

CHAPTER 105. DAM SAFETY AND WATERWAY MANAGEMENT

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Authority

The provisions of this Chapter 105 issued under section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P.S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402); sections 302 and 402 of the Flood Plain Management Act (32 P.S. §§ 679.302 and 679.402); and sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (32 P.S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17), unless otherwise noted.

Source

The provisions of this Chapter 105 rescinded and readopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843, unless otherwise noted. Immediately preceding text appears at serial pages (38843), (47970) to (47983), (38854) to (38859), (47990) to (47994), (38864), (38865), (47996) to (47998), (38868) to (38891) and (49597) to (49598).

Notes of Decisions

The Department regulations providing for exception to maximum peak particle velocity and noise requirements during surface mining blasting operations in close proximity to certain structures were unreasonable since they made a distinction between ownership of the structure at the location of the blasting. *Department of Environmental Resources v. Croner, Inc.*, 618 A.2d 1135 (Pa. Cmwlth. 1992).

Cross References

This chapter cited in 25 Pa. Code § 71.21 (relating to content of official plans); 25 Pa. Code § 77.459 (relating to stream diversions, water obstructions and encroachments); 25 Pa. Code § 77.523 (relating to water obstructions and encroachments); 25 Pa. Code § 77.527 (relating to sedimentation controls); 25 Pa. Code § 77.531 (relating to dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 77.631 (relating to general requirements); 25 Pa. Code § 78a.15 (relating to application requirements); 25 Pa. Code § 78a.60 (relating to discharge requirements); 25 Pa. Code § 78a.68 (relating to oil and gas gathering pipelines); 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines); 25 Pa. Code § 78a.68b (relating to well development pipelines for oil and gas operations); 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects); 25 Pa. Code § 87.71 (relating to stream diversions, water obstructions and encroachments); 25 Pa. Code § 87.73 (relating to dams, ponds, embankments and impoundments); 25 Pa. Code § 87.104 (relating to stream channel diversions); 25 Pa. Code § 87.108 (relating

to hydrologic balance: sedimentation ponds); 25 Pa. Code § 87.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 87.160 (relating to haul roads and access roads); 25 Pa. Code § 88.51 (relating to stream diversions, obstructions and encroachments); 25 Pa. Code § 88.53 (relating to dams, ponds, embankments and impoundments); 25 Pa. Code § 88.94 (relating to hydrologic balance: stream diversions); 25 Pa. Code § 88.102 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 88.103 (relating to hydrologic balance: coal processing waste dams and embankments); 25 Pa. Code § 88.138 (relating to haul roads and access roads: general); 25 Pa. Code § 88.189 (relating to hydrologic balance: stream diversions); 25 Pa. Code § 88.197 (relating to hydrologic balance: ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 88.198 (relating to hydrologic balance: coal processing waste dams and embankments); 25 Pa. Code § 88.231 (relating to haul roads and access roads: general); 25 Pa. Code § 88.294 (relating to hydrologic balance: stream diversions); 25 Pa. Code § 88.298 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 88.302 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 88.303 (relating to hydrologic balance: coal processing waste dams and embankments); 25 Pa. Code § 88.335 (relating to haul roads and access roads: general); 25 Pa. Code § 89.26 (relating to roads); 25 Pa. Code § 89.56 (relating to stream channel diversions); 25 Pa. Code § 89.111 (relating to large impoundments); 25 Pa. Code § 90.36 (relating to stream diversions, water obstructions and encroachments); 25 Pa. Code § 90.105 (relating to stream channel diversions); 25 Pa. Code § 90.108 (relating to hydrologic balance: sedimentation ponds); 25 Pa. Code § 90.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 90.122 (relating to coal refuse disposal); 25 Pa. Code § 90.134 (relating to haul roads and access roads: general); 25 Pa. Code § 90.202 (relating to general requirements); 25 Pa. Code § 90.205 (relating to alternatives analysis); 25 Pa. Code § 92a.11 (relating to other chapters applicable); 25 Pa. Code § 96.3 (relating to water quality protection requirements); 25 Pa. Code § 102.14 (relating to riparian buffer requirements); 25 Pa. Code § 236.128 (relating to natural resources); 25 Pa. Code § 236.147 (relating to surface geology and hydrology); 25 Pa. Code § 245.234 (relating to siting requirements); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.309 (relating to MSCs for surface water); 25 Pa. Code § 250.406 (relating to relationship to surface water quality requirements); 25 Pa. Code § 271.915 (relating to management practices); 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited); 25 Pa. Code § 273.213 (relating to access roads); 25 Pa. Code § 273.243 (relating to sedimentation ponds); 25 Pa. Code § 273.244 (relating to discharge structures); 25 Pa. Code § 277.202 (relating to areas where construction/demolition waste landfills are prohibited); 25 Pa. Code § 277.213 (relating to access roads); 25 Pa. Code § 277.242 (relating to soil erosion and sedimentation control); 25 Pa. Code § 277.243 (relating to sedimentation ponds); 25 Pa. Code § 277.244 (relating to discharge structures); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 279.213 (relating to access roads); 25 Pa. Code § 279.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.202 (relating to areas where general composting facilities are prohibited); 25 Pa. Code § 281.212 (relating to access roads); 25 Pa. Code § 281.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 281.253 (relating to sedimentation ponds); 25 Pa. Code § 283.213 (relating to access roads); 25 Pa. Code § 283.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 285.123 (relating to impoundments—general); 25 Pa. Code § 288.213 (relating to access roads); 25 Pa. Code § 288.243 (relating to sedimentation ponds); 25 Pa. Code § 288.244 (relating to discharge structures); 25 Pa. Code § 288.422 (relating to areas where Class I residual waste landfills are prohibited); 25 Pa. Code § 288.522 (relating to areas where Class II residual waste landfills are prohibited); 25 Pa. Code § 288.622 (relating to areas where Class III residual waste landfills are prohibited); 25 Pa. Code § 289.223 (relating to access roads); 25 Pa. Code § 289.253 (relating to sedimentation ponds); 25 Pa. Code § 289.254 (relating to discharge structures); 25 Pa. Code § 289.422 (relating to areas where Class I residual waste disposal impoundments are prohibited); 25 Pa. Code § 289.522 (relating to areas where Class II residual waste disposal impoundments are prohibited); 25 Pa. Code § 290.408 (relating to storage impoundments—scope); 25 Pa. Code § 290.409 (relating to storage impoundments—general requirements); 25 Pa. Code

§ 293.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 293.213 (relating to access roads); 25 Pa. Code § 293.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.202 (relating to areas where composting facilities are prohibited); 25 Pa. Code § 295.212 (relating to access roads); 25 Pa. Code § 295.252 (relating to soil erosion and sedimentation control); 25 Pa. Code § 295.253 (relating to sedimentation ponds); 25 Pa. Code § 297.202 (relating to areas where incinerators and other processing facilities are prohibited); 25 Pa. Code § 297.213 (relating to access roads); 25 Pa. Code § 297.232 (relating to soil erosion and sedimentation control); 25 Pa. Code § 299.141 (relating to scope); 25 Pa. Code § 299.142 (relating to general requirements); 58 Pa. Code § 51.61 (relating to permits required for disturbance of waterways or watersheds); and 67 Pa. Code § 459.10a (relating to bridge occupancy).

Subchapter A. GENERAL PROVISIONS

GENERAL

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GENERAL**§ 105.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27).

Along—Touching or contiguous; to be in contact with; to abut upon.

Appurtenant works—Structures or materials incident to or annexed to dams or water obstructions which are built or maintained in connection with the dams or water obstructions and are essential to their proper functioning. For dams, the term includes, but is not limited to:

- (i) Structures such as spillways, either in the dam or separate therefrom.
- (ii) Low level outlet works.
- (iii) Conduits such as tunnels, pipelines or penstocks through the dam or its abutments.

Archaeological site—A known site of archaeological significance based on the Comprehensive State Plan for Conservation of Archaeological Resources. The Comprehensive State Plan is available from the Historic and Museum Commission.

Body of water—A natural or artificial lake, pond, reservoir, swamp, marsh or wetland.

Bridge—A structure and its appurtenant works erected over the regulated waters of this Commonwealth.

Commercially navigable waters of the Delaware River and its navigable tributaries—Portions of the Delaware River from the Delaware border in the south to the railroad bridge at Morrisville in the north; the Schuylkill River below Fairmount Dam; Chester Creek below Ninth Street; Crum Creek below the Route 291 (Industrial Highway) Bridge; Darby Creek below 84th Street; Neshaminy Creek below the Route 13 Bridge; Pennypack Creek below the Frankford Avenue Bridge; and Ridley Creek below the Baltimore and Ohio Railroad Bridge in Chester.

Construct—To erect, build, place or deposit including preliminary preparation of a site for construction.

Contributory drainage area—Area upstream of a proposed or existing dam, water obstruction or encroachment that contributes runoff to a watercourse.

Course—The path taken by a stream, floodway or body of water.

Cross section—The area from the top of the bank to the top of the opposite bank of a stream or body of water as cut by a vertical plane passed at a right angle to the course of the stream.

Culvert—A structure with appurtenant works which carries a stream under or through an embankment or fill.

Current—The rate or velocity of flow of water in a stream, floodway or body of water.

Dam—An artificial barrier, together with its appurtenant works, constructed for the purpose of impounding or storing water or other fluid or semifluid, or a refuse bank, fill or structure for highway, railroad or other purposes which does or may impound water or other fluid or semifluid.

Design flood—A specified discharge for which the hydraulic capacity of a structure is designed.

Discharge of dredged material—An addition, deposit, disposal or discharge of dredged material into the regulated waters of this Commonwealth including, but not limited to, the addition of dredged material to a specific disposal site located in the regulated waters of this Commonwealth and the runoff or overflow of dredged material from a contained land or water disposal area. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products.

Discharge of fill material—

(i) An addition, deposit, disposal or discharge of fill into the regulated waters of this Commonwealth, including, but not limited to, the following types of construction:

(A) Fill that is necessary for the construction of a structure in a regulated water of this Commonwealth.

(B) A structure or impoundment requiring rock, sand, soil or other material for its construction.

(C) Site-development fills for recreational, industrial, commercial, residential and other uses.

(D) Causeways or roadfills.

(E) Dams and dikes.

(F) Artificial islands.

(G) Property protection or reclamation devices, such as riprap, groins, seawalls, breakwaters and revetments.

(H) Levees.

(I) Fill for structures such as sewage treatment facilities.

(J) Intake and outfall pipes associated with power plants and subaqueous utility lines.

(K) Artificial reefs.

(ii) The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products.

Dredge—To remove sand, gravel, mud or other materials from the beds of regulated waters of this Commonwealth.

Dredged material—A material that is excavated or dredged from the regulated waters of this Commonwealth.

EAP—Emergency Action Plan—A formal document that identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life.

