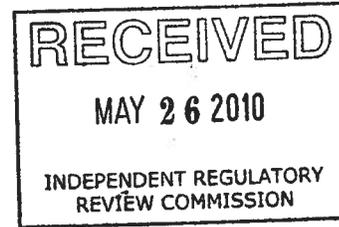




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American Rivers
Thriving By Nature



20 May 2010

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

To Members of the Environmental Quality Board:

Thank you for the opportunity to comment on the proposed rulemaking for 25 Pa. Code Ch. 105, Dam Safety and Waterway Management.

American Rivers is the nation's leading conservation organization standing up for healthy rivers so communities can thrive. Headquartered in Washington, DC, we have more than 4,000 members and supporters in Pennsylvania, and field offices in Camp Hill and Pittsburgh. Since 2000, we have worked in close partnership with the Department of Environmental Protection's Division of Dam Safety ("Department") in providing technical and financial assistance to dozens of dam removal projects across the Commonwealth. As such, we are very familiar with the dam safety regulations and their implementation. We applaud this effort to respond to the concerns raised in the 2008 Dam Safety Audit, which identified several opportunities for improvement, including recommendations for both dams and levees.

Our comments are as follows:

§ 105.13(b). Proof of financial responsibility. American Rivers strongly supports the proposed requirement to extend the proof of financial responsibility to Category 1 and 2 dams covering the full life cycle of the projects, as recommended in the 2008 Dam Safety Audit. With thousands of dams on the landscape that no longer serve a purpose, abandonment of outdated infrastructure is a serious, hazardous and costly problem. The dangers of abandoned or poorly maintained Category 1 and 2 dams is clear and we believe that financial responsibility requirements are a fundamental measure to address this issue. We believe this requirement must extend to both private and public dam owners.

§ 105.25 Transfer of permits. We note that the Department only requests notification when there is a change in ownership, but not in the permittee of the dam. As these are not always the same entity, we recommend that the Department requires submittal of an operations and maintenance agreement between relevant dam owner and permittee to clarify the responsibility of maintenance tasks. It is our experience that conditions of dual or split ownership often result in neglect of dam safety responsibilities due to lack of clarification of duties.

§ 105.43 Time limits. We oppose the elimination of a completion date from dam permits or other Department approvals for construction or modification. Most dam owners are likely to complete construction or modifications in a timely fashion once work has commenced. However, in some cases, progress may notably lag and at those times it is important that the Department

maintains the authority to require that the dam owner provide a schedule for completion in order to avoid prolonged disruptive site conditions, for both public safety and environmental reasons.

§ 105.47 Removal of dams and removal or abandonment of water obstructions and encroachments. American Rivers strongly supports the proposed revisions to this section. The addition of subsection c formalizes the Commonwealth’s historical commitment to protecting public safety and the environment through removal of abandoned dams.

§ 105.61 Procedures for investigations. American Rivers strongly supports the addition of “or the environment” to this section.

§ 105.91 Classification of dams and reservoirs. We support the creation of a fourth Hazard Potential Category. The previous C-2 high and C-2 non-high distinction was not clear in practice. We believe some dams, the failure of which have the potential to result in loss of life, may have been overlooked in the previous definition.

American Rivers *strongly* recommends that the Board incorporate environmental losses (i.e., natural resource damages) in the Department’s hazard potential classification system. This addition would be consistent with the Federal Emergency Management Agency’s Model State Dam Safety Law, U.S. Army Corps of Engineers’ Dam Safety Assurance Program, Interagency Committee on Dam Safety recommendations, and dam safety regulations of other states in the region. Environmental losses resulting from dam failure are distinct from economic loss, and have occurred due to release of known contaminants or hazardous/toxic materials, destruction of exemplary or critical habitats, and/or extensive species mortality. The Department is clearly empowered to consider the environmental impacts of dam construction, operation and alteration, it is logical to extend that same consideration to the hazard potential classification system.

§ 105.97 Stability of structures. American Rivers recommends that considerations for land use and extractive industries near dams be added. In light of ongoing long-wall mining, as well as significant increases in re-mining and hydraulic fracturing activities in the Commonwealth, we encourage the formalization of coordination and communication between relevant authorities to ensure that a consistent and appropriate level of public and environmental safety be retained.

§ 105.107 Final inspection. American Rivers supports the proposed change. Given the statistical correlation of dam failures with initial impoundment filling, the post-construction inspection is logical. In the absence of the proposed change there may be a lag time of 1 to 5 years, depending upon the hazard potential classification of the dam, before a Departmental representative visits and develops a familiarity with the site. As the Dam Safety authority, it is important for the Department, and not the permittee’s engineer, to make a final inspection of the dam.

