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COMMONWEALTH OF PENNSYLVANIA
STATE CONSERVATION COMMISSION

February 24, 2012

FROM: Karl Brown, Executive Secretary
State Conservation Commission
2301 N. Cameron St., Room 310
Harrisburg PA 17110

TO: Environmental Quality Board
P. O. Box 8477
Harrisburg, PA 17105-8477

SUBJECT: Proposed Rulemaking Dam Safety and Waterway Management Fees

The State Conservation Commission (SCC) requested comments on the Proposed Rulemaking for Dam Safety and Waterway Management Fees from the Conservation District Managers Advisory Committee and the Chapter 102/105/NPDES/Stormwater Advisory Committee. Each of these committees consists of two conservation district managers or staff from each DEP region. The committee members were asked to distribute the proposed rulemaking to all districts in their region and compile the comments before submitting them to the SCC.

The attached document contains the comments the SCC received from approximately twenty-five county conservation districts. The first four pages of the document groups many of the comments by subject. The remaining pages are copies of the actual letters/emails the SCC received from the committee members.

Thank you for this opportunity to provide comments on the Proposed Rulemaking Dam Safety and Waterway Management Fees on behalf of the SCC and County Conservation Districts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl G. Brown'.

Karl G. Brown
Executive Secretary

Enclosures

Chapter 105 Proposed Rule Making Comments

These comments were provided by County Conservation Districts to the State Conservation Commission when asked to make comments on the Proposed 105 Rulemaking. Approximately Twenty Five Conservation Districts provided input into these comments.

1. Fees are excessive and may decreased voluntary compliance – Several Districts expressed concern over the possibility of a decrease in voluntary compliance if fees especially of these amounts are imposed on 105 Permits.

“For over a decade I have worked to convince local contractors and developers and timber harvesting parties that voluntarily meeting the Chapter 105 regulations would only cost them their time and likely prevent violations. That decade of work will be undone as many of these parties will not pay hundreds of dollars for authorizations on private property for very, very minor stream impact”

“Conservation Districts are local entities and it is our job to represent the interests and well-being of not only our environment but the landowners within our county border. The fee schedule reflects the necessity to keep the fee low for the agricultural community to a certain extent but does not consider an average landowner trying to access their property or stabilize the stream, hence preventing erosion. These proposed fees are too excessive for these particular landowners and will encourage non-compliance”

“The proposed fees will serve to greatly encourage persons to do the work without benefit of permit coverage since the Dept. has shown little to no field presence and does little to no follow up on 105 complaints. Many of the Districts feel that the fees are not tied to any real or perceived workload and costs related to permit delivery.”

“We have concerns that many smaller activities that may require the use of a General Permit not associated with either an NPDES permit or an ESPC permit will not be submitted if a fee is charged.”

“The District realizes the need for DEP to become self-sufficient; however, these fees may lead to more “night work” on projects without permits. This will lead to the Districts spending more time and resources in the compliance arena and referring more matters to the regional office.”

“If DEP charges 105 GP fees, they should be based on impact, according to square feet of impact or length of impact, both of which must already be determined and entered into the 105 GP forms by the applicant. “

“I still feel that some of these fees are way out of line for a Ma & Pa who has to submit a full blown 105 WO&E for something they plan to do in a floodway or because a GP does not apply (for instance an outfall in HQ or EV watersheds). Our county tends to have several of these as well as the example I used of a local Borough whose majority of homes are located in the Floodway so to just put a vinyl fence up for their children or dogs must go through the 105 WO&E permit to do so. If I calculated correctly with the admin fee, plus the permanent and temporary disturbance fee, and the Environmental Assessment fee the cheapest WO&E permit would cost \$3,450! Is that correct??”

“We feel the fees are excessive and could be scaled back in some instances. With the fee structures as it exists within the general permits individuals are going to be more apt to do work and seek forgiveness if caught than to get the permit.”

"Separate categories depending on the type of applicant should be created, i.e.: Commercial/Industrial, Residential Development, Timber Harvest, and Residential. The fee could stay as proposed for Commercial/Industrial and Residential Development but should be reduced for Timber Harvest, Residential and Small Business applicants that would have a more difficult time recouping costs."

"I would hope they would make a category for these very low impact projects at a reduced fee."

"Fees should be consistent between types of GPs as the processing time and amount of work associated with reviewing each is roughly the same. The differences in the amount of work involved should not be such that it justifies such a huge range as \$50 - \$750 to cover the administration costs."