(i) The EAP contains procedures and information to assist the dam owner in issuing early warning and notification messages to responsible downstream emergency management authorities of the emergency situation.

(ii) The EAP also contains inundation maps to show the emergency management authorities of the critical areas for action in case of an emergency.

Encroachment—A structure or activity which changes, expands or diminishes the course, current or cross section of a watercourse, floodway or body of water.

FEMA—The Federal Emergency Management Agency.

Fill—Sand, gravel, earth or other material placed or deposited to form an embankment or raise the elevation of the land surface. The term includes material used to replace an area with aquatic life with dry land or to change the bottom elevation of a regulated water of this Commonwealth.

Flood—A general but temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers or other waters of this Commonwealth.

Floodplain—The lands adjoining a river or stream that have been or may be expected to be inundated by flood waters in a 100-year frequency flood.

Floodway—The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed, absent evidence to the contrary, that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

Flowage easements—An acquired right of use of another person's land for water temporarily or permanently impounded by a dam or backwater from the installation, operation and maintenance of a water obstruction or encroachment.

Freeboard—The vertical distance between the water surface elevation experienced during the design flood and the crest elevation of a dam levee, flood-wall or other embankment.

Height of dam—The vertical measurement expressed in feet as measured from the downstream toe of the dam at its lowest point to the elevation of the top of the dam.

High hazard dam—A dam so located as to endanger populated areas downstream by its failure.

Hydrologic and hydraulic analysis—

(i) A study of the effects of an encroachment or water obstruction on the flow carrying capacity of a watercourse.

(ii) A study determining the watershed runoff into a dam and reservoir and the resulting routed outflow from the dam and its spillway structures.

Incremental dam breach analysis—A process to determine the highest runoff event during which a dam failure would cause a threat to life, health, property or the environment in areas below the dam in excess of the threat level caused by the same runoff event with no dam failure.

Inundation area—The land area subject to flood waters as the result of failure of a dam.

Letter of Amendment for dams—A letter from the Department amending an existing Dam Permit for major maintenance, repair or improvement projects which do not involve modification to the top-of-dam elevation or modification of the normal pool reservoir elevation.

Letter of Authorization for dams—A letter from the Department approving major maintenance, repair or improvement projects which do not involve modification to the top-of-dam elevation or modification of the normal pool reservoir elevation of a dam which has not been previously permitted by the Department and meets the waiver of permit requirements under § 105.12(b)(1) or (2) (relating to waiver of permit requirements).

Levee—An earth embankment or ridge constructed along a water course or body of water to confine water within prescribed limits; the term is also known as a dike.

Limited Power and Water Supply Act—The act of June 14, 1923 (P. L. 700, No. 293) (32 P. S. §§ 621—625); and the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. §§ 591—600), regarding Limited Power Permits and Limited Water Supply Permits from the Water Supply Commission of Pennsylvania and the conditions thereof, to the flooding and use by holders of Limited Power Permits of lands owned by the Commonwealth, to the unlawful use for water or steam power developments of dams and changes in streams hereafter constructed or made otherwise than under Limited Power Permits, and to proceedings for the enforcement of this act.

Maintenance dredging—Periodic dredging conducted to accomplish one or more of the following purposes:

- (i) Maintain adequate depths for navigation.
- (ii) Assure proper passage of ice and flood flows.
- (iii) Preserve the safety, stability and proper operation of the dam, water obstruction or encroachment.
- (iv) Restore the natural or previously permitted reservoir capacity.
- (v) Restore flood protection projects to original design dimensions.

Major dam design revision—A revision to a previously approved or permitted dam design which requires either the Department's review or modeling of a revised hydrologic and hydraulic analysis of the dam and reservoir's capacity to pass or store, or both, the required spillway design flood; the Department's review or modeling of an analysis to determine the ability of the dam's spillway or decant to dewater after runoff events; or the Department's review or modeling of a stability analysis of the revised dam design.

Maximum credible earthquake—A seismic event with a 2% probability of exceedance in 50 years.

Mitigation—

- (i) An action undertaken to accomplish one or more of the following:
 - (A) Avoid and minimize impacts by limiting the degree or magnitude of the action and its implementation.

(B) Rectify the impact by repairing, rehabilitating or restoring the impacted environment.

(C) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.

(ii) If the impact cannot be eliminated by following clauses (A)—(C), compensate for the impact by replacing the environment impacted by the project or by providing substitute resources or environments.

Normal pool elevation—

(i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.

(ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control or dam crest which maintains the body of water at a specified height.

(iii) This term does not apply to wetlands.

100-year frequency flood—The flood magnitude expected to be equaled or exceeded on the average of once in 100 years; it may also be expressed as the flood having a 1.0% chance of being equaled or exceeded in a given year.

Operation—Elements of the use, control and functioning of a dam, water obstruction or encroachment during the lifetime of the dam, water obstruction or encroachment, including its removal, which may affect primarily the storage, release or flow of water; the structural safety of a dam, water obstruction or encroachment; or navigation, with due consideration of the other purposes of the act.

Ordinary low water mark—The water surface elevation at ordinary stages of low water, unaffected by drought and unchanged by artificial means.

Owner—A person who owns, controls, operates, maintains or manages a dam or reservoir, water obstruction or encroachment.

PMF—Probable maximum flood—The flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in an area. The PMF is derived from the probable maximum precipitation (PMP) as determined on the basis of the most recent data available from the National Oceanographic and Atmospheric Administration (NOAA).

Parcel—A portion of land formally set forth and described in a conveyance.

Person—

(i) A natural person, partnership, association, corporation, public utility, municipality, municipal authority, political subdivision of this Commonwealth, receiver or trustee and a department, board, commission or authority of the Commonwealth.

(ii) Whenever used in a section prescribing and imposing a penalty or sanction, the term includes the members of an association and the officers of a corporation, municipality or municipal authority.

Political subdivision—A county, city, borough, incorporated town, township, school district, authority or other governmental unit or a combination thereof acting jointly.

Public service corporation or public utility—A corporation, association or other corporate body having the powers and privileges of corporations not possessed by individuals or partnerships which entity renders a public utility service. The term does not include a municipality or municipal authority.

Public service line—The term includes, but is not limited to, electric transmission lines, gas pipelines, telephone lines, water lines, railroad trackage and other facilities owned or operated by public service corporations.

Public utility service—The rendering of one or more of the following services for the public:

- (i) Gas, electricity or steam production, generation, transmission or distribution.
- (ii) Water diversion, pumping, impoundment or distribution.
- (iii) Railroad transportation of passengers or property.
- (iv) Operation of a canal, turnpike, tunnel, bridge, wharf or similar structure.
- (v) Transportation of natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration or other fluid substances by pipeline or conduit.
- (vi) Telephone or telegraph communications.
- (vii) Sewage collection, treatment or disposal.

Regulated waters of this Commonwealth—Watercourses, streams or bodies of water and their floodways wholly or partly within or forming part of the boundary of this Commonwealth.

Replacement—The construction of a new wetland or restoration of a previously destroyed wetland, or both.

Reservoir filling plan—A plan that sets a schedule for the initial filling of the reservoir behind a new dam or the refilling of a reservoir after the rehabilitation of an existing dam.

Safety—Security from the risk or threat of significant loss or injury to life, health, property and the environment.

Small projects—Water obstructions or encroachments located in a stream or floodplain which will have an insignificant impact on safety and protection of life, health, property and the environment.

Spillway—A device which safely conveys the design flood of a dam without endangering the dam's safety or integrity.

Storage capacity—The volume as expressed in acre-feet of the impounded water to the maximum storage level, that is, the top of the dam.

Stormwater management facilities—Manmade measures designed and constructed to convey stormwater runoff away from structures or improved land uses, or to control, detain or manage stormwater runoff to avoid or reduce

downstream damages. The term includes, but is not limited to, transportation and related facility drainage systems and manmade stormwater detention basins. The term does not include replacement wetlands or major dams and reservoirs constructed for water supply, recreation, river basin flood control or other regional or basin-wide purposes.

Stream—A watercourse.

Stream crossings—A pipeline, aerial cable or similar structure which is placed in, along, under, across or over the regulated waters of this Commonwealth.

Stream enclosure—A bridge, culvert or other structure in excess of 100 feet in length upstream to downstream which encloses a regulated water of this Commonwealth.

Submerged lands of this Commonwealth—Waters and permanently or periodically inundated lands owned by the Commonwealth, including lands in the beds of navigable lakes and rivers and beds of streams declared public highways which are owned and held in trust by the Commonwealth.

U.S.G.S.—United States Geological Survey.

Watercourse—A channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

Water obstruction—

(i) A dike, bridge, culvert, wall, wingwall, fill, pier, wharf, embankment, abutment or other structure located in, along or across or projecting into a watercourse, floodway or body of water.

(ii) In the case of ponds, lakes and reservoirs, a water obstruction is considered to be in or along the body of water if, at normal pool elevation, the water obstruction is either in the water or adjacent to and abutting the water's edge.

Water Obstructions Act—The act of June 25, 1913 (P.L. 555, No. 355) (32 P.S. §§ 681—691), repealed by section 27 of the act of October 23, 1979 (P.L. 204, No. 70) (32 P.S. § 693.27).

Wetland functions—Include, but are not limited to, the following:

(i) Serving natural biological functions, including food chain production; general habitat; and nesting, spawning, rearing and resting sites for aquatic or land species.

(ii) Providing areas for study of the environment or as sanctuaries or refuges.

(iii) Maintaining natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, natural water filtration processes, current patterns or other environmental characteristics.

(iv) Shielding other areas from wave action, erosion or storm damage.

(v) Serving as a storage area for storm and flood waters.

(vi) Providing a groundwater discharge area that maintains minimum baseflows.

- (vii) Serving as a prime natural recharge area where surface water and groundwater are directly interconnected.
- (viii) Preventing pollution.
- (ix) Providing recreation.

Wetlands—Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

Wild trout streams—A stream identified as supporting naturally reproducing trout populations by the Fish and Boat Commission under 58 Pa. Code § 57.11 (relating to listing of wild trout streams). For a list of wild trout streams, contact the Fish and Boat Commission, www.fish.state.pa.us.

Authority

The provisions of this § 105.1 amended under the Dam and Safety Encroachments Act (32 P.S. §§ 693.1–693.27); The Clean Streams Law (35 P.S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P.L. 704, No. 294) (32 P.S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P.S. §§ 679.101–679.601).

Source

The provisions of this § 105.1 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended October 6, 1978, effective October 7, 1978, 8 Pa.B. 2723; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended February 18, 1983, effective February 19, 1983, 13 Pa.B. 781; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (352704), (207661) to (207666) and (313645).