§ 105.131(b) Operation, maintenance and monitoring. We support the addition of a clarifying statement in this section that permittees/owners must also submit an environmental assessment to the Department.

§ 105.133 Directed repairs. American Rivers strongly supports the addition of “and the environment” in this section. The Department must have the authority to direct actions as necessary to protect the environment.

§ 105.134 Emergency Action Plan (EAP). We applaud the changes to this section. The revisions address many issues raised in the 2008 Dam Safety Audit, and will improve the process for developing and maintaining critical public safety procedures. American Rivers is especially supportive of the new requirement for coordination with county emergency managers. We believe the delivery and posting of EAPs is fundamentally important to increasing community awareness and preparedness of potential risks. We support the inclusion of an unambiguous authority of the Department to require updates to EAPs upon changes to a dam’s hazard potential or known development in an inundation area. It is our understanding that the Department’s “most recent EAP guidelines” include provision of a clearly delineated map of the dam’s inundation area and affected lands parcels, and that this map will be provided to municipal emergency management officials. However, this alone will not address the long-standing problem of “hazard creep” (i.e., unchecked development downstream of dams necessitating upgrades of the hazard potential classification). Inundation maps must be referenced during local zoning and planning decisions. Too many local land use decisions are made without considering inundation areas. American Rivers believes there are legislative approaches to addressing this problem, such as a law recently established in Virginia, and we welcome the opportunity to discuss such approaches with the Department.

American Rivers is hopeful that these changes will improve public safety and environmental protection at and around dams across the Commonwealth. We further hope that the Department will follow these revisions with additional measures to address inadequacies in levee inspection and oversight, monitoring of the condition of federal dams in Pennsylvania, and enforcement actions following dam safety violations. These issues were raised in the 2008 Dam Safety Audit and we agree they are critical to the responsible regulation of infrastructure affecting rivers and riverside communities throughout Pennsylvania.

American Rivers thanks the Board once again for the opportunity to comment on the proposed rulemaking. If we can be of further assistance, please contact me at 518-482-2631 or slindloff@americanrivers.org.

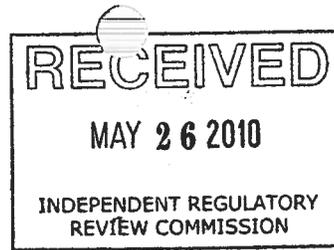
Sincerely,



Stephanie Lindloff
Senior Director, River Restoration Program
American Rivers



American Rivers
Thriving By Nature



Summary Comments from American Rivers

RE: Proposed Rulemaking, 25 Pa. Code Ch. 105, Dam Safety and Waterway Management

We thank the Environmental Quality Board for the opportunity to comment. American Rivers is the nation's leading river conservation organization. We have more than 4,000 members and supporters in Pennsylvania, and field offices in Camp Hill and Pittsburgh. Since 2000, we have worked in close partnership with the Department of Environmental Protection's Division of Dam Safety in providing technical and financial assistance to dozens of dam removal and river restoration projects across the Commonwealth. As such, we are very familiar with the dam safety regulations, their implementation and their affect on rivers and communities throughout Pennsylvania. Our comments are as follows:

Section and Title	Summary Comment
§ 105.13(b). Proof of financial responsibility.	Strongly support revisions. Requirement must extend to both private and public dam owners.
§ 105.25 Transfer of permits.	Recommend submittal of operations and maintenance agreement for dams owned and operated by different entities.
§ 105.43 Time limits.	Oppose elimination of completion date on dam permits.
§ 105.47 Removal of dams and removal or abandonment of water obstructions and encroachments.	Strongly support revisions, which formalize the Commonwealth's long-standing commitment to public safety and environmental restoration.
§ 105.61 Procedures for investigations.	Strongly support addition of "or the environment."
§ 105.91 Classification of dams and reservoirs.	Support the creation of fourth hazard potential category. Strongly recommend incorporation of environmental losses in the hazard potential classification system, to be consistent with FEMA, Army Corps and other state programs.
§ 105.97 Stability of structures.	Recommend formal coordination with authorities regulating extractive industries, to assess potential affects to dam stability.
§ 105.107 Final inspection.	Support post-construction Departmental inspection.
§ 105.133 Directed repairs.	Strongly support addition of "and the environment."
§ 105.134 Emergency Action Plan	Strongly support revisions. Encourage more concerted efforts to address "hazard creep."

American Rivers thanks the Board once again for the opportunity to comment on the proposed rulemaking. If we can be of further assistance, please contact Stephanie Lindloff, Senior Director, River Restoration Program, slindloff@americanrivers.org or the address below.

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