is \$3,287,132 because there is no union contract in place to allow projections for staffing salaries. The projected revenue for fiscal years 2011-12, 2012-13 and 2013-14 is \$1,760,150 (fees are not assessed to state agencies) based on the annual average of the last 3 years' activities. Thus the projected amount collected in revenue does not fully cover the estimated cost of the program. Additional time accounting codes must be developed and utilized to adequately identify staff time spent on all related program activities to properly distribute those costs to appropriate fee categories.

Water Obstruction and Encroachment:

For the Department to implement the Chapter 105 Waterways and Wetlands Program activities listed above, including SLLAs, the costs will vary depending on the number of permitted projects and plan reviews submitted in a given year. The fee increase is an attempt to better meet the needs of the Department. While the permit fees have been developed to assume the cost of implementation of project review and authorization activities. Additional time accounting codes must be developed and utilized to adequately identify staff time spent on all related program activities to properly distribute those costs to appropriate fee categories.

It is estimated that the proposed fees will generate \$2,9615,470 (fees are not assessed to Federal, State, county or municipal agencies or municipal authorities) in fiscal years 2011-12, 2012-13 and 2013-14 because fee collections are based on average annual activities and cannot be projected. These fees will cover 53% of the \$5,581,060 cost for conducting permit review associated activities identified above (including SLLAs) and Central Office oversight of this portion of the program for

fiscal years 2011-12, 2012-13 and 2013-14. Program cost was determined using a portion of the report on Watershed Management Program average Regional Office (RO) hours in 2007 provided by the Department's Field Operations Deputate. The portion included only those tasks completed by RO staff in the Chapter 105 Program and was used in conjunction with data provided by the Bureau of Fiscal Management and a daily working knowledge of Central Office staff as a way to determine time and money spent implementing the Program.

Based upon this approach, using permitting fees to offset the \$9,615,471 cost of the entire program would result in unacceptably high fees. Therefore, another approach was developed using the proposed permitting fees in an attempt to offset only the \$5,581,060 cost of the permitting portion of the program. Ultimately the decision was made to continue the fee exemption to Federal, State, county or municipal agencies or municipal authorities resulting in \$2,952,612 revenue from fees annually, offsetting 31% of the total program and 53% of the permitting portion.

Permit applications from state agencies represent approximately 18% of the applications received by the program and approximately \$966,309 of the permitting cost. County or municipal agencies or municipal authorities represent approximately 27% of the applications received by the program and approximately \$1,449,464 of the permitting cost. The combined governmental units represents approximately 45% and \$2,415,773 of the permitting workload.

The Department will review the adequacy of the fees at least once every 3 years and provide a written report to the Board. 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.

RECOMMENDATION AND COMMENT:

This proposed rulemaking for Chapter 105 Dam Safety sets forth the requirements for the permitting and written approvals for dams, waterways and wetlands projects. The Department is proposing an increased fee for activities requiring a permit or other authorization, for monitoring inspections and for periodic dam condition assessments.

The Department will review the adequacy of the fees established at least once every three years and provide a written report to the Board. The report shall identify any disparity between the amount of each program's income generated by the fees and the costs to fully administer the programs and it shall contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase each program's fees.

The Agricultural Advisory Board (AAB) and the Water Resources Advisory Committee (WRAC) held meetings on the dates indicated below to review the Department's proposed drafts of the Chapter 105 Dam Safety and Waterway Management regulations. Neither advisory committee voiced any concern over the increase in fees:

- AAB: - June 16, 2010
- WRAC: - May 11, 2010 - July 14, 2010

**Department of Environmental Protection
Proposed Revised Dam Safety Fee Schedule
February 2010**

Fee Title	Section	Current Fee	Proposed Fee
Permit Application - New Dam - Class A, Hazard 1	105.13(b)(1)	\$3,000	\$26,500
Permit Application - New Dam - Class A, Hazard 2	105.13(b)(1)	\$3,000	\$26,500
Permit Application - New Dam - Class A, Hazard 3	105.13(b)(1)	\$3,000	\$25,500
Permit Application - New Dam - Class A, Hazard 4	105.13(b)(1)	\$3,000	\$23,500
Permit Application - New Dam - Class B, Hazard 1	105.13(b)(1)	\$2,500	\$19,000
Permit Application - New Dam - Class B, Hazard 2	105.13(b)(1)	\$2,500	\$19,000
Permit Application - New Dam - Class B, Hazard 3	105.13(b)(1)	\$2,500	\$18,500
Permit Application - New Dam - Class B, Hazard 4	105.13(b)(1)	\$2,500	\$17,000
Permit Application - New Dam - Class C, Hazard 1	105.13(b)(1)	\$1,500	\$10,500
Permit Application - New Dam - Class C, Hazard 2	105.13(b)(1)	\$1,500	\$10,500
Permit Application - New Dam - Class C, Hazard 3	105.13(b)(1)	\$1,500	\$10,000
Permit Application - New Dam - Class C, Hazard 4	105.13(b)(1)	\$1,500	\$8,000
Permit Application - Modification of Dam - Class A, 1	105.13(b)(1)	\$3,000	\$18,500
Permit Application - Modification of Dam - Class A, 2	105.13(b)(1)	\$3,000	\$18,500
Permit Application - Modification of Dam - Class A, 3	105.13(b)(1)	\$3,000	\$18,500
Permit Application - Modification of Dam - Class A, 4	105.13(b)(1)	\$3,000	\$18,000
Permit Application - Modification of Dam - Class B, 1	105.13(b)(1)	\$2,500	\$12,000
Permit Application - Modification of Dam - Class B, 2	105.13(b)(1)	\$2,500	\$12,000
Permit Application - Modification of Dam - Class B, 3	105.13(b)(1)	\$2,500	\$12,000
Permit Application - Modification of Dam - Class B, 4	105.13(b)(1)	\$2,500	\$11,500
Permit Application - Modification of Dam - Class C, 1	105.13(b)(1)	\$1,500	\$7,500
Permit Application - Modification of Dam - Class C, 2	105.13(b)(1)	\$1,500	\$7,500
Permit Application - Modification of Dam - Class C, 3	105.13(b)(1)	\$1,500	\$7,500
Permit Application - Modification of Dam - Class C, 4	105.13(b)(1)	\$1,500	\$7,500
Permit Application - O&M of Existing Dam - Class A, 1	105.13(b)(1)	\$3,000	\$12,500
Permit Application - O&M of Existing Dam - Class A, 2	105.13(b)(1)	\$3,000	\$12,500
Permit Application - O&M of Existing Dam - Class A, 3	105.13(b)(1)	\$3,000	\$12,000
Permit Application - O&M of Existing Dam - Class A, 4	105.13(b)(1)	\$3,000	\$10,000
Permit Application - O&M of Existing Dam - Class B, 1	105.13(b)(1)	\$2,500	\$10,000
Permit Application - O&M of Existing Dam - Class B, 2	105.13(b)(1)	\$2,500	\$10,000
Permit Application - O&M of Existing Dam - Class B, 3	105.13(b)(1)	\$2,500	\$9,500
Permit Application - O&M of Existing Dam - Class B, 4	105.13(b)(1)	\$2,500	\$8,500
Permit Application - O&M of Existing Dam - Class C, 1	105.13(b)(1)	\$1,500	\$7,000
Permit Application - O&M of Existing Dam - Class C, 2	105.13(b)(1)	\$1,500	\$7,000
Permit Application - O&M of Existing Dam - Class C, 3	105.13(b)(1)	\$1,500	\$6,500
Permit Application - O&M of Existing Dam - Class C, 4	105.13(b)(1)	\$1,500	\$6,000

Major Letter of Amendment or Authorization Review Fee - Class A	105.13(b)(1)	\$0	\$14,700
Major Letter of Amendment or Authorization Review Fee - Class B	105.13(b)(1)	\$0	\$8,700
Major Letter of Amendment or Authorization Review Fee - Class C	105.13(b)(1)	\$0	\$4,400
Minor Letter of Amendment or Authorization Review Fee - Class A	105.13(b)(1)	\$0	\$1,300
Minor Letter of Amendment or Authorization Review Fee - Class B	105.13(b)(1)	\$0	\$1,000
Minor Letter of Amendment or Authorization Review Fee - Class C	105.13(b)(1)	\$0	\$650
Major Dam Design Revision Review - Class A	105.13(b)(1)	\$0	\$4,700
Major Dam Design Revision Review - Class B	105.13(b)(1)	\$0	\$3,200
Major Dam Design Revision Review - Class C	105.13(b)(1)	\$0	\$1,700
Review Fees for Environmental Assessments of Non-Jurisdictional Dams or Letters of Amendment and Authorization - Class A	105.13(b)(1)	\$0	\$1,400
Review Fees for Environmental Assessments of Non-Jurisdictional Dams or Letters of Amendment and Authorization - Class B	105.13(b)(1)	\$0	\$1,000
Review Fees for Environmental Assessments of Non-Jurisdictional Dams or Letters of Amendment and Authorization - Class C	105.13(b)(1)	\$0	\$900
Transfer of Dam Permit Fee - No Proof of Financial Responsibility Required	105.13(b)(1)	\$0	\$300
Transfer of Dam Permit Fee - Proof of Financial Responsibility Required	105.13(b)(1)	\$0	\$550
Annual Registration Fee - Class A, 1	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class A, 2	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class A, 3	105.137(a)	\$0	\$800
Annual Registration Fee - Class A, 4	105.137(a)	\$0	\$0
Annual Registration Fee - Class B, 1	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class B, 2	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class B, 3	105.137(a)	\$0	\$800
Annual Registration Fee - Class B, 4	105.137(a)	\$0	\$0
Annual Registration Fee - Class C, 1	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class C, 2	105.137(a)	\$0	\$1,500
Annual Registration Fee - Class C, 3	105.137(a)	\$0	\$800
Annual Registration Fee - Class C, 4	105.137(a)	\$0	\$0

**Department of Environmental Protection
Proposed Revised Water Obstruction and Encroachment Fee Schedule
February 2010**

Current 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 Fees:

Program	Fee Title	Fee
Obstructions and Encroachments	Administrative Filing Fee (Application fees)*	\$1,750 + disturbance fee
Obstructions and Encroachments	Permanent Disturbance (waterways, floodways/plains, and bodies of water including 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 + disturbance fee
Obstructions and Encroachments	Minor Amendment	\$250
Obstructions and Encroachments	Transfer with SLLA	\$200
Obstructions and Encroachments	Transfer without SLLA	\$100

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
BDW-GP-10	Abandoned Mine Reclamation	\$500
BWM-GP-11	Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments*	\$750 + disturbance fee
BWQP-GP-15	Private Residential Construction in Wetlands*	\$750 + disturbance fee
<p>* The Disturbance Review Fee is calculated by adding all permanent or 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.</p>		