Cross References

This section cited in 25 Pa. Code § 78a.1 (relating to definitions); 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines); 25 Pa. Code § 96.3 (relating to water quality protection requirements); 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.20a (relating to wetland replacement criteria); and 25 Pa. Code § 105.452 (relating to status of prior converted cropland—statement of policy).

§ 105.2. Purposes.

The purposes of this chapter are to:

- (1) Provide for the comprehensive regulation and supervision of dams, reservoirs, water obstructions and encroachments in the Commonwealth in order to protect the health, safety, welfare and property of the people.
- (2) Assure proper planning, design, construction, maintenance, monitoring and supervision of dams and reservoirs, including preventive measures necessary to provide an adequate margin of safety.

(3) Assure proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments, in order to prevent unreasonable interference with water flow and to protect navigation.

(4) Protect the natural resources, environmental rights and values secured by PA. CONST. art. I, § 27 and conserve and protect the water quality, natural regime and carrying capacity of watercourses.

Source

The provisions of this § 105.2 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 27, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47975).

§ 105.3. Scope.

(a) The following structures or activities are regulated under the act and section 302 of the Flood Plain Management Act (32 P.S. § 679.302):

(1) Dams on a natural or artificial watercourse, other than those licensed under the Federal Power Act (16 U.S.C.A. §§ 791a—825s), where one or more of the following occur:

(i) The contributory drainage area exceeds 100 acres.

(ii) The greatest depth of water measured by upstream toe of the dam at maximum storage elevation exceeds 15 feet.

(iii) The impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(2) Dams used for the storage of water not located on a watercourse and which have no contributory drainage where the greatest depth of water measured at upstream toe of the dam at maximum storage elevation exceeds 15 feet and the impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(3) Dams used for the storage of fluids or semifluids other than water, the escape of which may result in air, water or land pollution or in danger to persons or property.

(4) Water obstructions and encroachments other than dams located in, along or across, or projecting into a watercourse, floodway or body of water, whether temporary or permanent.

(5) Flood control projects constructed, owned or maintained by a governmental unit.

(b) For the purposes of this chapter, the Department's jurisdiction in and along Lake Erie will be defined by the high water elevation of 572.8 feet International Great Lakes Datum (IGLD) and low water elevation of 568.6 IGLD. Dams, water obstructions and encroachments constructed between elevation 572.8 IGLD and elevation 568.6 IGLD require a permit under section 6 of the act (32 P.S. § 693.6). Dams, water obstructions and encroachments constructed lakeward of elevation 568.6 IGLD require both a permit under section 6 of the act and a Submerged Lands License Agreement under section 15 of the act (32 P.S. § 693.15).

(c) The environmental assessment conducted under this chapter is applicable to dams, water obstructions and encroachments for which a permit or approval is required under this chapter.

Authority

The provisions of this § 105.3 amended under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1–693.27); The Clean Streams Law (35 P.S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P.L. 704, No. 294) (32 P.S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P.S. §§ 679.101–679.601).

Source

The provisions of this § 105.3 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended October 6, 1978, effective October 7, 1978, 8 Pa.B. 2723; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (141412) and (117643).

Notes of Decisions

Fill site must be sufficiently close to wetlands so as to be “along” them in order to invoke jurisdiction in action under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1–693.27). *Game Commission v. Department of Environmental Resources*, 509 A.2d 877 (Pa. Cmwlth. 1986); appeal granted 521 A.2d 934 (Pa. 1987); affirmed 555 A.2d 812 (Pa. 1989).

Cross References

This section cited in 25 Pa. Code § 78a.1 (relating to definitions); 25 Pa. Code § 105.71 (relating to scope); 25 Pa. Code § 105.141 (relating to scope); 25 Pa. Code § 105.181 (relating to scope); 25 Pa. Code § 105.221 (relating to scope); 25 Pa. Code § 105.251 (relating to scope); 25 Pa. Code § 105.291 (relating to scope); 25 Pa. Code § 105.321 (relating to scope); 25 Pa. Code § 105.361 (relating to scope); and 25 Pa. Code § 105.391 (relating to scope).

§ 105.4. Delegations to local agencies.

(a) Under section 17 of the act (32 P.S. § 693.17) and subject to this section, the Department may by written agreement delegate to a county conservation district or other county agency one or more of its regulatory functions including enforcement and the power to permit, inspect and monitor specified categories of water obstructions and encroachments.

(b) No delegation may be made of the authority to issue permits for a water obstruction or encroachment constructed, owned or maintained by the Commonwealth, a political subdivision or a public utility. Delegations may be made of the powers to inspect and monitor the activities, if the Department retains final authority to approve or disapprove permits, and concurrent authority to inspect, monitor and enforce the act.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this chapter and to exercise other powers and duties otherwise vested in the Department to implement the act with respect to the categories of water obstructions and encroachments covered by the delegation.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated agency.

- (2) Specify the categories of water obstructions and encroachment activities to be covered by the delegated agency.
- (3) Provide for the commitment by the delegated agency of sufficient trained staff and resources to perform the powers and duties to be delegated.
- (4) Require the delegated agency to maintain records of activities performed under the delegation.
- (5) Provide for monitoring and supervision by the Department of performance by the delegated agency of the functions delegated under the agreement.
- (e) A permit for a water obstruction or encroachment issued by a delegated agency is subject to review by the Department, unless the right of review is waived by the Department. A permit issued by a delegated agency shall become effective 30 days following the receipt of notice by the Department of issuance, unless the permit is disapproved by the Department or an appeal is filed with the Department under section 17 of the act.
- (f) When the Department delegates one or more of its regulatory functions to a local agency, the Department will retain the concurrent power to inspect and monitor categories of water obstructions and encroachments and to enforce the act and this chapter.

Authority

The provisions of this § 105.4 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.4 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (336611) to (336612).

Cross References

This section cited in 25 Pa. Code § 105.14 (relating to review of applications); and 25 Pa. Code § 105.446 (relating to procedure for issuance).

PERMIT APPLICATIONS

§ 105.11. Permit requirements.

- (a) A person may not construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment without first obtaining a written permit from the Department.
- (b) An existing dam, water obstruction or encroachment constructed under a license or permit issued in compliance with the act of June 8, 1907 (P. L. 496, No. 322) (53 P. S. § 16834 note and 55 P. S. §§ 332.1 and 332.2) or the Water Obstructions Act, shall be deemed to comply with the construction and operating permit requirements of this section. These projects shall, after September 27, 1980, comply with the operating, maintenance, monitoring and other requirements of this chapter.

(c) The owner of an existing dam, water obstruction or encroachment who does not hold a permit issued under the act of June 8, 1907 (P. L. 496, No. 322) or the Water Obstructions Act shall apply for and receive a permit to operate and maintain the facility under the act on or before January 1, 1981. For purposes of this subsection, a limited power permit issued under the Limited Power and Water Supply Act will be deemed to have been issued under the Water Obstructions Act. These projects shall comply with the operating, maintenance, monitoring and other requirements established under the act.

(d) A permit issued by the Department after July 1, 1979, for the construction and operation of a water obstruction or encroachment will incorporate authorization for normal repairs and maintenance of permitted structures conducted within the original specifications for the water obstruction or encroachment. A repair or maintenance involving modification of the water obstruction or encroachment from its original specifications and a repair or reconstruction involving a substantial portion of the structure shall require the prior written permit of the Department under subsection (a).

(e) A water obstruction or encroachment or modification thereof, constructed or authorized pursuant to the terms of a permit issued under this chapter prior to October 12, 1991, will be deemed to comply with the construction permit requirements of this subchapter. These projects must, after October 12, 1991, comply with the operating, maintenance, monitoring and other requirements of this chapter.

(f) A dam or modification thereof, constructed or authorized pursuant to the terms of a permit issued under this chapter prior to January 8, 2011, will be deemed to comply with the construction permit requirements of this subchapter. These projects must, after January 8, 2011, comply with the operating, maintenance, monitoring and other requirements of this chapter.

Authority

The provisions of this § 105.11 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.11 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (336612) to (336613).

Notes of Decisions

Cause of Action

A builder's allegation that the township approved a subdivision plan in the absence of a permit from the Department of Environmental Protection is not a cognizable cause of action because it is the Department which enforces this regulation, not the local agency; furthermore, this regulation does not create a private cause of action. *Shafer v. Waite*, 43 D. & C. 4th 91 (1999).

Failure to Obtain Permit

Appellant, who placed fill on his land without a permit which constituted an unlawful encroachment on wetlands in violation of the law, could not claim Department of Environment Protection's issuing of compliance order effected an unconstitutional, regulatory taking of property rights because Appellant failed to apply for a permit. *Baehler v. Department of Environmental Protection*, 863 A.2d 57, 59–60 (Pa. Cmwlth. 2004).

Cross References

This section cited in 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.52 (relating to inspection); 25 Pa. Code § 105.53 (relating to inspections by permittees or owners and inspection reports); and 25 Pa. Code § 105.443 (relating to nature of a general permit; substitution for individual applications and permits).

§ 105.12. Waiver of permit requirements.

(a) Under section 7 of the act (32 P. S. § 693.7), the requirements for a permit are waived for the following structures or activities, regardless of when commenced. If the Department upon complaint or investigation finds that a structure or activity which is eligible for a waiver, has a significant effect upon safety or the protection of life, health, property or the environment, the Department may require the owner of the structure to apply for and obtain a permit under this chapter.

(1) A dam not exceeding 3 feet in height in a stream not exceeding 50 feet in width, except wild trout streams designated by the Fish and Boat Commission.

(2) A water obstruction in a stream or floodway with a drainage area of 100 acres or less. This waiver does not apply to wetlands located in the floodway.

(3) An aerial crossing of a nonnavigable stream or wetland by electric, telephone or communications lines which are not located in a Federal wilderness area or watercourse or body of water designated as a wild or scenic river under the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287) or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29). This waiver applies to one or more wires attached aboveground to single poles. This does not apply to the maintenance and construction of towers, roads or other water obstructions or encroachments.

(4) A dam subject to the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2 (relating to water, sediment or slurry impoundments and impounding structures; identification; and water, sediment, or slurry impoundments or impounding structures; minimum plan requirements; changes or modifications; certification), if the Department determines on the basis of preliminary data submitted by the applicant that the dam is of Size Classification C and Hazard Potential Classification 3 as defined in § 105.91 (relating to classification of dams and reservoirs) and is not located in a watercourse or body of water designated as a wild and scenic river under the Wild and Scenic Rivers Act of 1968 or the Pennsylvania Scenic Rivers Act.

(5) A water obstruction or encroachment located in, along, across or projecting into a wetland or impoundment, constructed and maintained for the purpose of treating acid mine drainage, sewage or other waste, if the wetland or impoundment is a treatment facility constructed under a valid permit issued by the Department under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326), the Solid Waste Management Act (35

P. S. §§ 6018.101—6018.1003), the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

(6) A water obstruction or encroachment located in, along, across or projecting into a stormwater management facility or an erosion and sedimentation pollution control facility which meets the requirements in Chapter 102 (relating to erosion and sediment control), if the facility was constructed and continues to be maintained for the designated purpose.

