



February 2, 2021

Pennsylvania Environmental Quality Board

RegComments@pa.gov

<http://www.ahs.dep.pa.gov/eComment>

RE: Comments to proposed rulemaking 25 PA Code Chapter 105

To whom it may concern:

American Rivers protects wild rivers, restores damaged rivers, and conserves clean water for people and nature. Since 1973, we have used our leadership and expertise to ensure a nation of clean, healthy rivers that sustain and connect us to our past, to nature, and to one another. We are the only national river conservation organization and have staff and field offices located across the country, including two offices located in Pennsylvania. American Rivers advocates for clean water, using our public policy expertise to uphold Clean Water Act standards. Across the nation, our programs and leadership are helping to restore rivers and ecosystems, connecting people to their waterways, and improving recreational opportunities such as boating and fishing.

American Rivers values our long-standing relationship with DEP Bureau of Waterways Engineering and Wetlands. We appreciate the opportunity to comment on proposed rulemaking that will enhance the clarity and functionality of Chapter 105 regulations, as well as to improve safety of functioning dams while also retiring obsolete dams. We provide our comments herewith and would be happy to engage directly with the Board or staff as appropriate.

Section 105.1 Definitions:

American Rivers supports additional definitions and proposed refinements that provide clarity.

Definition for aquatic resources: does this also include floodplains and riparian areas?

The definition for Incremental Dam Breach Analysis is unclear and should be revised.

Definition of Maintenance: Replace "activities" with "repairs" to ensure that this term is not interpreted to include increasing the physical dimensions of the dam or the amount of water it impounds.

Definition of Probable Maximum Flood: This has previously been based on historical rainfall data. Is this definition adequate to address potential future high flow conditions expected to happen during the design life of the dam?

Definition for Probable Maximum Precipitation: Will this be determined based on historical rainfall records alone, or will it take into account increased precipitation events possible as a result of climate change? "Certain time of the year" is not relevant because it will preclude evaluating the full range of potential storm events likely during the design life of the dam, particularly as the climate changes.

Definition of Project: Does this include the reach of the river impacted by a dam?

Section 105.12 Waiver of Permit Requirements

105.12 a.2. references a stream enclosure. This is an undefined term and should be defined. There is another reference to this undefined term in 105.12 a.18.

105.12 a.11 American Rivers supports this clarifying language.

105.12 b.1 references “submerged lands of the Commonwealth”, which is not defined in this document and should be. Likewise for 105.12 b.5 and 105.12.c.1.

105.12 c.2 Appears to indicate that dam removals that reconnect habitat in the range of a Threatened or Endangered species will no longer qualify for a Restoration Waiver. If this interpretation is correct, American Rivers does not support this proposed rule change.

105.12.c.3 and 4 are very concerning because it appears that dams deemed to be historic are not eligible for a Restoration Waiver for removal. Our concern is that this language will disincentivize the removal of obsolete, failing dams that alter the natural form and function of the stream and impede the passage of aquatic species.

Section 105.13 Regulated activities—information and fees

American Rivers supports the clarifications and conveniences that the new language provides, particularly with respect to updated payment methods described in 105.13.a. We also have the following comments:

105.13 a. includes new language “or registration,” however, that term is not defined. What is the difference between application and registration?

105.13. (iii) D (v) American Rivers supports the language pertaining to stormwater management planning.

105.13 E (ix) Mitigation plan: American Rivers applauds DEP’s requirement that an applicant for a mitigation plan must demonstrate that impacts to aquatic resources have been avoided and minimized.

Section 105.17 Wetlands

105.17 (1) (iii) American Rivers applauds DEP's proposed rules that include protection of wetlands and floodplains associated with Wild & Scenic rivers and Exceptional Value streams.

Section 105.20 (a) Compensation for impacts

AR applauds DEP's proposed rules that specify replacement of the function and value of wetlands, rather than simply a 1:1 replacement of the wetland area in acres.

Section 105.53 Inspections

American Rivers applauds DEP for increased inspection requirements for Hazard Category 1 and 2 dams to include internal conduit inspections every 10 years.

Section 105.96 Outlet works

105.96.a. This calculation appears to be based on rear-facing statistics that do not take increased precipitation from climate change into consideration. How is DEP planning to take climate change into account in planning for adequate outlet works at dams?

105.96.a.2 Mean annual flow is based on past rainfall records, which are likely becoming less valid as climate changes due to the chemistry of the atmosphere. How is DEP planning to take climate change in account to ensure that dams can adequately pass flows throughout the life of the dam?

Section 105.98 Design flood criteria

This section references section 105.91, which is not included in this document.

Section 105.134 EAP

This requirement should be amended to comply with new FEMA standards that are no longer focused on the 100 year flood.

104.134(g)(2) Who is responsible for tracking proposed land use changes in the inundation area to trigger compliance? This requirement provides a disincentive for a dam owner to report a downstream land use change. If a developer is proposing to locate homes in the inundation area, and those homes would increase the Hazard Class of the dam, what recourse does the dam owner have to avoid having increased liability and responsibility due to an action caused by another party?

Subchapter C Culverts and Bridges

American Rivers recommends that Subchapter C be amended to include incentives for replacing fish-excluding culverts with fish-friendly culverts for streams or rivers classified as Exceptional Value or High Quality.

Section 105.161.6 (e) This requirement should be amended to comply with new FEMA standards that are no longer focused on the 100 year flood.

Thank you again for the opportunity to comment. We would welcome an opportunity to discuss these comments prior to these rules being adopted.

Sincerely,



Lisa Hollingsworth-Segedy, AICP
Director, River Restoration