"Latitude should exist to waive fees for projects sponsored by Conservation Districts or other State/County agencies. A landowner participating in a Growing Greener or other District sponsored project for streambank stabilization or Ag BMP installation should not be required to pay a fee."

2. Decreased requests for technical assistance – Some Districts expressed concerns that individuals will not seek technical assistance due to the fees which may in turn result in improper design and implementation of projects and result in additional impacts.

"Decreased requests for technical assistance related to 105 issues. Just as what happened with 105 compliance when the CDs were forced to give back the program due to lack of DEDICATED funding, many will refuse to ask for assistance prior to beginning projects associated with streams and wetlands if they know trying to do the right thing will now cost them significantly."

"We feel we have worked hard to make the permit process as painless as possible in an attempt to get as many sites permitted as possible. If there is a less complex process in place individuals are more likely to come in and tell you about the work they plan to do instead of going and just doing it."

3. Enforcement – Several Districts expressed their concerns over the current lack of enforcement in the 105 program and the need for more enforcement especially if fees are going to be charged.

"Enforcement of the Chapter 105 regulations is non-existent. There is little to no point in implementing fees for this program without a corresponding increase in the field presence of the Dept."

"If the Department is going to charge 105 GP fees, then we would really like to see some kind of benefit from it such as an increased field presence and increased 105 enforcement presence. Here in SW region, 105 enforcement is slow due to staffing situations. The region is well aware of the situation; it seems as if Harrisburg is the origin of the problem."

"If DEP is going to charge fees for the use of permits, then it needs to have severe enough penalties in place that can be used to provide sufficient incentive to warrant people getting the proper permits before their regulated activity."

"How many enforcement actions did DEP take in 2009, 2010 and 2011 for 105 General Permit activities when a permit was issued after the activity occurred? If few enforcement actions were taken,

what incentive does one have to apply for and pay for the use of a GP knowing that little if anything will occur after the fact?"

"Further, we do not feel that DEP will take any type of an enforcement action if and when they find out that a permitted activity occurred without the permit being obtained in advance."

4. Distribution of Fees Collected – The current revisions do not explain if or how the fees will be distributed between DEP and delegated districts. The Districts feel strongly that delegated districts should receive most if not all of the fees collected in the 105 program.

"As a county who still has the Ch. 105 Delegation I agree that conservation districts should receive the GP application fees"

"Somewhere, language should be added that allows those Chapter 105 delegated Districts to receive and keep the fees. The review of the fees needs to include the costs associated with the 30 delegated Districts administering the program for DEP and not just DEP's costs."

"Most (90% minimum) if not all of any proposed fee for the GP's should go to the 105 delegated District. This program MUST NOT mirror the current 102 program where District/Dept costs are lumped together and then the Dept. has the District collect a \$100.00 per disturbed acre fee to pass on to the Dept."

"The district board also feels strongly that any fees collected by a delegated district remain at the district level to assist in offsetting the cost of administering the program. This program should not be like the 102 program and the Department collects substantial fees for work they are not associated with. Districts should not be fee collectors for PA DEP."

"We not looking to participate in another 'fee collector' situation, where we just gather fee checks and forward them to DEP. (This is what we do already with the NPDES disturbed acreage fee). This takes our time up on something we don't gain from."

"Chapter 102.6 provides Districts the opportunity to collect and retain fees. The current 105 and proposed 105 revisions do not. i.e. it needs to be specific in the new regs that that Districts may legally collect fees for acknowledging Ch. 105 general permits."

"We recommend that any fees and penalties associated with the Chapter 105 program be accounted for separately from other programs (Chapter 102) that also go into the Department's Clean Water Fund."

5. Delegation Agreement – The Chapter 105 Delegation Agreement has not been revised in several years.

"The current delegation agreement between the Dept. and Districts for the 105 program is in great need of revision and is inadequate to meet the needs of the Districts."

"It appears that the delegation agreement will need to be revised to indicate that all fees collected by delegated Conservation Districts remain there to help cover the costs of administering the program."

6. Miscellaneous Comments - These are additional comments received that did not fit into any of the other categories.

"The program shift from a service provision to one of a fee based program is of concern to several of the Districts."

"I am acutely aware of how these changes will be implemented and how they will work here on the ground, in the real world, where regulations actually come to life. Many of us have seen it with this and other programs as they are changed over time. The increasing of fees will not have a positive, and may very likely result in a negative, influence on water quality protection."

