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December 3, 2012

Silvan B. Lutkewitte, III
Independent Regulatory Review Commission
333 Market Street, 14th Floor
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RE: 25 PA. CODE CH. 105 Dam Safety and Waterway Management Fees

Dear Chairman Lutkewitte:

The National Association of Water Companies (NAWC) www.nawc.org/ represents all aspects of the private water service industry including ownership of regulated drinking water and wastewater utilities and the many forms of public-private partnerships and management contract arrangements. The Pennsylvania Chapter consists of 10 member companies that provide safe and adequate drinking water service to approximately 3.1 million Pennsylvanians in 485 communities over 39 counties. In addition, three of our member companies provide wastewater service to approximately 155,000 Pennsylvanians in 24 communities over 7 counties.

The Chapter **respectfully opposes** Reg. No. 2927 Environmental Quality Board #7-466: Dam Safety and Waterway Management Fees and offers the following comments to the Commission for consideration:

We continue to object to the existing fee exemptions provided for Federal, State, county or municipal agencies and authorities. The Chapter understands the suggestion to exempt certain entities but, in the case of a water system, the regulatory playing field should be level regardless of the ownership status (i.e., authority, county, municipal, investor or private company). **Why should investor and privately-owned water systems be subject to these fees, while others in our industry are granted an exemption simply because they are publicly-owned?**

The Department acknowledged our concern regarding the equitable assessment of fees across all categories of dam owners, but decided to continue to exempt political subdivisions from fees assessed under this program due to its responsibility to ensure the solvency of its municipalities who provide public services. If solvency is an issue, then Act 47 communities could be exempt.

Furthermore, the Department rationalizes that the rulemaking does not provide a full cost recovery of all program administration costs and assesses fees that will offset approximately 35% of the cost of the program. "All fee amounts are substantiated by a workload analysis, where Department staff carefully assessed the resources necessary for program administration on a permit-by-permit basis. It is for this reason that the fees included in the rulemaking represent the "true costs" of permitting activity and are not inflated to cover the costs of those entities exempt from the fees."

Respectfully, we do not understand how the Department can come to that conclusion when fees (already being substantially increased and subject to review at least once every 3 years) are not being assessed on all entities generating the costs. Further, the entities exempt from these fees do not pay taxes that would go into the State's General Fund to presumably cover the other 65% of the cost of the program. Therefore, the ratepayers of investor and privately-owned water systems are being asked to pay higher water rates to cover the cost of these fees (fees are included in the cost to provide service), while also subsidizing, through their state income taxes, the other 65% of the cost of the program. In addition, the investor and privately-owned water systems themselves pay corporate taxes that go into the State's General Fund, while those systems being exempted from the fees pay nothing. A consequence of this rationale is that the state penalizes the free enterprise system and incentivizes growth of state controlled enterprises which we believe to be counter to the goals of good governance.

Finally, the Chapter believes that any fee package (both the Dam Safety and the Water Obstructions or Encroachments Programs) should at least attempt to proportionately reflect the Department's actual cost of providing such services to the regulated community. However, it appears that only the owners of privately-owned dams will be asked to disproportionately carry that burden.

The Chapter appreciates the opportunity to present these comments and respectfully requests the IRRC to **disapprove this final form rulemaking**.

Respectfully submitted,



JT Hand, Chair
National Association of Water Companies
Pennsylvania Chapter