



2927

RECEIVED
IRRC

MOVING WATER FORWARD

2017 FEB 28 P 12: 34

www.nawc.org

Chair

David Lewis
Columbia Water Company
220 Locust Street
P.O. Box 350
Columbia, PA 17512-0350
Phone: 717-684-2188
dlewis@pa.net

Vice Chair

William C. Kelvington
Pennsylvania American Water
800 West Hershey Park Drive
Hershey, PA 17033
Phone: 717-531-3370
William.kelvington@amwater.com

Secretary

JT Hand
The York Water Company
130 East Market Street
P.O. Box 15089
York, PA 17401-1219
Phone: 717-845-3601
jth@yorkwater.com

Treasurer

Kathy Miller
The York Water Company
130 East Market Street
P.O. Box 15089
York, PA 17401-1219
Phone: 717-845-3601
kathym@yorkwater.com

Past Chair

Kathy L. Pape
Pennsylvania American Water
800 West Hershey Park Drive
Hershey, PA 17033
Phone: 717-531-3200

Governmental Relations

Erik A. Ross
Gmerek Government Relations, Inc.
212 Locust Street
Suite 600
Harrisburg, PA 17101
Phone: 717-234-8525
Cell: 717-919-3534
eross@ggrgov.com

Counsel

Michael D. Klein
Dewey & LeBoeuf LLP
1101 New York Avenue NW
Suite 1100
Washington, DC 20005-4213
Phone: 202-346-8154
mklein@dl.com

February 27, 2012

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477
RegComments@pa.gov

RE: 25 PA. CODE CH. 105 Dam Safety and Waterway Management Fees

Dear Environmental Quality Board:

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.

Introduction

The Environmental Quality Board (EQB) proposes to amend Chapter 105 (relating to dam safety and waterway management) to update existing fees and include additional fees for activities performed by the Department of Environmental Protection. This proposed rulemaking was adopted by the Board at its meeting of December 21, 2010.

The purpose of the proposed rulemaking is to amend the Department's Dam Safety and Waterway Management regulations to update existing fees and include additional fees for activities performed by the Department as the current fees for most activities have not been increased since 1991 and do not provide enough revenue to support existing program functions. These amendments were developed to offset a portion of the operating costs of the Water Obstruction and Encroachments (WO&E) Program and the Dam Safety Program. The new fees included in the proposed rulemaking are associated with: 1) review of permit applications, general permit registration or other requests for approval; 2) inspections; and 3) review of permit related submissions, such as Emergency Action Plans (EAP), inspection reports,

transfers and amendments.

The Chapter **respectfully opposes this proposed rulemaking** and welcomes this opportunity to offer the following comments to the EQB for consideration:

General

The Chapter is not opposed to the concept of user fees paying for the resources that are consumed in regulating water utilities. However, such fees should bear a reasonable relationship to the actual cost of providing a service. Most of the proposals put forth for comment in this rulemaking do not meet this standard in our opinion.

Dam Safety Program

The Department oversees the construction and operation of dams through the Dam Safety Program. In the background information accompanying this proposed rulemaking, it states that the “Dam Safety Program oversees the regulation and safety of approximately 3,200 dams and reservoirs throughout this Commonwealth to protect the health, safety and welfare of its citizens and property downstream of dams. The goal is to assure proper planning, design, construction, maintenance, operation, monitoring and supervision of dams and reservoirs. The Dam Safety Program also oversees removal of dams that are no longer needed by their owners.”

Moreover, the “revenue generated by the Department will ensure that adequate and consistent monitoring, compliance and inspection of dams will occur and reviews will be accompanied in a timely manner. The revenue from this fee package will restore key positions in the Dam Safety Program to better protect the public. Recently the Dam Safety Program lost one of two critical geotechnical engineering positions due to budget cuts to the Department. The person in this position was responsible to review the geotechnical aspects of new dam projects, perform inspections of unsafe, high hazard dams and investigate deficiencies and recommend corrective action to unsafe high hazard dams. The loss of this position has increased the workload on the remaining geotechnical engineer and has significantly delayed dam permit application processing and project review times. Also, there is a concern for public safety due to the position’s direct involvement with dams of special concern in this Commonwealth. The fees collected from this proposed rulemaking will also allow the Department to fund eight full-time dam inspectors located in and under the supervision of the six regional offices. With budget cuts to the Department, the number of engineers in the section that performs the dam inspections in each of the regional offices has been reduced so there no longer are eight full-time inspectors. By restoring engineering positions for geotechnical review and dam inspections through this proposed rulemaking, it will ensure that dams are maintained as designed and will help protect the public safety of the communities located downstream and assist the public who depend on dams for water supply, flood control or recreation.”