"WCD has been reviewing 105 GP's for some time. We charge an "E&S review fee" to process the 105 GP's. (DEP agreed to this approach.) Our E&S review fee for 105 GP's is based on the degree of stream disturbance which is associated with the permitted activity. Our base fee is \$125 and the fees go up a little more after that. These fees do not recover all of our 105 GP program costs. Our Board, program advisory committee and majority funding source (the County Commissioners) have encouraged us to recover more of our costs."

"If DEP decides to charge their own fee for Chapter 105 GP's, it would not be fair to impose it universally, because in some counties (like Westmoreland) the CD does all the review & processing of the GP. It should only be imposed on counties where the CD is not delegated 105."

7. Questions:

"There should be further clarification of the Disturbance Review Fee. Does this only apply to GP11 and GP 15? Is it only for full Water Obstruction and Encroachment permits? That is an additional \$800/0.1 acre of permanent and \$400/0.1 acre temporary impact. Wasn't the GP11 created to deal with maintenance of existing WOE permits?"

"In the table of fees, under Obstructions and Encroachments there is a \$1750 Administrative Filing fee. Please explain to which permits this fee applies? Please provide an example."

"There is also a proposed \$500 fee for Environmental Assessment for Waived Activities. Please explain when this fee would apply?"

"Paragraph 105.13(c)(2) lists fees for bridges and other water obstructions and encroachments \$200 and then in the chart, there are other numbers for various types of encroachments. Example:GP-3 \$250 Does this mean \$250+\$200 or \$200 or \$250?"

"I have looked over the fees and think it should be clarified which types of Obstruction and Encroachments permit applications are subject to the \$1750 administrative fee or the disturbance impact fees."

"The district would like clarification in the area of fees. Specifically, are applicants going to be required to obtain an approved E&S plan and pay the associated fees in addition to the proposed permit fees? Also are state agencies such as PennDot, DCNR and municipalities/township exempt from the fees?"



Potter County Conservation District
107 Market Street
Coudersport, PA 16915
814-274-8411 ext. 4
Fax 814-274-0396

February 7, 2012

State Conservation Commission
2301 N. Cameron Street Room 310
Harrisburg, PA 17110

Dear State Conservation Commission

The Potter County Conservation District would like to take this opportunity to make a couple comments on the proposed Chapter 105 changes.

We feel the fees are excessive and could be scaled back in some instances. With the fee structure as it exists within the general permits individuals are going to be more apt to do work and seek forgiveness if caught than to just get the permit. In Potter County we feel we have worked hard to make the permit process as painless as possible in an attempt to get as many sites permitted as possible. If there is a less complex process in place individuals are more likely to come in and tell you about the work they plan to do instead of going out and just doing it.

This district board also feels strongly that any fees collected by a delegated district remain at the district level to assist in offsetting the cost of administering the program. This program should not be like the Chapter 102 program and the department collects substantial fees for work they are not associated with. Districts should not be fee collectors to PA DEP.

The district would like clarification in the area of fees. Specifically, are applicants going to be required to obtain an approved E&S plan and pay the associated fees in addition to the proposed permit fees? Also are state agencies such as Penn DOT, DCNR and municipalities/townships exempt from the fees?

Sincerely,

Earl Brown

Earl Brown
Vice Chairman

Cc: PACD
File

Books, Karen

From: Dave Rupert <rupert2@windstream.net>
Sent: Friday, February 03, 2012 9:01 AM
To: Books, Karen
Subject: FW: [pacdmanagers] 105 PERMITS

Karen,

FYI.

David R. Rupert
District Manager

Armstrong Conservation District
Suite B-2
124 Armsdale Road
Kittanning, Pa. 16201

724.548.3425
724.545.9012 (fax)

www.armstrongcd.org

From: pacdmanagers@googlegroups.com [mailto:pacdmanagers@googlegroups.com] **On Behalf Of** Greg Phillips
Sent: Thursday, February 02, 2012 3:17 PM
To: Robert B. Maiden
Cc: pacdmanagers@googlegroups.com; Ronald Rohall
Subject: [pacdmanagers] 105 PERMITS

Robert, here are our comments:

Background:

WCD has been reviewing 105 GP's for some time. We charge an "E&S review fee" to process the 105 GP's. (DEP agreed to this approach.) Our E&S review fee for 105 GP's is based on the degree of stream disturbance which is associated with the permitted activity. Our base fee is \$125 and the fees go up a little more after that. These fees do not recover all of our 105 GP program costs. Our Board, program advisory committee and majority funding source (the County Commissioners) have encouraged us to recover more of our costs.

