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February 27, 2012

by electronic mail

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

**Re: Proposed Rulemaking Regarding Dam Safety and Waterway Management Fees;
42 Pa.B. 553 (January 28, 2012)**

To Whom It May Concern:

On January 28, 2012 the Environmental Quality Board ("Board") issued notice of a proposed rulemaking to amend the Dam Safety and Waterway Management regulations of the Department of Environmental Protection ("Department") set forth at 25 Pa. Code Chapter 105. 42 Pa.B. 553 (January 29, 2012). The proposed rulemaking would raise the Department's current fees for Chapter 105 permit applications and Submerged Land License Agreements, and include new fees for annual dam registrations, design revisions, permit amendments, environmental assessment reviews, and permit transfers.

PennFuture thanks the Board for the opportunity to comment, and strongly supports the proposed fee increases. As the Board's notice of the proposed rulemaking observes, the Department's fees for most Chapter 105 activities have not increased since 1991. Meanwhile, the Department's funding from the state General Fund has been repeatedly slashed in recent years, even as the Department's workload has increased dramatically, mostly due to Marcellus Shale activities. In light of these developments, an increase in Chapter 105 fees is sorely needed.

For Chapter 105 purposes, Marcellus development activities consist chiefly of the crossing of streams and wetlands by pipelines and roads, and of the construction and operation of impoundments for the storage of fresh water and wastewater. Given the staggering rate and magnitude of Marcellus development in the past four years, we suspect that the Department is now reviewing considerably more applications for water obstructions and encroachment permits and dam safety permits than at any time in its history. In our experience, the Department staff who perform these reviews and inspect permitted facilities are competent, dedicated, and diligent – but also, in recent years, overworked and overwhelmed. Staff are too few, applications too many; reviews are rushed; errors are oversights are not uncommon.

We believe that the General Assembly should levy a robust severance tax on production from unconventional oil and gas wells, and should use the revenue to ensure that the Department has adequate personnel and resources to administer all of its regulations, including Chapter 105. In the absence of increased General Fund revenue, however, the Board should proceed to adopt the fees in the current proposed rulemaking. Our only additional comment is to urge that the Board reduce the initial review period in 25 Pa. Code § 105.13(l) (concerning review of the adequacy of the new fees by the Department) to one year in order to determine whether the proposed fees should be raised further. Given the diversity of the new fees being added to Chapter 105, and the wide range of new administrative work that they will entail, the current three-year period is too long. After the first year's review, a regular three-year period should suffice.

Again, we thank you very much for the opportunity to comment. Should you have any questions concerning these comments, please do not hesitate to contact me.

Thank you very much.

Sincerely,

/s Mark Szybist

Mark Szybist