

Cooper, Kathy

2927

From: Michelle L. Elliott
Sent: Tuesday, February 21, 2012 4:01 PM
To: IRRC
Cc: Hoffman, Stephen F.; Wilmarth, Fiona E.; Smith, James M.
Subject: Comments on #2927
Attachments: Summary of Comments to the EQB on 105 fees.doc

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2012 FEB 21 P 4: 07

From: Tate, Michele [mailto:mtate@pa.gov]
Sent: Tuesday, February 21, 2012 3:57 PM
To: Richard Fox (RFOX@pasenate.com); 'Joseph Deklinski' (Jdeklins@pahousegop.com); Serra, Jamie (JSerra@pahouse.net); apankake@pasen.gov; IRRC; Smith, James M.; Michelle L. Elliott
Cc: Allan, Patricia M (DEP); Gimbel, Sean
Subject: FW: 25 Pa. Code Ch. 105, Dam Safety and Waterway Management Fees

Please find attached comments the EQB received on the proposed Dam Safety and Waterway Management Fees rulemaking. Please contact me if you have any questions concerning this e-mail or the attached comments.

Thank you.

Michele L. Tate | Regulatory Coordinator
Pennsylvania Department of Environmental Protection
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Notice: *On Friday, July 29, 2011, the Commonwealth will be adding @pa.gov as the primary email domain for all state employees. For example: mtate@state.pa.us will now be mtate@pa.gov. The email addresses ending in @state.pa.us will continue to function so that emails will never be interrupted. We appreciate your cooperation as we take a small step to increase the usability and consistency of the Commonwealth's online communications.*

From: O. Roth Richards [mailto:ormccd@ptd.net]
Sent: Thursday, February 16, 2012 4:41 PM
To: EP, RegComments
Cc: 'Mark Sincavage'; 'monroecd'
Subject: 25 Pa. Code Ch. 105, Dam Safety and Waterway Management Fees

From: Monroe County Conservation District, monroecd@ptd.net
8050 Running Valley Rd.
Stroudsburg, PA 18360

Please find attached a one-page summary for the Board's consideration. Following are the full comments of the Monroe County Conservation District, which has performed duties on behalf of DEP under a Chapter 105 delegation agreement for over 20 years.

Throughout the preamble to this proposed rulemaking are references to “fees for activities performed by the Department”. Proposed §105.13(a) is consistent with the preamble: “An application ... shall be accompanied by a check payable to ‘Commonwealth of Pennsylvania’...”.

This proposed rulemaking is flawed because it is silent on the activities performed on behalf of the Department by delegated conservation districts. It is the districts’ delegated duty to receive and acknowledge notifications to use Chapter 105 general permits issued by DEP. While DEP incurs costs when a new general permit is proposed and when general permits are amended, as well as ongoing costs to provide technical assistance to delegated districts, delegated districts incur the bulk of the costs for administering the general permit program in their counties. The fact that the proposed fees vary according to general permit number, and that each GP registration requires a fee, implies that the fee is based on the GP acknowledgement process. While the general permit fees may consider the Department’s ongoing obligations as stated above, a substantial portion of those fees should be directed to delegated conservation districts. Likewise, delegated districts provide support to the Department (e.g., technical assistance to the regulated community on Chapter 105 individual permits) for permits which are processed, and the bulk of costs are incurred, by the Department.

Therefore, we suggest that general permit processing fees should be submitted directly to delegated conservation districts, and that proposed §105.13(a) be amended as follows: “An application ... shall be accompanied by a fee ... ”. This is consistent with the Chapter 102 regulations, which do not specify to whom the fees are directed. The tracking of Chapter 105 fees can easily be done via the quarterly Chapter 102-105 reports submitted by delegated districts and DEP regional offices to DEP Central Office.

We suggest adding a new §105.13(b), which mimics Chapter 102, §102.6(b)(3): *Conservation districts may charge additional review fees in accordance with section 9(13) of the Conservation District Law (3 P.S. § 857(13)).*

Section 105.13(c)(1)(iv)(C) contains an error, which can be corrected by adding the words, *equal or*, as follows: If, after completion of the project, the total construction costs *equal or exceed* \$250,000, ...

If the fees in §105.13(c)(1)(viii) are intended to cover DEP’s costs for administering annual dam inspections and EAPs, we suggest that an annual fee be assessed on Category 4 dams, which should be inspected by DEP periodically, but perhaps not as frequently as Category 3 dams are inspected. The fee should also consider that EAP updates every 5 years are not required for Cat. 4 dams as they are for Cat. 3 dams.

Since the fees assessed in §105.13(c)(2) differentiate between major and minor amendments, this section should include definitions as do sections 105.13(c)(1)(iv)(B) and (C). The implication that major amendments include temporary and/or permanent impacts while minor amendments do not should be explicit in this section.

The base administrative filing fee as well as the permanent disturbance fee in 105.13(c)(2) may be excessive for certain projects. The general permit fee for a small dock is \$175.00, while the fee for the same dock in an EV watershed would be \$2,550.00. Because this proposed rulemaking addresses only a small portion of Chapter 105, it is not practical to adjust the fees by amending the GPs at this time. Therefore, we suggest a second category of base filing fee, which does not include disturbance review fees, and which must be defined in this section.

Section 105.131a contains an error in the reference to 105.13(c)(viii), which should be corrected to 105.13(c)(1)(viii).

By referencing fees established under §105.13, is §105.444(5) limiting fees for new general permits because those new permits are not specifically listed in 105.13(c)(2)?

Thank you for the opportunity to comment on this proposed rulemaking.

Orianna Roth Richards
Resource Conservationist

Monroe County Conservation District
ph. 570-629-3060



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2927

Summary of Comments to the Environmental Quality Board
25 Pa. Code Ch. 105, Dam Safety and Waterway Management Fees
Monroe County Conservation District
February 16, 2012

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