Comments:

If DEP decides to charge their own fee for Chapter 105 GP's, it would not be fair to impose it universally, because in some counties (like Westmoreland) the CD does all the review & processing of the GP. It should only be imposed on counties where the CD is not delegated 105.

If DEP charges 105 GP fees, they should be based on impact, according to square feet of impact or length of impact, both of which must already be determined and entered into the 105 GP forms by the applicant.

WCD is not looking to participate in another 'fee collector' situation, where we just gather fee checks and forward them to DEP. (this is what we do already with the NPDES disturbed acreage fee). This takes our time

up on something we don't gain from.

If the Department is going to charge 105 GP fees, then we would really like to see some kind of benefit from it such as an increased field presence and increased 105 enforcement presence. Here in SW region, 105 enforcement is slow due to staffing situations. The region is well aware of the situation; it seems as if Harrisburg is the origin of the problem.

Permits/Costs Recovered:

In 2009, the first year we charged fees to review 105 GP's, we reviewed 70 General Permits and received \$6,550. (this started in May)

In 2010, we reviewed 102 Chapter 105 General Permits and received \$15,000 in fees.

In 2011, we reviewed 84 Chapter 105 GP's and received \$9,000 in fees.

It's important to know that other factors are at work, and that we don't charge fees for PennDOT or municipalities, so that the results may be skewed.

This data merely shows the possibility of earning some \$\$ with 105 GP's.

Greg

--

Gregory M. Phillips
District Manager/CEO
Westmoreland Conservation District
Donohoe Center
218 Donohoe Road
Greensburg, PA 15601
PH: 724-837-5271
FAX: 724-552-0143
Email: greg@wcdpa.com
Website: www.wcdpa.com

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You received this message because you are subscribed to the Google Groups "PACD Conservation District Managers" group.

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To unsubscribe from this group, send email to pacdmanagers+unsubscribe@googlegroups.com.

For more options, visit this group at <http://groups.google.com/group/pacdmanagers?hl=en>.

Books, Karen

From: Jim Garner <jgarner@susqco.com>
Sent: Monday, February 06, 2012 1:55 PM
To: Books, Karen
Subject: RE: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

Karen,

I have included some verbiage from another manager but I think you understand the idea. Let me know if you have a question.

Chapter 102.6. provides Districts the opportunity to collect and retain fees. The current 105 and proposed 105 revisions do not. i.e. it needs to be specific in the new regs that that Districts may legally collect fees for acknowledging Ch. 105 general permits. The revised 105.13.A. (new) would need to be revised to address what we want. note ; The existing 105.13.A. is being deleted and the proposed 105.13.B. will take its place. This needs to be included in any comments Districts may be making in regards to collecting fees.

From: Books, Karen [mailto:kbooks@pa.gov]
Sent: Friday, February 03, 2012 9:03 AM
To: Barry Travelpiece; Chris Droste; Craig Todd; Ellen Enslin; Fiscus, Fred; Floyd Cicconlini; Freyermuth, Sidney; Gaye Lynn Criswell; Jim Resh; Brown, Karl; Kleiner, Shane; Larry Martick; Maria Anderson; Mark Davidson; Means, Jeffrey; molly-burns@pacd.org; Murin, Kenneth; Orr, Jennifer; Rich Kadwill; Robert B. Maiden; Sandy Thompson; Smith, Amy (AG_SCC); Ziadeh, Ramez; Berger, Johan; Bill Deitrick; Books, Karen; Centre County (DEP); Chris Stromaier (cstrohmaier@chesco.org); Crawford County; Dan Dunmire; Dave Rupert; Fayette County; Fiscus, Fred; Jim Garner; Hughes, Marjorie; Taglang, Steven W; Todd Brajkovich
Subject: FW: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

This is a reminder to send me any comments by the end of the day on Monday February 6th on the Chapter 105 Proposed Rulemaking.

Thank You!

