



2927

Paul A. Zielinski
600 West Hersheypark Drive
Hershey, PA 17033
Email: Paul.Zielinski@amwater.com

Phone: 717.531.3308
Fax: 717.531.3314

February 27, 2012

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

RECEIVED
IRRC

2012 FEB 28 P 12:35

Dear Environmental Quality Board member:

Pennsylvania American Water has reviewed the draft Dam Safety and Waterway Management Fees proposal published in the Pennsylvania Bulletin on Saturday, January 28, 2012. Attached is a summary of our comments for your consideration.

We thank the Board for the opportunity to offer comments to the draft rulemaking.

Very truly yours,

Paul A. Zielinski
Sr. Director – Water Quality and Environmental Compliance



PENNSYLVANIA
AMERICAN WATER

Comments Regarding Proposed Rulemaking Dam Safety and Waterway Management Fees

Pennsylvania American Water Company (PAWC) is the largest regulated water and wastewater service provider in Pennsylvania. The Company serves approximately 2.2 million people in 36 counties across the Commonwealth. Our customer base consists of 638,000 water customers and 17,000 wastewater customers. PAWC owns and operates 57 dams used for water supply in the state of Pennsylvania. The fee structure proposed in this rulemaking will have a significant financial impact on our Company which could result in increased rates to our water customers.

Introduction

The Environmental Quality Board (EQB) proposes to amend Chapter 105 (relating to dam safety and waterway management) to update existing fees and include additional fees for activities performed by the Department of Environmental Protection (DEP). This proposed rulemaking was adopted by the EQB at its meeting of December 21, 2010.

The purpose of the proposed rulemaking is to amend the Department's Dam Safety and Waterway Management regulations to update existing fees and include additional fees for activities performed by the Department as the current fees for most activities have not been increased since 1991 and do not provide enough revenue to support existing program functions. These amendments were developed to offset a portion of the operating costs of the Water Obstruction and Encroachments (WO&E) Program and the Dam Safety Program. The new fees included in the proposed rulemaking are associated with review of permit applications, general permit registration or other requests for approval, inspections, and review of permit related submissions, such as Emergency Action Plans (EAP), inspection reports, transfers and amendments.

Comment: Dam safety work is not optional. The DEP Dam Safety Program oversees the regulation and safety of approximately 3,300 dams and reservoirs throughout the Commonwealth to protect the health, safety, welfare, and property of not only those living downstream, but also those who rely upon these dams and reservoirs as a source for drinking water. Despite the importance of this program, staffing has recently been eliminated in the DEP Dam Safety Program. Therefore, PAWC recognizes the current underfunded situation and appreciates DEP's budgetary constraints in administering the dam safety program.

However, the **PAWC cannot support the proposed rulemaking in its current form** unless substantial changes are made to the fee structure and respectfully requests the inclusion of measures to streamline the permitting and project review process which should



PENNSYLVANIA
AMERICAN WATER

provide cost savings to the DEP. While DEP cannot eliminate or reduce any regulatory standard or enforcement activity, it can be more cost effective and efficient through greater reliance on pre-qualified consulting engineers, reduced paperwork, and quicker reviews. We welcome this opportunity to offer the following comments to the EQB for consideration.

1. Fee Equity

PAWC is not opposed to the concept of user fees paying for the resources that are consumed in regulating water utilities. However, such fees should bear a reasonable relationship to the actual cost of providing a service. Most of the proposals put forth for comment do not meet this standard in PAWC's opinion.

Specifically, the proposed regulations increase permitting fees associated with new dam construction, modification of existing dams, and certain waterway obstruction and encroachments. It also imposes new fees associated with annual dam registration, major and minor letter of amendment or authorization, design revisions, environmental assessments, transfer of dam permits, and general water obstructions and encroachments permits.

There are currently 3,324 regulated dams in the Commonwealth. Approximately 28% of these dams are owned by state, county, or municipal entities and are exempt from fees. The remaining 72% are owned by private dam owners, but only 645 of these or 19% of the total regulated dams in Pennsylvania are eligible for annual dam fees.

Comment: The proposed regulations impose over \$1.1 million of increased fees while exempting a vast majority of dam owners. These regulations exempt federal, state, county and municipal dam owners from any and all fees associated with the DEP Dam Safety and Waterway Management Program. While these owners benefit from DEP's oversight of their facilities, the cost of administering DEP's program is not borne by them. Instead, the costs are shifted to private dam owners such as PAWC. In as much as all dam owners benefit from the DEP's Dam Safety and Waterway's Management Program, all owners should pay their fair share for the services rendered by DEP. The proposed fee structure unfairly taxes private dam owners such as PAWC, and should be changed to equitably distribute program costs across all dam owners in accordance with the level of DEP effort utilized in administering the various programs.

2. Program Efficiency

The proposed rulemaking describes the increased staff requirements associated with the dam safety program and provides a basis for the increased fees associated with that program. Conversely, no detailed assessment has been provided in the proposed



PENNSYLVANIA
AMERICAN WATER

rulemaking to ascertain the reasonableness of the new and increased fees associated with the water obstruction and encroachment program and the administration of submerged land license agreements. This lack of supporting information to address improvements in operational efficiencies raises a concern that increased fees may not result in any increased performance.

Comment: Operational efficiencies could be gained in streamlining the permitting process when a special class of engineering consultant is utilized by the dam permittee/owner. This consultant would be prequalified by the Department as an industry expert; permit applications or other work products prepared by them would not require the same level of review by the Department. This would benefit both the Department (reduced work load) and the permittee/owner (shorter permitting time), and avoid duplication of effort. This approach could be further incentivized by applying a reduced fee structure when utilized. Maximizing the use of computer forms and uploads for supporting information to the DEP via electronic means would also provide efficiencies in the process.

3. Technical Comments

- a. In Annex A, Section 105.13 (c) (2), the description for the application fee and disturbance fee should specifically state that these are only for "Individual Water Obstruction and Encroachments." With the current wording, the applicant may believe that they must pay the administrative filing fee, disturbance fee, and the appropriate General Permit fee to obtain a General Permit.
- b. In the current Chapter 105 regulations, there is a definition for "Small Project." The "Small Project" is also described in Annex A, Section 105.13 (f) and (g). However, this type of authorization is no longer listed as a type of permit in the fee section. The small project designation should be deleted, as it is no longer an activity for permitting under the Water Obstructions and Encroachments section.
- c. A large number of dam rehabilitations involve the need to provide additional hydraulic spillway capacity. With large dam rehabilitation designs, a hydrologic and hydraulic review by the Department is usually required very early in the design process to assure that money is not wasted on duplicate efforts throughout design. How will this staged review approach be handled in accordance with the new fees?



PENNSYLVANIA
AMERICAN WATER

4. Conclusion

- a. PAWC recommends that a revised fee structure be developed that equitably distributes fees to all dam owners for support of the program
- b. PAWC also requests that a "cap" or maximum dollar amount be considered for permits, reviews, and any fees on an annual basis that would be considered by the DEP.
- c. We request that the program be reviewed to assure that all DEP operations are streamlined to maximize review efficiency while maintaining proper oversight of dam safety. Efficiencies could be gained by using "prequalified" engineers by the DEP where shorter DEP reviews could be present at a lower fee.
- d. We encourage the Department to enhance use of the electronic delivery of information required under the program.

PAW cannot support the Rule as it currently is being proposed.

We appreciate the opportunity to present comments on this proposed rulemaking and respectfully requests the EQB's consideration. We also appreciate and acknowledge the DEP for their outreach efforts and collaboration with advisory committees and private dam owners on this fee package.