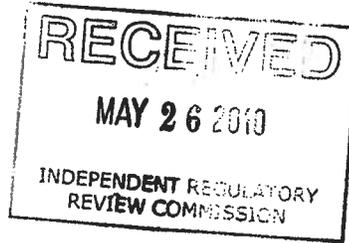




2835

**MEMO****DATE:** May 21, 2010**SUBJECT:** Chapter 105 Proposed Rulemaking Comments

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

FROM: Brian G. Thompson, P.E.
Director
Bureau of Design

The Pennsylvania Department of Transportation (PennDOT) offers the following comments on the PROPOSED RULEMAKING for 25 PA. CODE Ch. 105, Dam Safety and Waterway Management as published in the Saturday, April 24, 2010 PA Bulletin. If you have any questions please contact Mr. Gary C. Fawver, P.E. of my staff at telephone number (717) 787-1024. Further, please notify Mr. Fawver when the Comment and Response Document is posted on the EQB web site.

1. 105.1. Definitions.

- A definition of “practicable alternative” is included in this section. PennDOT requests that this definition be revised as follows so that satisfying the basic purpose of the project or the project need is more directly part of the definition and not just part of the definition which speaks to areas not presently owned by the applicant.
Recommended language: “An alternative is practicable if it **meets the basic purpose of the project and** is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics.”

2. Section 105.14. Review of applications.

- Subsection (b)(1) was revised to add “potential threats to the environment” as one of the factors considered in making a determination of impact. The effect to the environment is presently addressed in subsection (b)(4) and speaks in terms of “significant environmental factors”. Adding “threats to the environment” in subsection (b)(1) could be interpreted that the potential threat to the environment does not have to be significant. PennDOT requests clarification that Section 105.14(b)(1) “potential threats to the environment” are significant impacts. PennDOT also requests that Section 105.14(b)(1) be revised as follows: “potential significant threats to the environment”.
- The last sentence, states, “**In reviewing permit applications existing and designated uses will be maintained and protected.**” Clarify that the existing and designated uses are as defined in Chapter 93.

3. Section 105.15. Environmental Assessment.

- PennDOT requests that this section be revised to clarify that a Section 401 Water Quality Certification can be issued separate from the Chapter 105 permit. Specifically, that detailed information required by Chapter 105.13 (d)(1)(v), (vi), (vii), (ix), and (f) and the detailed hydraulic studies are not required to issue the Section 401 Water Quality Certification. Instead, the Certification could be conditioned upon obtaining a Chapter 105 permit prior to construction. PennDOT requests this change to clarify the use of the integrated NEPA/404 permit process.

4. Section 105.42. Terms and conditions of Department permits and approvals.

- This section has been revised to make the permittee **or owner** responsible (1) for informing the contractor of the terms and conditions of the permit and (2) completing the acknowledgement form. See revised 105.42 (a) and (b). This would place responsibility on PennDOT for permits obtained by developers for Highway Occupancy Permits (HOP) matters that require roadway improvements within PennDOT's right-of-way. PennDOT (acting on behalf of the taxpayers) does not want any responsibility for the construction of roadway improvements that are required as a result of private development. If "or owner" remains in the proposed regulations, PennDOT requests that DEP stipulate "Primary owner," i.e. if PennDOT owned 0.1 acre of right-of-way (ROW) adjacent to the developers 50 acres and the developer was putting drainage through PennDOT's ROW to connect to PennDOT's road, then the developer would be the "Primary owner". PennDOT requests that the proposed language be revised so that it is clear that PennDOT will not be responsible for informing contractors and completing acknowledgement forms related to HOPs

5. Section 105.46. Implementation of erosion and sedimentation control plans.

- This section has been revised to make the permittee **or owner** responsible for following the E&S plan during construction. Again, this would place additional responsibility on PennDOT for permit obtained by developers for HOP matters that require roadway improvements within PennDOT's right-of-way. PennDOT (acting on behalf of the taxpayers) does not want any responsibility for the construction of roadway improvements that are required as a result of private development. PennDOT requests that the proposed language be revised so that it is clear that PennDOT will not be responsible if permittees for HOPs do not follow the E&S Plan.

6. Section 105.51. Change "above and below" to "upstream and downstream."

7. Section 105.61. Procedure for investigations.

- This section has been revised to allow DEP to require investigations if DEP has reasonable cause to suspect the existence of a condition adversely affecting the environment. Previously, this burden was on DEP. PennDOT requests clarification on whether this revision can cause PennDOT to conduct studies if flooding has increased in the vicinity of one of PennDOT's bridges.

8. The current Chapter 105 process does not provide for co-permittees after the permit is issued. PennDOT requests that one of the reserved sections provide language that permits the contractors to be co-permittees during construction – this would be analogous to the NPDES

permit program. By adding the contractor as a co-permittee, the contractor can be held more directly accountable by both DEP and PennDOT in the event that the contractor fails to follow the permit conditions.

10. **105.96. Outlet works.** Define how to calculate “highest mean monthly inflow.”

4390/GCF/bjg

CC: Kenda J. Gardner, 9th Floor, CKB
Danielle, Spila, 8th Floor, CKB
Crystal Newcomer, 7th Floor, CKB
Gary C. Fawver, P.E., 7th Floor, CKB

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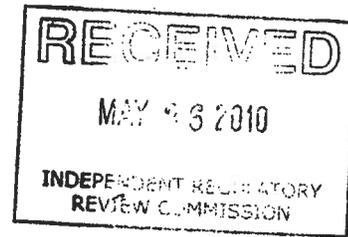
From: Fawver, Gary [GFAWVER@state.pa.us]
Sent: Friday, May 21, 2010 1:32 PM
To: EP, RegComments
Cc: Gardner, Kenda Jo; Spila, Danielle K; Newcomer, Crystal
Subject: Proposed Rulemaking for 25 PA CODE Ch. 105, Dam Safety and Waterway Management
Attachments: Chapter105 Proposed Rulemaking Comments.pdf

To Whom It May Concern:

Please find attached the Pennsylvania Department of Transportation's comments on the Environmental Quality Board's Proposed Rulemaking on the Administration of the Environmental Covenants Act.

Please advise me if there is any problem with the receipt of these comments. Thank you for your assistance.

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