Karen Books, Dirt and Gravel Roads Program Coordinator
State Conservation Commission
2301 N. Cameron St., Rm 310 | Harrisburg, PA 17110
Phone: 717-787-2103

My Top Five Strengths:

Context
Harmony
Communication
Adaptability
Arranger

From: Books, Karen
Sent: Thursday, January 26, 2012 9:59 AM
To: 'Barry Travelpiece'; 'Chris Droste'; 'Craig Todd'; Ellen Enslin; Fiscus, Fred; 'Floyd Cicconlini'; Freyermuth, Sidney; 'Gaye Lynn Criswell'; 'Jim Resh'; 'Karl Brown'; Kleiner, Shane; 'Larry Martick'; 'Maria Anderson'; 'Mark Davidson'; Means, Jeffrey; molly-burns@pacd.org; Murin, Kenneth; Orr, Jennifer; 'Rich Kadwill'; Robert B. Maiden; 'Sandy Thompson';

Books, Karen

From: Floyd A. Ciccolini Jr. <fciccolini@mifflinccd.com>
Sent: Thursday, January 26, 2012 12:33 PM
To: Books, Karen
Subject: RE: Chapter 105 Proposed Rulemaking Input Requested

Hi Karen. Thanks for the opportunity. At the risk of offending someone, and at the same time realizing that some folks spent a tremendous amount of time putting the 105 changes together, I'll formally offer the same comment(s) I initially made over a year ago.

Take care!
Floyd

"In light of DEP's general lack of consistent enforcement of existing regulatory programs under the CSL, adding increased permit fees, in particular those for general 105 permits 1-11, will likely succeed in the following areas only, regardless of our good intentions:

1. Decreased voluntary compliance; for over a decade I have worked to convince local contractors and developers and timber harvesting parties that voluntarily meeting the Chapter 105 regulations would only cost them their time and likely prevent violations. That decade of work will be undone as many of these parties will not pay hundreds of dollars for authorizations on private property for very, very minor stream impacts.
2. Decreased requests for technical assistance related to 105 issues. Just as what happened with 105 compliance when the CDs were forced to give back the program due to lack of DEDICATED funding, many will refuse to ask for assistance prior to beginning projects associated with streams and wetlands if they know trying to do the right thing will now cost them significantly.
3. Increased revenue for the 105 program; obviously this will generate non-dedicated program funding, but at a real-world cost of decreased water quality protection through decreased voluntary program compliance.
4. Decreased respect for, and increased frustration with, DEP and associated permit approval timeframes. CDs and the general public have become increasingly frustrated with DEPs burdensome permitting, redundancy, and paper-trail processes that result in minimal, if any, increases in water quality protection. To now charge a fee for a General 105 permit such as GP3 that may take 2 to 3 months for the initial review (with NO PNDI or other atypical issues) will not increase program awareness in a positive way.

I wouldn't expect all those involved in the program to agree with me, nor would I expect my comments alone to change much. However, I am acutely aware of how these changes will be implemented and how they will work here on the ground, in the real world, where regulations actually come to life. Many of us have seen it with this and other programs as they are changed over time. The increasing of fees will not have a positive, and may very likely result in a negative, influence on water quality protection."

Floyd

Floyd A. Ciccolini Jr.
Resource Conservation Specialist
Mifflin County Conservation District
20 Windmill Hill #4
Burnham, PA 17009
717-248-4695
717-248-6589 fax
fciccolini@mifflinccd.com

Books, Karen

From: Dave Rupert <rupert2@windstream.net>
Sent: Friday, February 03, 2012 9:01 AM
To: Books, Karen; robert-maiden@pacd.org
Subject: 105 proposed revisions- comments from SW CDMAC

Karen and Robert,

I asked the counties in the SW to provide me comments related to the proposed revisions to chapter 105. Greg Phillips in Westmoreland provided comments directly to PACD. Karen, I will forward that email to you. Other Counties responding to my request for input were: Cambria, Greene, Fayette, Washington, and Indiana. I will attempt to summarize their comments:

1. Enforcement of the Chapter 105 regulations is non-existent. There is little to no point in implementing fees for this program without a corresponding increase in the field presence of the Dept.
2. Most (90% minimum) if not all of any proposed fee for the GP's should go to the 105 delegated District. This program MUST NOT mirror the current 102 program where District/Dept costs are lumped together and then the Dept. has the District collect a \$100.00 per disturbed acre fee to pass on to the Dept.
3. The proposed fees will serve to greatly encourage persons to do the work without benefit of permit coverage since the Dept. has shown little to no field presence and does little to no follow up on 105 complaints. Many of the Districts feel that the fees are not tied to any real or perceived workload and costs related to permit delivery.
4. The program shift from a service provision to one of a fee based program is of concern to several of the Districts.
5. The current delegation agreement between the Dept. and Districts for the 105 program is in great need of revision and is inadequate to meet the needs of the Districts.