(7) Maintenance of field drainage systems that were constructed and continue to be used for crop production. Crop production includes:

- (i) Plowing, cultivating, seeding, grazing or harvesting.
- (ii) Crop rotation.
- (iii) Government set aside programs.

(8) Plowing, cultivating, seeding or harvesting for crop production.

(9) Construction and maintenance of ford crossings of streams for individual private personal use which require only grading of banks for approach roads and the placement of not more than 12 inches of gravel for roadway stability. Fords may not be used for commercial purposes and shall cross the regulated waters of this Commonwealth in the most direct manner. This waiver does not apply in exceptional value streams as listed under Chapter 93 (relating to water quality standards) or in wild trout streams.

(10) A navigational aid or marker, buoy, float, ramp or other device or structure for which a permit has been issued by the Fish and Boat Commission under 30 Pa.C.S. § 5123(a)(7) (relating to general boating regulations).

(11) The removal of abandoned dams, water obstructions and encroachments if the Department determines in writing on the basis of data, information or plans submitted by the applicant that the removal of the abandoned dam water obstruction or encroachment cannot imperil life or property, have significant effect on coastal resources or have an adverse impact on the environment, and the plans provide for restoration and stabilization of the project area.

(12) The construction, operation or removal of staff gages, water recording devices, water quality testing devices, including, but not limited to, sensors, intake tubes, weirs and small buildings which contain required instruments and similar scientific structures.

(13) A bridge or culvert purchased from an operating railroad company subsequent to the abandonment of the railroad line, track, spur or branch pursuant to the approval of the Interstate Commerce Commission. Major maintenance or reconstruction, or stream dredging may not be undertaken until the new owner obtains a permit under this chapter.

(14) The maintenance of an artificial pond or reservoir to its original storage capacity where:

- (i) The contributory drainage area is less than or equal to 100 acres.

(ii) The greatest depth of water at maximum storage elevation is less than or equal to 15 feet.

(iii) The impounding capacity at maximum storage elevation is less than or equal to 50 acre feet.

(15) The construction and maintenance of an encroachment or water obstruction on an abandoned mining site, where the Department has issued a notice of intent to forfeit the bond for a mining activity permitted after July 1982.

(16) Restoration activities undertaken and conducted pursuant to a restoration plan which has been approved, in writing, by the Department.

(b) The requirements for a permit for existing structures or activities, as provided in section 6(c) of the act (32 P. S. § 693.6(c)), are waived for the following structures or activities, if construction was completed prior to July 1, 1979. If the Department upon complaint or investigation finds that a structure or activity which is eligible for a waiver, has a significant effect upon safety or the protection of life, health, property or the environment, the Department may require the owner of the structure or activity to apply for and obtain a permit under this chapter.

(1) A dam not exceeding 5 feet in height in a nonnavigable stream operated and maintained for water supply purposes.

(2) A dam which the Department determines, on the basis of preliminary data submitted by the applicant, is of Size Category C and Hazard Potential Category 4, as defined in § 105.91 (relating to classification of dams and reservoirs) and does not have a significant effect on coastal resources or an adverse impact on the environment.

(3) A fill not located on navigable lakes and navigable rivers.

(4) A streambank retaining device.

(5) A stream crossing other than a crossing located on submerged lands of this Commonwealth and a crossing by pipelines for conveyance of petroleum products and gas.

(6) An outfall, headwall or water intake structure.

(7) A culvert, bridge or stream enclosure on a watercourse where the drainage area above the culvert, bridge or stream enclosure is 5 square miles or less.

(c) Structures and activities shall meet the construction, operation, maintenance, monitoring and other requirements of this chapter. No other permits which may be required under a law other than the act are waived by this section.

Authority

The provisions of this § 105.12 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.12 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (336614), (266255) to (266256) and (207675).

Cross References

This section cited in 25 Pa. Code § 105.1 (relating to definitions); 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.15 (relating to environmental assessment); 25 Pa. Code § 105.21a (relating to public notice); 25 Pa. Code § 105.41 (relating to notices and reports); 25 Pa. Code § 105.71 (relating to scope); 25 Pa. Code § 105.89 (relating to Letters of Amendment and Letters of Authorization for modification of dams and reservoirs); 25 Pa. Code § 105.141 (relating to scope); 25 Pa. Code § 105.181 (relating to scope); 25 Pa. Code § 105.221 (relating to scope); 25 Pa. Code § 105.251 (relating to scope); 25 Pa. Code § 105.291 (relating to scope); 25 Pa. Code § 105.321 (relating to scope); 25 Pa. Code § 105.361 (relating to scope); and 25 Pa. Code § 105.391 (relating to scope).

§ 105.13. Regulated activities—information and fees.

(a) Application for permits under this chapter shall be submitted to the Department, in writing, upon forms provided by the Department. Applicants are encouraged to request a meeting with the Department prior to submission of their applications. An application for a permit, registration for a general permit, request for permit amendment, major or minor letter of amendment or authorization, major dam design revision, environmental assessments, permit transfer or annual dam registration under this chapter shall be accompanied by a check for the applicable fees except for submissions by Federal, State, county or municipal agencies or a municipal authority.

(b) Fees collected by the Dam Safety Program and Water Obstruction and Encroachment Program, including delegations to local agencies, 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.

(c) The fees are as follows:

(1) *Dams based on size and hazard potential category as defined in § 105.91 (relating to classification of dams and reservoirs).*

(i) *Dam permit application fees for new dam construction.*

	<i>Hazard Potential Category</i>			
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Size Category</i>				
A	\$26,500	\$26,500	\$25,500	\$23,500
B	\$19,000	\$19,000	\$18,500	\$17,000
C	\$10,500	\$10,500	\$10,000	\$8,000

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.

(B) Staged construction requires an additional 90% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(ii) *Dam permit application fees for modification of existing dams.*

	<i>Hazard Potential Category</i>			
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Size Category</i>				
A	\$18,500	\$18,500	\$18,500	\$18,000
B	\$12,000	\$12,000	\$12,000	\$11,500
C	\$7,500	\$7,500	\$7,500	\$7,500

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.

(B) Staged construction requires an additional 85% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

(iii) *Dam permit application fees for operation and maintenance of existing dams.*

	<i>Hazard Potential Category</i>			
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Size Category</i>				
A	\$12,500	\$12,500	\$12,000	\$10,000
B	\$10,000	\$10,000	\$9,500	\$8,500
C	\$7,000	\$7,000	\$6,500	\$6,000

(iv) *Letter of amendment or authorization review fees.*

<i>Size Category</i>	<i>Major Project</i>	<i>Minor Project</i>
A	\$14,700	\$1,300
B	\$8,700	\$1,000
C	\$4,400	\$650

(A) The estimated total construction cost of the project shall be provided to the Department with the submission of the letter of amendment or authorization request.

(B) A major project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 (relating to definitions) whose total construction costs equal or exceed \$250,000. If, after completion of the project, the total construction costs do not exceed \$250,000, the Department will refund the difference between major and minor project review fees upon approval of the completion certification as required under § 105.108 (relating to completion, certification and project costs).

(C) A minor project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 whose total construction costs are less than \$250,000. If, after completion of the project, the total construction costs equal or exceed \$250,000, the difference in review fees between major and minor projects must be submitted to the Department with the completion certification as required under § 105.108.

(v) *Major dam design revision review fees based on major dam design revision as defined in § 105.1.*

<i>Size Category</i>	<i>Fee</i>
A	\$4,700
B	\$3,200
C	\$1,700

(vi) *Environmental assessment review fees for nonjurisdictional dams, letters of amendment or letters of authorization.*

<i>Size Category</i>	<i>Fee</i>
A	\$1,400
B	\$1,000
C	\$900

(vii) *Transfer of dam permit as required under § 105.25 (relating to transfer of permits).*

<i>Type of Dam Permit Transfer</i>	<i>Fee</i>
No Proof of Financial Responsibility Required	\$550
Proof of Financial Responsibility Required	\$300

(viii) *Annual dam registration fees as required under § 105.131a (relating to annual dam registration).*

	<i>Hazard Potential Category</i>			
	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Size Category</i>				
A	\$1,500	\$1,500	\$800	\$0
B	\$1,500	\$1,500	\$800	\$0
C	\$1,500	\$1,500	\$800	\$0

(A) Annual registration fees are due by July 1 of each year.

(B) If the annual registration fee is not received by July 1, dams regulated by the Department are subject to a temporary suspension of the dam permit, if applicable, and the owner or operator may be required to drain the reservoir at a rate not to exceed 1 foot per day.

(C) If the annual registration fee is not received by July 1, dams regulated by the Department qualifying for waiver of permit provisions in § 105.12 (relating to waiver of permit requirements) may be subject to a temporary draining of the reservoir at a rate not to exceed 1 foot per day.

(D) If annual registration fees are not remitted as specified, interest will accrue on the entire amount from the original date payment was due at a rate of 12% per annum until payment is remitted.

(2) *Water obstructions and encroachments.*

<i>Fee Title/Type</i>		<i>Fee</i>
<i>Water Obstruction and Encroachment Permit Application Fees</i>		
Joint application	Administrative filing fee (* plus applicable disturbance review fees)	\$1,750
<i>General Permit</i>		<i>Registration Fees</i>
GP-1	Fish habitat enhancement structures	\$50
GP-2	Small docks and boat launching ramps	\$175
GP-3	Bank rehabilitation, bank protection and gravel bar removal	\$250
GP-4	Intake and outfall structures	\$200
GP-5	Utility line stream crossings	\$250
GP-6	Agricultural crossings and ramps	\$50
GP-7	Minor road crossings	\$350
GP-8	Temporary road crossings	\$175

<i>Fee Title/Type</i>		<i>Fee</i>
GP-9	Agricultural activities	\$50
GP-10	Abandoned mine reclamation	\$500
GP-11*	Maintenance, testing, repair, rehabilitation or replacement of water obstructions and encroachments	\$750
GP-15*	Private residential construction in wetlands	\$750
* Disturbance review fees added to application, registration or other fees where applicable		
Permanent disturbance	Waterways, floodways/floodplains and wetlands per tenth acre, minimum 0.1 acre	\$800
Temporary disturbance	Waterways, floodways/floodplains and wetlands per tenth acre, minimum 0.1 acre	\$400
<i>Other Fees not Added to Initial Application or Registration Fees</i>		
	Environmental assessment for waived activities (§ 105.12(a)(11) and (16) per § 105.15(d))	\$500
	Major amendment to Water Obstruction and Encroachment Permit*	\$500
	Minor amendment to Water Obstruction and Encroachment Permit	\$250
	Transfer of permit with Submerged Lands License Agreement (SLLA)	\$200
	Transfer of permit without SLLA	\$100

- (i) Small projects require a joint application for a Water Obstruction and Encroachment Permit and follow the same fee requirements.
- (ii) Additional General Permit registration requirements are as follows:
- (A) General Permit registration for GP-11 and GP-15 also requires disturbance review fees when applicable.
- (B) Conservation districts may charge additional review fees in accordance with section 9(13) of the Conservation District Law (3 P. S. § 857(13)).
- (C) Registration fees for coverage under a General Permit issued under Subchapter L (relating to general permits) not otherwise specified in this section will be established in the General Permit. The applicability of the disturbance review fees will also be established in the General Permit.
- (iii) Disturbance review fees are calculated by individually adding all of the permanent and temporary impacts to waterways, floodways, floodplains and bodies of water including wetlands to the next highest tenth acre and multiplying the permanent and temporary impacts by the respective fees and then these amounts are added to the other applicable fees.