Specifically, the proposed rulemaking would establish annual dam registration fees according to § 105.13(c) (viii) (relating to regulated activities – information and fees) for the Department’s administration of the act. Under § 105.13(c) (viii), fees would be \$800 on the low end or \$1,500 on the high end, depending on the size or hazard potential categories. Furthermore, § 105.13 fee categories include:

- Dam permit application fees for new dam construction.
- Dam permit application fees for modification of existing dams.
- Dam permit application fees for operation and maintenance of existing dams.
- Letter of amendment or authorization review fees.
- Major dam design revision review fees based on major dam design revision as defined in § 105.1.
- Environmental assessment review fees for nonjurisdictional dams, letters of amendment or letters of authorization.
- Transfer of dam permit as required under § 105.25 (relating to transfer of permits).
- Annual dam registration fees as required under § 105.131a (relating to annual dam registration).

Under 32 P.S. §§ 693.5 (a), the EQB shall have the power, and its duty shall be, to adopt such regulations and standards for the design, construction, operation, monitoring, maintenance, modification, repair and removal of dams and reservoirs, water obstructions and encroachments as are necessary and proper to carry out the purposes of this act. The regulations shall include, but are not limited to, rules establishing:

(5) Reasonable fees for the processing of applications and periodic inspections, for the purpose of reimbursing the Commonwealth for the costs of administration of this act.

Furthermore, 32 P.S. §§ 693.7 (General permits and waiver of permit requirements) says:

(a) The Environmental Quality Board may, by regulation, waive the permit requirements for any category of dam, water obstruction or encroachment which it determines has insignificant effect upon the safety and protection of life, health, property and the environment.

While it's clear that the EQB has statutory authority to collect "reasonable" fees and may "waive permit requirements for any category of dam, water obstruction or encroachment," we question why this proposed rulemaking seeks to continue to exempt applications submitted by Federal, State, county or municipal agencies or a municipal authority for a dam, water obstruction or encroachment from "reasonable" fees?

It appears that the proposed rulemaking seeks to replace state funding, cut from the Department's budget, to ensure that dams are maintained as designed and will help protect the public safety of the communities located downstream and assist the public who depend on dams for water supply, flood control or recreation.

1. Of the approximately 3,200 dams and reservoirs throughout this Commonwealth overseen by the Dam Safety Program, how many are owned by Federal, State, county or municipal agencies or a municipal authority?
2. How many of the unsafe, high hazard dams are owned by Federal, State, county or municipal agencies or a municipal authority?
3. Has the Department determined that such entities continue to have an "insignificant effect upon the safety and protection of life, health, property and the environment;" thereby, maintaining their exemption from any fees?

4. Was a workload analysis prepared by the Department and how do such costs break out?

The proposed rulemaking also requires the Department to review the adequacy of the fees at least once every 3 years and provide a written report to the EQB.

The Chapter believes that any fee package should at least attempt to proportionately reflect the Department's actual cost of providing a service. However, it appears that only the owners of privately-owned dams will be asked to disproportionately carry that burden.

Water Obstructions or Encroachments (WO&E Program)

Similarly to the Dam Safety Program, the proposed rulemaking maintains fee exemptions, including Federal, State, county or municipal agencies or municipal authorities for the WO&E Program.

Conclusion

The NAWC appreciates the opportunity to present these comments on this proposed rulemaking and respectfully requests the EQB's consideration.

Respectfully submitted,



David Lewis, Chair

National Association of Water Companies, Pennsylvania Chapter
220 Locust Street
P.O. Box 350
Columbia, PA 17512-0350
717-684-2188 (Phone)