This is my summary of the comments that I received. It may not reflect word for word what was conveyed to me, but represents my interpretation of their comments.

Sincerely,

David R. Rupert
District Manager

Armstrong Conservation District
Suite B-2
124 Armsdale Road
Kittanning, Pa. 16201

724.548.3425
724.545.9012 (fax)

www.armstrongcd.org

Books, Karen

From: Barry Travepiece <Barry.travepiece@columbiaccd.org>
Sent: Monday, February 06, 2012 10:34 AM
To: Books, Karen
Cc: Davidson, Mark
Subject: RE: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

Hi Karen,

Mark Davidson has asked all the Districts in our region to reply to me with any comments related to these regulations. The only comment that I got back was:

to ask if those CD's that have the 105 delegation agreement, does the general permit fee go to the District's Clean Water Fund or does it get forwarded to DEP's clean water fund?

Also, I have looked over the fees and think it should be clarified which types of Obstruction and Encroachments permit applications are subject to the \$1750 administrative fee or the disturbance impact fees.

Barry Travepiece
Columbia County Conservation District
702 Sawmill Road, Suite 204
Bloomsburg, PA 17815
[Http://www.columbiaccd.org/](http://www.columbiaccd.org/)
Email address: barry.travepiece@columbiaccd.org
Phone 570-784-1310 ext 115

From: Books, Karen [mailto:kbooks@pa.gov]
Sent: Friday, February 03, 2012 9:03 AM
To: Barry Travepiece; Chris Droste; Craig Todd; Ellen Enslin; Fiscus, Fred; Floyd Cicconlini; Freyermuth, Sidney; Gaye Lynn Criswell; Jim Resh; Brown, Karl; Kleiner, Shane; Larry Martick; Maria Anderson; Mark Davidson; Means, Jeffrey; molly-burns@pacd.org; Murin, Kenneth; Orr, Jennifer; Rich Kadwill; Robert B. Maiden; Sandy Thompson; Smith, Amy (AG_SCC); Ziadeh, Ramez; Berger, Johan; Bill Deitrick; Books, Karen; Centre County (DEP); Chris Stromaier (cstrohmaier@chesco.org); Crawford County; Dan Dunmire; Dave Rupert; Fayette County; Fiscus, Fred; Jim Garner; Hughes, Marjorie; Taglang, Steven W; Todd Brajkovich
Subject: FW: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

This is a reminder to send me any comments by the end of the day on Monday February 6th on the Chapter 105 Proposed Rulemaking.

Thank You!
Karen Books, Dirt and Gravel Roads Program Coordinator
State Conservation Commission
2301 N. Cameron St., Rm 310| Harrisburg, PA 17110
Phone: 717-787-2103

My Top Five Strengths:
Context
Harmony
Communication

Books, Karen

From: Ellen Enslin <eenslin@pikepa.org>
Sent: Monday, February 06, 2012 3:20 PM
To: Books, Karen
Cc: Kleiner, Shane
Subject: Chapter 105 comments (Northeast)

Karen,

Below please find the comments that I have received from Susquehanna County. Pike County will comment directly to DEP. Has it been published in the bulletin yet?

Susquehanna County Conservation District (Willie Keeney):

Annex A

1. On the first page, there appears to be two sub paragraph (b)s. An Application for a permit and Fees collected....
2. Paragraph 105.13(c)(2) lists fees for bridges and other water obstructions and encroachments \$200 and then in the chart, there are other numbers for various types of encroachments. Example:GP-3 \$250 Does this mean \$250+\$200 or \$200 or \$250?
3. Susquehanna County Conservation District realizes the need for DEP to become self sufficient; however, these fees may lead to more "night work" on projects without permits. This will lead to the Districts spending more time and resources in the compliance arena and referring more matters to the regional office.