(A) The disturbance review fees are added to the joint application administrative filing fee, applicable General Permit registration fees and major amendments to Water Obstruction and Encroachment Permits.

(B) If a permit applicant is subject to payment of royalties to the Commonwealth under 58 Pa. Code § 51.92 (relating to royalty rates), the disturbance review fees are not required for the area of disturbance subject to the royalty payment.

(iv) Environmental Assessment for waived activities fee applies to use of the waivers at § 105.12(a)(11) and (16). Environmental Assessment for these waivers is required under § 105.15(d) (relating to environmental assessment).

(v) A minor amendment of an existing Water Obstruction and Encroachment Permit, permit authorization or water quality certificate before its expiration is an amendment that does not require an extensive review and evaluation and includes the following:

(A) Changes that do not substantially alter permit conditions, increase the amount of surface water impacts, increase the size of the operation or reduce the capacity of the facility to protect human health, safety or the environment.

(B) Requests for time extensions.

(C) Aquatic resource mitigation credit transfers from an approved mitigation bank.

(vi) A major amendment of an existing Water Obstruction and Encroachment Permit, permit authorization or water quality certificate before its expiration is an amendment that is not a minor amendment.

(d) A single application may be submitted or a single permit may be issued for multiple structures and activities which are part of a single project or facility or part of related projects and facilities, located in a single county, constructed, operated or maintained by the same persons. When a single application covers multiple structures or activities other than a single structure and related maintenance dredging, the application fee shall be the sum of fees in subsection (c) for the applicable structures and activities. Water obstructions and encroachments located within a single county shall be treated as a single structure or activity but the application fee shall be the sum of fees for each water obstruction and encroachment.

(e) An application for or a registration of a permit must be accompanied by information, maps, plans, specifications, design analyses, test reports and other data specifically required under this chapter and additional information as required under the Department to determine compliance with this chapter.

(1) For all permit applications, except small projects, this information includes, but is not limited to, the following:

(i) A site plan. A site plan must include:

- (A) A complete demarcation of the floodplains and regulated waters of this Commonwealth on the site. The wetlands shall be identified and delineated in accordance with the Department's Wetland Delineation Policy in § 105.451 (relating to identification and delineation of wetlands—statement of policy).
- (B) Existing roads, utility lines, lots, other manmade structures and natural features such as contour lines and drainage patterns.
- (C) Proposed structures or activities included in the project, which shall be identified by labeling.
- (D) A scale of one inch equals 200 feet or larger.
- (E) A north arrow.
- (F) The name of the persons who prepared the plan, and the date and name of the applicants.
- (G) A cross sectional view of the regulated waters to be impacted before and after the structure or activity is constructed.
- (ii) A location map. The location map must be of a scale factor of 1:24000 (standard U.S.G.S. Topographic Map). The location map must show all natural features including the names and boundaries of regulated waters of this Commonwealth, natural areas, wildlife sanctuaries, natural landmarks, political boundaries, locations of public water supplies and other geographical or physical features including cultural, archeological and historical landmarks within 1 mile of the site. U.S.G.S. maps may be reviewed at County Conservation District Offices or obtained by writing to United States Geological Survey Map Distribution, Box 25286 Federal Center, Denver, CO 80225.
- (iii) Project description. A narrative of the project shall be provided which includes, but is not limited to:
- (A) A description of the proposed structure or activity.
- (B) The project purpose.
- (C) The effect the project will have on public health, safety or the environment.
- (D) A statement on water dependency. A project is water dependent when the project requires access or proximity to or siting within water to fulfill the basic purposes of the project.
- (iv) Color photographs. Color photographs of the proposed site shall be submitted. The photos must accurately depict the project area and provide a relative scale of the project to the surrounding area and a map showing the location and orientation of each photograph.
- (v) Stormwater management analysis. If a watershed stormwater management plan has been prepared or adopted under the Storm Water Management Act (32 P. S. §§ 680.1—680.17), an analysis of the project's impact on the Stormwater Management Plan and a letter from the county or municipality commenting on the analysis shall be included.

(vi) Floodplain management analysis. If the proposed dam, water obstruction or encroachment is located within a floodway delineated on a FEMA map, include an analysis of the project's impact on the floodway delineation and water surface profiles and a letter from the municipality commenting on the analysis.

(vii) Risk assessment. If the stormwater or the floodplain management analysis conducted in subparagraphs (v) and (vi) indicates increases in peak rates of runoff or flood elevations, include a description of property and land uses which may be affected and an analysis of the degree of increased risk to life, property and the environment.

(viii) Alternatives analysis. A detailed analysis of alternatives to the proposed action, including alternative locations, routings or designs to avoid or minimize adverse environmental impacts.

(ix) Mitigation plan. Actions to be taken in accordance with the definition of mitigation in this chapter.

(x) Impacts analysis. A detailed analysis of the potential impacts, to the extent applicable, of the proposed project on water quality, stream flow, fish and wildlife, aquatic habitat, Federal and State forests, parks, recreation, instream and downstream water uses, prime farmlands, areas or structures of historic significance, streams which are identified candidates for or are included within the Federal or State wild and scenic river systems and other relevant significant environmental factors. If a project will affect wetlands the project description shall also include:

(A) A narrative of the delineation process supported by the appropriate data sheets and copies of appropriate soil maps and descriptions from soil conservation service soil surveys. Soil conservation service soil surveys may be obtained from the county conservation district offices.

(B) An analysis of whether the wetland is exceptional value as classified in § 105.17 (relating to wetlands).

(C) A statement on water dependency. A project is water dependent when the project requires access or proximity to or siting within water to fulfill the basic purposes of the project.

(2) An application for a project which will affect less than 1 acre of wetland where the wetland is not exceptional value wetland shall also include a description of functions and values of the existing wetlands to be impacted by the project, as defined in § 105.1.

(3) An application for a project which may have an effect on an exceptional value wetland or on 1 or more acres of wetland must also include an assessment of the wetland functions and values using a methodology accepted by the Department and a survey, conducted by a licensed professional land surveyor, of the wetland boundary as delineated and of the property lines of the parcel where the project is located.

- (4) When the Department or delegated local agency determines that an application or registration is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have 60 days to provide the information necessary to complete the application or registration. Thereafter, the Department or delegated local agency will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or registration is considered withdrawn. When an application or registration is considered withdrawn, the Department or local agency will close the application file and will not take action to review the file.
- (5) If the application has been withdrawn in accordance with paragraph (4), the fees associated with filing the application will not be refunded.
- (f) A permit application for small projects located in streams or floodplains must be accompanied by the following information. This permit application may not be used for projects located in wetlands. If upon review the Department determines that more information is required to determine whether a small project will have an insignificant impact on safety and protection of life, health, property or the environment, the Department may require the applicant to submit additional information and processing fees required under this chapter.
- (1) A site plan. A site plan must include:
 - (i) The floodplains and regulated waters of this Commonwealth on the site, including wetlands, existing roads, utility lines, lots, other manmade structures, natural features such as slopes and drainage patterns, proposed structures or activities included in the project.
 - (ii) The names of the persons who prepared the plan.
 - (iii) The date and the name of applicants.
 - (iv) A north arrow.
 - (2) A cross sectional view. A cross sectional view of the affected regulated waters of this Commonwealth before and after the structure or activity is constructed.
 - (3) A location map. A map showing the geographic location of the project. U.S.G.S. topographic maps, FEMA maps or municipal maps are acceptable. FEMA and municipal maps may be obtained from local government offices. U.S.G.S. maps may be reviewed at county conservation district offices or obtained by writing to United States Geological Survey Map Distribution, Box 25286 Federal Center, Denver, CO 80225.
 - (4) Project description. A narrative of the project shall be provided which includes, but is not limited to:
 - (i) A description of the proposed structure or activity.
 - (ii) The project purpose.
 - (iii) The effect the project will have on public health, safety or the environment.

(iv) The project's need to be in or in close proximity to water.

(5) Color photographs. Color photographs of the proposed site must be submitted. The photos must accurately depict the project area and provide a relative scale of the project to the surrounding area and a map showing the location and orientation of each photograph.

(g) Except for small projects, an application for a permit under this chapter shall be accompanied by proof of an application for an Earth Disturbance Permit or an erosion and sedimentation control plan for activities in the stream and earthmoving activities. The plan must conform to requirements in Chapter 102 (relating to erosion and sediment 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, if applicable. Earthmoving activities, including small projects, shall be conducted pursuant to an earth disturbance plan.

(h) An application shall be submitted by the person who owns or has primary responsibility for the proposed dam or reservoir, water obstruction or encroachment. If an application is submitted by a person with primary responsibility for the structure or activity, the owner of a dam or reservoir, water obstruction or encroachment will not thereby be relieved of legal duties or responsibilities for the structure or activity as imposed by the act or this chapter.

(i) An application shall be signed by the owners of the dam or reservoir, water obstruction or encroachment, or the persons exercising primary responsibility for the dam or reservoir, water obstruction or encroachment. In the case of a partnership, one or more members of the partnership authorized to sign on behalf of the entire partnership shall sign the application. In the case of a corporation, it shall be signed by the president, vice president or other responsible official empowered to sign for the corporation. In the case of a political subdivision, it shall be signed by the chief officers of the political subdivision or other responsible official empowered to sign for the political subdivision, with the seal affixed and attested by the clerk.

(j) Plans, specifications and reports accompanying applications for any category of dams, or for bridges and other water obstructions or encroachments which would pose a threat to human life or substantial potential risk to property shall be affixed with the seal of a registered professional engineer and a certification, signed by the registered professional engineer, which shall read as follows:

"I (name) do hereby certify pursuant to the penalties of 18 Pa.C.S.A. Sec. 4904 to the best of my knowledge, information and belief, that the information contained in the accompanying plans, specifications and reports has been prepared in accordance with accepted engineering practice, is true and correct, and is in conformance with Chapter 105 of the rules and regulations of the Department of Environmental Protection."