Ellen Enslin
Senior Resource Conservationist
Pike County Conservation District
556 Route 402
Hawley, PA 18428
(570) 226-8220 (phone)
(570) 226-8222 (fax)
www.pikeconservation.org

From: Books, Karen [<mailto:kbooks@pa.gov>]
Sent: Thursday, January 26, 2012 9:59 AM
To: Barry Travepiece; Chris Droste; Craig Todd; Ellen Enslin; Fiscus, Fred; Floyd Cicconlini; Freyermuth, Sidney; Gaye Lynn Criswell; Jim Resh; Brown, Karl; Kleiner, Shane; Larry Martick; Maria Anderson; Mark Davidson; Means, Jeffrey; molly-burns@pacd.org; Murin, Kenneth; Orr, Jennifer; Rich Kadwill; Robert B. Maiden; Sandy Thompson; Smith, Amy (AG_SCC); Ziadeh, Ramez; Berger, Johan; Bill Deitrick; Books, Karen; Centre County (DEP); Chris Stromaier (cstrohmaier@chesco.org); Crawford County; Dan Dunmire; Dave Rupert; Fayette County; Fiscus, Fred; Jim Garner; Hughes, Marjorie; Taglang, Steven W; Todd Brajkovich
Subject: Chapter 105 Proposed Rulemaking Input Requested

Hi All,

The State Conservation Commission has been invited to participate in a stakeholder meeting with DEP Secretary Krancer on February 10th in regards to the proposed rulemaking to amend Chapter 105.

February 6, 2012

Comments on Chapter 105 Dam Safety and Water Management
Subchapter A GENERAL PROVISIONS

The following are comments from the Adams County Conservation District.

Add page numbers.

Pg. 1 105.13 b 2b... "Fees collected by the Dam Safety and Water Obstruction and Encroachment Programs will be deposited into a restricted revenue account known as the Clean Water Fund and utilized to offset the operating costs to implement respective programs." We recommend that any fees and penalties associated with the Chapter 105 program be accounted for separately from other programs (Chapter 102) that also go into the Department's Clean Water Fund.

Pg. 6 Fees

Please provide the fee analysis DEP used to determine program costs. Does this analysis include costs associated with the 30 delegated conservation districts?

In the table of fees, under Obstructions and Encroachments there is a \$1750 Administrative Filing fee. Please explain to which permits this fee applies? Please provide an example.

There is also a proposed \$500 fee for Environmental Assessment for Waived Activities. Please explain when this fee would apply? We hope that one would not have to pay \$500 to have an activity that is waived for the use of a General Permit.

Pg. 8 (l) Fees....Somewhere, language should be added that allows those Chapter 105 delegated Districts to receive and keep the fees. The review of the fees needs to include the costs associated with the 30 delegated Districts administering the program for DEP and not just DEP's costs.

Pg. 7 top ... "additional information as required". Where is 'the additional information as required' identified and defined?

Pg. 7 [(e)] (f)... What type of permit is needed for projects located in wetlands?

Pg. 7 [(i)] (i) Change DER to DEP

Chapter 105 Data

Data needs to be developed or if it already exists widely shared and distributed in a timely manner so that it can be used when needed. . This report should include on a county by county basis the number of General Permits issued, the number of complaints,

enforcement actions, and an accounting of the costs and revenues associated with the program.

How many Chapter 105 General Permits were issued in 2009, 2010 and 2011? Of those, how many were done by a delegated District? How many GPs issued were not part of a NPDES or an ESPC permitted site?

How many enforcement actions did DEP take in 2009, 2010 and 2011 for 105 General Permit activities when a permit was issued after the activity occurred? If few enforcement actions were taken, what incentive does one have to apply for and pay for the use of a GP knowing that little if anything will occur after the fact?

We have concerns that many smaller activities that may require the use of a General Permit not associated with either an NPDES permit or an ESPC permit will not be submitted if a fee is charged. Further, we do not feel that DEP will take any type of an enforcement action if and when they find out that a permitted activity occurred without the permit being obtained in advance.

If DEP is going to charge fees for the use of permits, then it needs to have severe enough penalties in place that can be used to provide sufficient incentive to warrant people getting the proper permits before their regulated activity.

Thank you for allowing us the opportunity to submit our questions, comments and concerns on these proposed changes to the Chapter 105 program. We look forward to the Department's response to our questions and comments.

Laurence Martick, District Manager
Adams County Conservation District

Books, Karen

From: Robert E. Sweitzer <resweitz@co.centre.pa.us>
Sent: Friday, February 03, 2012 3:20 PM
To: Books, Karen
Subject: RE: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

Hi Karen,

I have two comments as a member of the CDMAC on behalf of the norhtcentral region:

1. As a county who still has the Ch. 105 Delegation I agree that conservation districts should receive the GP application fees. I hope that PACD is able to voice our opinion on that.

The Ch. 105 WO&E Permit fees are probably designed to go to DEP since they are the agency who issues them. We can still charge an E&S review fee for those erosion and sediment control plan reviews.

I still feel that some of these fees are way out of line for a Ma & Pa who has to submit a full blown 105 WO&E for something they plan to do in a floodway or because a GP does not apply (for instance an outfall in HQ or EV watersheds). Our county tends to have several of these as well as the example I used of a local Borough whose majority of homes are located in the Floodway so to just put a vinyl fence up for their children or dogs must go through the 105 WO&E permit to do so. If I calculated correctly with the admin fee, plus the permanent and temporary disturbance fee, and the Environmental Assessment fee the cheapest WO&E permit would cost \$3,450! Is that correct??

My comment is that I would hope they would make a category for these very low impact projects at a reduced fee.

2. It appears that the delegation agreement will need to be revised to indicate that all fees collected by delegated Conservation Districts remain there to help cover the costs of administering the program.

Thanks.

Bob

From: Books, Karen [mailto:kbooks@pa.gov]
Sent: Friday, February 03, 2012 9:03 AM
To: Robert E. Sweitzer
Subject: FW: Chapter 105 Proposed Rulemaking Input Requested - REMINDER

This is a reminder to send me any comments by the end of the day on Monday February 6th on the Chapter 105 Proposed Rulemaking.

Thank You!

Karen Books, Dirt and Gravel Roads Program Coordinator
State Conservation Commission
2301 N. Cameron St., Rm 310| Harrisburg, PA 17110
Phone: 717-787-2103

My Top Five Strengths:

Comments from the North West Region for:

**Annex A
Title 25 Environmental Protection
Part I. Department of Environmental Protection
Subpart C. Protection of Natural Resources
Article I. Water Resources
Chapter 105. Dam Safety and Water Management
Subchapter A. GENERAL PROVISIONS
PERMIT APPLICATIONS**

- Change §105.13 b. to read as:

...shall be accompanied by a check payable to "Commonwealth of Pennsylvania," or where delegated responsibilities under this Chapter, "_____ Conservation District" except for submissions by...

- §105.13 (2) Water obstructions and encroachments:

Conservation Districts are local entities and it is our job to represent the interests and well-being of not only our environment but the landowners within our county border. The fee schedule reflects the necessity to keep the fee low for the agricultural community to a certain extent but does not consider an average landowner trying to access their property or stabilize the stream, hence preventing erosion. These proposed fees are too excessive for these particular landowners and will encourage non-compliance

Separate categories depending on the type of applicant should be created, i.e.: Commercial/Industrial, Residential Development, Timber Harvest, and Residential. The fee could stay as proposed for Commercial/Industrial and Residential Development but should be reduced for Timber Harvest, Residential and Small Business applicants that would have a more difficult time recouping costs.

There should be further clarification of the Disturbance Review Fee. Does this only apply to GP11 and GP 15? Is it only for full Water Obstruction and Encroachment permits? That is an additional \$800/0.1 acre of permanent of ~~permanent~~ and \$400/0.1 acre temporary impact. Wasn't the GP11 created to deal with maintenance of existing WOE permits?

Fees should be consistent between types of GPs as the processing time and amount of work associated with reviewing each is roughly the same. The differences in the amount of work involved should not be such that it justifies such a huge range as \$50 - \$750 to cover the administration costs.

Latitude should exist to waive fees for projects sponsored by Conservation Districts or other State/County agencies. A landowner participating in a Growing Greener or other

District sponsored project for streambank stabilization or Ag BMP installation should not be required to pay a fee.

- §105.13 (old item f, new item g) should simply read as:

An application for a permit under this chapter shall conform to requirements in Chapter 102 (relating to erosion control) and must include a copy of a letter from the conservation district in the county where the project is located indicating that the district has reviewed the erosion and sediment control plan of the applicant and considered it to be satisfactory.

- §105.13 (l) should read as follows:

The Department **and the Conservation Districts** will review the adequacy of the fees once every three years and **jointly** provide a report to the EQB.

- §105.35. Charges for use and occupation of submerged lands of this Commonwealth-

Licenses and Annual Charges should be carefully reviewed prior to raising fees. In the North West Region the turn around for GP-2 applications takes approximately 2 years from the date of permit approval to be processed and issued by DEP.

The change in the minimum annual charge for SLLA from \$250 to \$750 seems to be excessive.