(k) The Department may waive the specific information requirements of this section in writing, in the record of decision, if upon review of the permit application, the Department finds that specific information is not necessary to review the application.

(l) The Department will review the adequacy of the fees in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

Authority

The provisions of this § 105.13 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.13 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219; amended February 15, 2013, effective February 16, 2013, 43 Pa.B. 967. Immediately preceding text appears at serial pages (354978) to (354983).

Notes of Decisions

Needs Analysis

Where the applicant failed to submit a proper alternatives/justification analysis and parking needs could have been met elsewhere, the Environmental Hearing Board concluded that petitioner did not justify the need to fill wetlands. *Hatchard v. Department of Environmental Resources*, 612 A.2d 621 (Pa. Cmwlth. 1992).

Cross References

This section cited in 25 Pa. Code § 105.15 (relating to environmental assessment); 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs); 25 Pa. Code § 105.89 (relating to Letters of Amendment and Letters of Authorization for modification of dams and reservoirs); 25 Pa. Code § 105.131a (relating to annual dam registration); 25 Pa. Code § 105.151 (relating to permit applications for construction or modification of culverts and bridges); 25 Pa. Code § 105.152 (relating to permit applications for operation and maintenance of existing culverts and bridges); 25 Pa. Code § 105.191 (relating to permit applications for construction or modification of stream enclosures); 25 Pa. Code § 105.192 (relating to permit applications for operation and maintenance of existing stream enclosures); 25 Pa. Code § 105.231 (relating to permit applications for construction or modification of channel changes and dredging for facility construction and maintenance); 25 Pa. Code § 105.261 (relating to permit applications for construction or modification of fills, levees, floodwalls and streambank retaining devices); 25 Pa. Code § 105.262

(relating to permit applications for existing fills, levees, floodwalls and streambank retaining devices); 25 Pa. Code § 105.301 (relating to permit applications for construction or modification); 25 Pa. Code § 105.302 (relating to permit applications for existing stream crossings by pipelines for conveyance of petroleum products and gas); 25 Pa. Code § 105.331 (relating to permit applications); 25 Pa. Code § 105.371 (relating to permits: content of application); 25 Pa. Code § 105.401 (relating to permit applications); 25 Pa. Code § 105.444 (relating to contents of general permits); and 25 Pa. Code § 105.448 (relating to determination of applicability of a general permit).

§ 105.13a. Complete applications.

(a) An application for a permit is complete when the necessary information is provided and requirements under the act and this chapter have been satisfied by the applicant.

(b) When the Department determines that an application is incomplete or contains insufficient information, it will notify the applicant in writing. The applicant shall have 60 days from the date of the Department's letter to complete the application or the Department will consider the application to be withdrawn. Requests for a specific extension shall be submitted by the applicant in writing. The applicant will be notified in writing when an application is considered withdrawn. If the applicant chooses to reapply for a permit, a new complete application and fee will be required.

Authority

The provisions of this § 105.13a issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.13a adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

Cross References

This section cited in 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs).

§ 105.13b. Proof of financial responsibility.

For continued operation and maintenance of all existing Hazard Potential Category 1 or Category 2 dams, as classified in § 105.91 (relating to classification of dams and reservoirs), and water obstructions or encroachments which present a substantial potential risk to life or property; and as a requirement for approval of a permit under this chapter for a Hazard Potential Category 1 or Category 2 dam, and water obstruction or encroachment which presents a substantial potential risk to life or property, the Department will require proof of financial responsibility or security assuring the proper construction, repair, operation and maintenance, inspection and monitoring and removal, if necessary, of the facility.

(1) As proof of responsibility or security, the Department may require one or more of the following:

(i) A certificate of public convenience from the Public Utility Commission if the owner of the proposed facility is subject to regulation under 66 Pa.C.S. (relating to Public Utility Code).

(ii) Ownership or management of the facility by an agency of the Federal, State, county or municipal government or of an interstate compact.

(iii) A bond or other legal device of a form acceptable to the Department, payable to the Commonwealth, which guarantees proper construction, repair, operation and maintenance, inspection and monitoring, and removal, if necessary, of the facility. The amount of bond or legal device must be sufficient to cover the costs of entry, repair, correction, operation, maintenance, inspection, monitoring or removal of the facility by the Commonwealth in the event of failure of the owner to comply with orders of the Department, terms and conditions of the permit, this chapter and the act and section 302 of the Flood Plain Management Act (32 P. S. § 679.302).

(2) The Department may, upon review, request an increase in the amount of the bond or other legal device noted in paragraph (1)(iii) as necessary to ensure that sufficient funds are available. The Department may not increase this amount more than once every 10 years unless the facility is being modified by permit.

(3) This chapter applies to already existing permits issued for a Hazard Potential Category 1 or Category 2 dam. The owner of an already existing permitted Hazard Potential Category 1 or Category 2 dam shall satisfy the requirements of this section by January 8, 2016.

Authority

The provisions of this § 105.13b issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.13b adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

Cross References

This section cited in 25 Pa. Code § 105.21 (relating to criteria for permit issuance and denial); 25 Pa. Code § 105.25 (relating to transfer of permits); 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); and 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs).

§ 105.14. Review of applications.

(a) An application will be reviewed to determine the proposed project's effect on health, safety and the environment, in accordance with prevailing practices in the engineering profession and in accordance with current environmental principles.

(b) In reviewing a permit application under this chapter, the Department will use the following factors to make a determination of impact:

- (1) Potential threats to life or property created by the dam, water obstruction or encroachment.
- (2) Potential threats to safe navigation created by the dam, water obstruction or encroachment.
- (3) The effect of the dam, water obstruction or encroachment on the property or riparian rights of owners upstream, downstream or adjacent to the project.
- (4) The effect of the dam, water obstruction or encroachment on regimen and ecology of the watercourse or other body of water, water quality, stream flow, fish and wildlife, aquatic habitat, instream and downstream uses and other significant environmental factors.
- (5) The impacts of the dam, water obstruction or encroachment on nearby natural areas, wildlife sanctuaries, public water supplies, other geographical or physical features including cultural, archaeological and historical landmarks, National wildlife refuges, National natural landmarks, National, State or local parks or recreation areas or National, State or local historical sites.
- (6) Compliance by the dam, water obstruction or encroachment with applicable laws administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact.
- (7) The extent to which a project is water dependent and thereby requires access or proximity to or siting within water to fulfill the basic purposes of the project. The dependency must be based on the demonstrated unavailability of any alternative location, route or design and the use of location, route or design to avoid or minimize the adverse impact of the dam, water obstruction or encroachment upon the environment and protect the public natural resources of this Commonwealth.
- (8) Present conditions and the effects of reasonably foreseeable future development within the affected watershed upstream and downstream of the dam, water obstruction or encroachment:
 - (i) A dam, water obstruction or encroachment shall be designed, constructed and operated to assure adequacy and compliance with this chapter, taking into account reasonably foreseeable development within the watershed.
 - (ii) In assessing the impact of future development upon a dam, water obstruction or encroachment, the Department may require the applicant to submit data regarding estimated development potentials and municipal, county and regional planning related to the affected watershed.
- (9) Consistency with State and local floodplain and stormwater management programs, the State Water Plan and the Coastal Zone Management Plan.
- (10) Consistency with the designations of wild, scenic and recreational streams under the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287) or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29), including identified 1-A candidates.

(11) Consistency with State antidegradation requirements contained in Chapters 93, 95 and 102 (relating to water quality standards; wastewater treatment requirements; and erosion and sediment control) and the Clean Water Act (33 U.S.C.A. §§ 1251—1376).

(12) Secondary impacts associated with but not the direct result of the construction or substantial modification of the dam or reservoir, water obstruction or encroachment in the area of the project and in areas adjacent thereto and future impacts associated with dams, water obstructions or encroachments, the construction of which would result in the need for additional dams, water obstructions or encroachments to fulfill the project purpose.

(13) For dams, water obstructions or encroachments in, along, across or projecting into a wetland, as defined in § 105.1 (relating to definitions), the Department will also consider the impact on the wetlands values and functions in making a determination of adverse impact.

(14) The cumulative impact of this project and other potential or existing projects. In evaluating the cumulative impact, the Department will consider whether numerous piecemeal changes may result in a major impairment of the wetland resources. The Department will evaluate a particular wetland site for which an application is made with the recognition that it is part of a complete and interrelated wetland area.

(c) In reviewing a permit application under § 105.11(c) (relating to permit requirements) and section 6(c) of the act (32 P. S. § 693.6(c)) for the operation and maintenance of an existing dam, water obstruction or encroachment, the Department will use the following factors:

(1) Potential threats to life, property or safe navigation created by the continuing operation or maintenance of the project.

(2) Adverse impact on stream flow, water quality or the environment which might be reduced or mitigated by reasonable changes in the operation of the project.

(3) Compliance of the operation and maintenance of the project with applicable laws administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact.

(d) The Department may review a permit application for the operation and maintenance of existing projects without regard to the design criteria and construction requirements in Subchapters B—J. If the Department finds that an existing dam, water obstruction or encroachment is unsafe or adversely affects property or the environment, it may consider application of criteria and requirements reasonably necessary to correct the conditions.

Authority

The provisions of this § 105.14 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and

1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.14 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313652) to (313654) and (336615).

Notes of Decisions

Reservoir was not an “available” alternative supplemental cooling water source within the meaning of 25 Pa. Code § 105.14(b)(7) where there was substantial evidence to support conclusion that such use of the reservoir was technically not feasible, there were legal impediments to such use and it would be unfair to give all unallocated water to one consumptive user. *Del-Aware Unlimited, Inc. v. Department of Environmental Resources*, 508 A.2d 348 (Pa. Cmwlth. 1986); appeal denied 523 A.2d 1132 (Pa. 1986).

Cross References

This section cited in 25 Pa. Code § 105.15 (relating to environmental assessment); 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.15. Environmental assessment.

(a) A person may not construct, operate, maintain, modify, enlarge or abandon the following categories of structures or activities until an Environmental Assessment has been approved in writing by the Department. The Environmental Assessment must be on a form provided by the Department and include the following information:

(1) For dams, water obstructions or encroachments permitted under this chapter, the Department will base its evaluation on the information required by § 105.13 (relating to permit applications—information and fees) and the factors included in § 105.14(b) (relating to review of applications) and this section.

(2) For dams, water obstructions or encroachments located in, along or projecting into a wetland for which a permit is not otherwise required under this chapter, the Department will base its evaluation on the information required by § 105.13(d) and the factors included in § 105.14(b) and this section.

(3) For dams located in, along or projecting into an exceptional value water as defined in Chapter 93 (relating to water quality standards) for which a permit is not otherwise required under this chapter, the Department will base its evaluation on the information required by the factors included in Chapter 93 and §§ 105.13(d) and 105.14(b) and the following information submitted by the applicant:

- (i) The surface area of the impoundment.
- (ii) The height of the dam.

- (iii) The mean depth and maximum depth of the stream at the location of the dam.
 - (iv) A description of the release structure.
 - (v) The rate of a conservation release.
 - (vi) The design of bypass structures.
 - (vii) The use of the dam.
 - (viii) The material used for construction of the dam.
- (b) For structures or activities where water quality certification is required under section 401 of the Clean Water Act (33 U.S.C.A. § 1341), an applicant requesting water quality certification under section 401 shall prepare and submit to the Department for review, an environmental assessment containing the information required by subsection (a) for every dam, water obstruction or encroachment located in, along, across or projecting into the regulated water of this Commonwealth.
- (c) Based on the results of the environmental assessment required under subsection (a), the Department may require the applicant to undertake further studies and submit additional information, analyses and reports as found necessary by the Department.
- (d) The environmental assessment has been conducted by the Department for all general permits, categories of structures and activities listed in § 105.12(a)(1)—(10) and (12)—(15) (relating to waiver of permit requirements). The environmental assessment has also been conducted for the structures or activities listed in § 105.12(b) or for which water quality certification has been granted for a Nationwide permit regulating the structure or activity and the environmental assessment requirements have been deemed satisfied.

Authority

The provisions of this § 105.15 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.15 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (336615) to (336616).

Cross References

This section cited in 25 Pa. Code § 96.3 (relating to quality protection requirements); 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs); 25 Pa. Code

§ 105.89 (relating to Letters of Amendment and Letters of Authorization for modification of dams and reservoirs); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.16. Environmental, social and economic balancing.

(a) If the Department determines that there may be an impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the adverse environmental impact. If, after consideration of mitigation measures, the Department finds that the adverse environmental impact will occur, the Department will evaluate the public benefits of the project to determine whether the public benefits outweigh the environmental harm.

(b) An application for a permit for a structure or activity which the Department determines will have an adverse impact on the environment or public natural resources will not be approved by the Department unless the applicant demonstrates and the Department finds that the public benefits of the proposed project outweigh the harm to the environment and public natural resources. Public benefits include, but are not limited to:

- (1) Correction and prevention of pollution.
- (2) Protection of public health and safety.
- (3) Reduction of flood damages.
- (4) Development of energy resources.
- (5) Creation or preservation of significant employment.
- (6) Provision of public utility services.
- (7) Other essential social and economic development which benefits a substantial portion of the public.

(c) An application for a permit will not be approved by the Department in the following areas unless the applicant demonstrates and the Department finds that the project will not have an adverse impact upon the public natural resources:

- (1) A project located in or within 100 feet of a watercourse or body of water that has been designated as a National or State wild or scenic river in accordance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287) or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29).
- (2) A project located in or within 100 feet of a Federal wilderness area designated in accordance with the Wilderness Act (16 U.S.C.A. §§ 1131—1136) or the Federal Eastern Wilderness Act of 1975 (16 U.S.C.A. § 1132).
- (3) A project located within an area which serves as a habitat of a threatened or endangered species protected by the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531—1543) or for a species which has been designated as a threatened or endangered species under the Wild Resource Conservation

Act (32 P. S. §§ 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).

(4) A project located in waters designated as exceptional value in Chapter 93 (relating to water quality standards).

(d) In reviewing permit applications, it will be the policy of the Department to encourage activities that protect the natural condition of the watercourses or other body of water.

(e) This section does not apply to dams, water obstructions or encroachments located in, along, across or projecting into wetlands. These structures or activities will be evaluated under §§ 105.17 and 105.18a—105.20.

Authority

The provisions of this § 105.16 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.16 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117652) to (117654).

Notes of Decisions

Because the petitioner failed to utilize available alternatives, the Department was not required to consider the petitioner's proposed mitigation measures. *Hatchard v. Department of Environmental Resources*, 612 A.2d 621 (Pa. Cmwlth. 1992).

Cross References

This section cited in 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.17. Wetlands.

Wetlands are a valuable public natural resource. This chapter will be construed broadly to protect this valuable resource.

(1) *Exceptional value wetlands.* This category of wetlands deserves special protection. Exceptional value wetlands are wetlands that exhibit one or more of the following characteristics:

- (i) Wetlands which serve as habitat for fauna or flora listed as “threatened” or “endangered” under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).

(ii) Wetlands that are hydrologically connected to or located within 1/2-mile of wetlands identified under subparagraph (i) and that maintain the habitat of the threatened or endangered species within the wetland identified under subparagraph (i).

(iii) Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 (relating to water quality standards) and the floodplain of streams tributary thereto, or wetlands within the corridor of a watercourse or body of water that has been designated as a National wild or scenic river in accordance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287) or designated as wild or scenic under the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29).

(iv) Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply.

(v) Wetlands located in areas designated by the Department as “natural” or “wild” areas within State forest or park lands, wetlands located in areas designated as Federal wilderness areas under the Wilderness Act (16 U.S.C.A. §§ 1131—1136) or the Federal Eastern Wilderness Act of 1975 (16 U.S.C.A. § 1132) or wetlands located in areas designated as National natural landmarks by the Secretary of the Interior under the Historic Sites Act of 1935 (16 U.S.C.A. §§ 461—467).

(2) *Other wetlands.* This category includes wetlands not categorized as exceptional value wetlands.

(3) *Permits.* The Department will maintain a list of permit decisions involving wetlands. This list will be a matter of public record and will be available for inspection at the Department’s offices.

Authority

The provisions of this § 105.17 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.17 adopted November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117654) and (126083).

Cross References

This section cited in 7 Pa. Code § 130d.1 (relating to definitions); 7 Pa. Code § 130d.45 (relating to prohibited applications); 25 Pa. Code § 93.1 (relating to definitions); 25 Pa. Code § 96.3 (relating to water quality protection requirements); 25 Pa. Code § 105.13 (relating to regulated activities—

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information and fees); 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing); 25 Pa. Code § 105.442 (relating to authorization for general permits); 25 Pa. Code § 250.1 (relating to definitions); 25 Pa. Code § 250.311 (relating to evaluation of ecological receptors); 25 Pa. Code § 271.915 (relating to management practices); 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited); 25 Pa. Code § 275.202 (relating to areas where the land application of sewage sludge is prohibited); § 277.202 (relating to areas where construction/demolition waste landfills are prohibited); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 281.202 (relating to areas where general composting facilities are prohibited); and 25 Pa. Code § 283.202 (relating to areas where resource recovery facilities and other processing facilities are prohibited).

§ 105.18. [Reserved].**Source**

The provisions of this § 105.18 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved February 18, 1983, February 19, 1983, 13 Pa.B. 781. Immediately preceding text appears at serial pages (59026) to (59027).

§ 105.18a. Permitting of structures and activities in wetlands.

(a) *Exceptional value wetlands.* Except as provided for in subsection (c), the Department will not grant a permit under this chapter for a dam, water obstruction or encroachment located in, along, across or projecting into an exceptional value wetland, or otherwise affecting an exceptional value wetland, unless the applicant affirmatively demonstrates in writing and the Department issues a written finding that the following requirements are met:

(1) The dam, water obstruction or encroachment will not have an adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15 (relating to review of applications; and environmental assessment).

(2) The project is water-dependent. A project is water-dependent when the project requires access or proximity to or siting within the wetland to fulfill the basic purposes of the project.

(3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less effect on the wetland, and not have other significant adverse effects on the environment. An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the project shall be considered as a practicable alternative.

(4) The project will not cause or contribute to a violation of an applicable State water quality standard.

(5) The project will not cause or contribute to pollution of groundwater or surface water resources or diminution of resources sufficient to interfere with their uses.

(6) The cumulative effect of this project and other projects will not result in the impairment of the Commonwealth's exceptional value wetland resources.

(7) The applicant shall replace affected wetlands in accordance with § 105.20a (relating to wetland replacement criteria).

(b) *Other wetlands.* Except as provided for in subsection (c), the Department will not grant a permit under this chapter for a dam, water obstruction or encroachment in, along, across or projecting into the wetland which is not an exceptional value wetland, or otherwise affecting the wetland, unless the appli-

cant affirmatively demonstrates in writing and the Department issues a written finding that the following requirements are met:

(1) The project will not have a significant adverse impact on the wetland, as determined in accordance with §§ 105.14(b) and 105.15. The determination of whether an adverse impact is significant includes an evaluation of the following factors:

- (i) The areal extent of the wetland impacts.
- (ii) The wetland's values and functions.
- (iii) Whether the affected wetlands values and functions are unique to the area or region.
- (iv) Comments from other State and Federal environmental agencies concerning the scope and effect of the impact.

(2) Adverse environmental impacts on the wetland will be avoided or reduced to the maximum extent possible.

(3) There is no practicable alternative to the proposed project that would not involve a wetland or that would have less adverse impact on the wetland, and that would not have other significant adverse impacts on the environment. An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the proposed project shall be considered as a practical alternative.

(i) It shall be a rebuttable presumption that there is a practicable alternative, not involving a wetland, to a nonwater-dependent project, and that the alternative would have less adverse impact on the wetland.

(ii) To rebut the presumption, an applicant for a permit under this chapter shall demonstrate with reliable and convincing evidence and documentation and the Department will issue a written finding that the following statements are true:

(A) The basic project purpose cannot be accomplished utilizing one or more other sites that would avoid, or result in less, adverse impact on the wetland.

(B) A reduction in the size, scope, configuration or density of the project as proposed and alternative designs to that of the project as proposed that would avoid, or result in fewer or less severe, adverse impacts on a wetland will not accomplish the basic purpose of the project.

(4) The project will not cause or contribute to a violation of an applicable State water quality standard.

(5) The project will not cause or contribute to pollution of groundwater or surface water resources or diminution of the resources sufficient to interfere with their uses.

(6) The cumulative effect of this project and other projects will not result in a major impairment of this Commonwealth's wetland resources.

(7) The applicant will replace the affected wetlands to compensate for unavoidable impacts, in accordance with § 105.20a.

(c) The Department will not grant a permit under this chapter for a dam, water obstruction or encroachment which has a significant adverse impact on a wetland unless the applicant affirmatively demonstrates and the Department finds in writing that a project is necessary to abate a substantial threat to the public health or safety and that the requirements of subsection (b)(2)—(7) are met.

Source

The provisions of this § 105.18a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

Cross References

This section cited in 25 Pa. Code § 96.3 (relating to water quality protection requirements); and 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing).

§ 105.19. [Reserved].

Authority

The provisions of this § 105.19 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601); reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.19 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313658) and (207691).

Cross References

This section cited in 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing).

§ 105.20. [Reserved].

Authority

The provisions of this § 105.20 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601); reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.20 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207691) to (207692).

Cross References

This section cited in 25 Pa. Code § 105.16 (relating to environmental, social and economic balancing); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.20a. Wetland replacement criteria.

(a) Wetlands replacement must meet the following general criteria:

(1) *Area ratio.* The wetland shall be replaced at a minimum area ratio of replacement acres to affected acres of 1:1. The Department may require the area ratio to exceed 1:1 based on a determination of the area affected and the functions and values which will be destroyed or adversely affected by the project. For structures or activities constructed without a permit, and for which mitigation, as defined in § 105.1 (relating to definitions), cannot be achieved, the wetland shall be replaced at a minimum area ratio of 2:1 (replacement acres: affected acres). The Department may require the area ratio to exceed 2:1 based on a determination of the area affected and the functions and values which were destroyed or adversely affected by the project.

(2) *Function and value replacement.* Functions and values that are physically and biologically the same as those that are lost shall be replaced at a minimum ratio of 1:1. The Department may require the functions and values ratio to exceed 1:1 based on the area affected and on the functions and values which will be destroyed as adversely affected by the project and the replacement ratio. For structures or activities constructed without a permit, and for which mitigation, as defined in § 105.1, cannot be achieved, the wetland shall be replaced at a minimum area ratio of 2:1. The Department may require the area ratio to exceed 2:1 based on a determination of the area affected and the functions and values which were destroyed or adversely affected by the project.

(3) *Siting criteria.* Replacement shall be located adjacent to the impacted wetland unless an alternative replacement site is approved by the Department. Alternative replacement sites will generally not be approved unless the replacement site is located within the same watershed as the wetland being replaced or within the designated boundaries of the coastal zone management area where the loss occurs.

(b) In addition to the general criteria in subsection (a), the Department will use its guidelines entitled “*Design Criteria for Wetlands Replacement*” in making decisions under this section. These guidelines provide for design, flexibility and utilization of best available technology in environmental engineering. These guidelines are available from the Division of Rivers and Wetlands Conservation, Post Office Box 8761, Harrisburg, Pennsylvania 17105-8761.

Authority

The provisions of this § 105.20a issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.20a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

Cross References

This section cited in 25 Pa. Code § 96.3 (relating to water quality protection requirements); 25 Pa. Code § 105.18a (relating to permitting of structures and activities in wetlands); and 25 Pa. Code § 105.21 (relating to criteria for permit issuance and denial).

PERMIT ISSUANCE, TRANSFER AND REVOCATION**§ 105.21. Criteria for permit issuance and denial.**

(a) In addition to the other requirements of this chapter, a permit application will not be approved unless the applicant demonstrates that the following conditions are met:

- (1) The application is complete and accurate.
- (2) The proposed project or action complies with the standards and criteria of this title and with other laws administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact.
- (3) The proposed project or action will adequately protect public health, safety and the environment.
- (4) The proposed project or action is consistent with the environmental rights and values secured by Pa. Const. Art. I, § 27 and with the duties of the Commonwealth as trustee to conserve and maintain public natural resources of this Commonwealth.
- (5) The applicant has not been found to be in continuing violation of this title or other laws administered by the Department, the Fish and Boat Commission, or a river basin commission created by interstate compact, including, but not limited to, a violation of an adjudication and order, agreement, consent order or decree, whether or not the applicant's violation resulted in an order or civil penalty assessment.

(6) The applicant has submitted adequate proof of financial responsibility, if required under § 105.13b (relating to proof of financial responsibility).

(b) A permit issued under this chapter shall be subject to the general and special conditions regarding construction, operation, maintenance, inspection and monitoring of a project or action that the Department may deem necessary to assure compliance with the requirements and purposes of this chapter, the act, the Flood Plain Management Act (32 P. S. §§ 679.101–679.601) and other laws

administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact.

(c) The Department may not issue a permit to operate and maintain a dam, water obstruction or encroachment constructed without a permit unless one of the following is met:

(1) The Department determines that the structure or activity complies with the standards and criteria of this title, including replacement in accordance with § 105.20a (relating to wetland replacement criteria), and with other laws administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact.

(2) The Department determines that the structure or activity does not comply with the standards and criteria of this title and with other laws administered by the Department, the Fish and Boat Commission and river basin commissions created by interstate compact, that the effect on wetlands will be mitigated, and at least one of the following is met:

(i) Restoration would cause destruction of a dwelling occupied by a person who had no role in the planning or construction of the project.

(ii) Restoration may result in more long term damage than would be caused by allowing the project to remain in place.

(iii) Restoration would be unsuccessful due to material changes in the condition of the site and its surrounding area.

(iv) There are extraordinary circumstances which preclude restoration.

(d) The reason for denial of a permit application and appeal procedures will be communicated in writing to the applicant.

(e) In an appeal from a Department action concerning a permit application to operate and maintain a dam, water obstruction or encroachment, the applicant has the burden of proving that there is no reasonable basis for the Department's action.

Authority

The provisions of this § 105.21 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.21 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (272287) to (272288).

Notes of Decisions

The terms and conditions attached to a dredging permit are terms and conditions of the permit, as authorized under this section rather than rules and regulations. *Warren Sand and Gravel Co. v. Department of Environmental Resources*, 341 A.2d 556 (Pa. Cmwlth. 1975).

Cross References

This section cited in 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.21a. Public notice.

Except for dams, water obstructions and encroachments authorized under §§ 105.12, 105.64 and Subchapter L (relating to waiver of permit requirements; emergency permit; and general permits), or as small projects, the Department will publish a notice in the *Pennsylvania Bulletin* upon receipt of an application and again upon the issuance or denial of a permit by the Department.

Authority

The provisions of this § 105.21a issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.21a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

§ 105.22. [Reserved].**Source**

The provisions of this § 105.22 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 12, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117657) to (117658).

§ 105.23. Compliance with other applicable statutes.

Receipt of a permit under this chapter does not relieve the permittee of the obligation of complying with Federal, interstate compact and State laws, regulations and standards applicable to the construction, operation or maintenance of the dam or water obstruction.

Source

The provisions of this § 105.23 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (233595).

§ 105.24. Coordination of permits.

(a) The Department will establish a system to coordinate the application for and issuance of permits under this chapter with permit processes conducted under other statutes and regulations administered by the Department and with permit processes administered by other Federal and State agencies.

(b) When possible, the Department will develop joint permit application forms to facilitate the submission of information on related activities of a project regulated under statutes and regulations administered by the Department and other Federal and State agencies, to reduce duplicate and repetitious application requirements. The joint application forms shall be used in lieu of individual applications for the required permits, except for small projects.

Authority

The provisions of this § 105.24 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Notes of Decisions

The EHB did err in determining that DER did not abuse its discretion by soliciting comments from the Fish and Boating Commission and other agencies when reviewing the petitioner's permit. *Hatchard v. Department of Environmental Resources*, 612 A.2d 621 (Pa. Cmwlth. 1992).

Source

The provisions of this § 105.24 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended October 6, 1978, effective October 7, 1978, 8 Pa.B. 2723; amended November 2, 1979, effective November 3, 1979, 9 Pa.B. 3640; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117658).

§ 105.25. Transfer of permits.

(a) A permit must be transferred or notification provided to the Department as follows:

(1) If the owner and permittee are the same person and there is a change in ownership, the permit must be transferred to the new owner of the dam, water obstruction or encroachment.

(2) If the owner and permittee are not the same person and there is a change of permittee, but not ownership of the dam, water obstruction or encroachment, the permit must be transferred to the new permittee.

(3) If the owner and permittee are not the same person and there is a change in ownership, but not permittee of the dam, water obstruction or encroachment, the change in ownership must be reported by the permittee to the Department in writing within 30 days.

(b) A permit will only be transferred upon application to and approval by the Department. An application for transfer shall be submitted on forms provided by the Department.

(c) A permit may not be transferred if a violation of this chapter exists at the time of application for transfer unless the transfer will expedite correction of the violation.

(d) The new permittee shall expressly agree to abide by the permit conditions and shall, if applicable:

(1) Provide the Department with proof of financial responsibility or security in accordance with § 105.13b (relating to proof of financial responsibility).

(2) Obtain a license, easement, right-of-way or other interest in the submerged lands of this Commonwealth in accordance with §§ 105.31—105.35 (relating to submerged lands of the Commonwealth—licenses and annual charges).

(e) The original permittee will not be relieved of an obligation to comply with this chapter, the terms and conditions of the permit or an order issued by the Department until the transfer has been approved.

(f) Upon receipt of the approved application for transfer, the applicant shall affix the approved application for transfer to the original permit. The approved application for transfer shall become part of, and remain affixed to, the original permit. The Department may prepare a new permit to replace worn or obsolete documents.

Authority

The provisions of this § 105.25 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.25 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (233596) and (313659).

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to regulated activities—information and fees).

§ 105.26. Revocation and suspension of permits.

(a) Failure to comply with a provision of this chapter, an order of the Department, or a term or condition of a permit issued under this chapter, or the submission of false or misleading information on a permit application, will be cause for the Department to revoke or suspend a permit.

(b) The Department will issue to the permittee a written notice of the suspension or revocation of a permit. The notice shall be subject to the procedure for appeal and hearing before the EHB as provided under section 24 of the act (32 P. S. § 693.24); section 503(b) of the Flood Plain Management Act (32 P. S.

§ 679.503(b)); section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

Source

The provisions of this § 105.26 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313659).

§ 105.27. [Reserved].

Source

The provisions of this § 105.27 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38854).

§ 105.28. [Reserved].

Source

The provisions of this § 105.28 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38854) to (38855).

§ 105.29. [Reserved].

Source

The provisions of this § 105.29 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38855).

§ 105.29a. Burden of proof.

In a civil or administrative action taken by the Department under this chapter, the person against whom the action has been taken has the burden of proof to demonstrate that the project complies with the act and this chapter.

Authority

The provisions of this § 105.29a issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.29a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

§ 105.30. [Reserved].

Source

The provisions of this § 105.30 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38855).

**SUBMERGED LANDS OF THE COMMONWEALTH—LICENSES
AND ANNUAL CHARGES**

§ 105.31. Property rights.

(a) Except as provided in §§ 105.32 and 105.33 (relating to projects—proper purpose; and licenses for public service corporations), a permit issued under this chapter may not give real or personal property rights nor grant exclusive privileges; nor may it be construed to grant or confer a right, title, easement or interest in, to or over lands belonging to the Commonwealth.

(b) A permit for a dam, water obstruction or encroachment to occupy submerged lands of the Commonwealth will not be issued by the Department until the applicant has first obtained one of the following:

(1) An easement, right-of-way, license or lease from the Department under section 15 of the act (32 P. S. § 693.15) and § 105.32.

(2) A license under section 514 of The Administrative Code of 1929 (71 P. S. § 194) and § 105.33.

(3) A license, easement, right-of-way or other interest in the submerged lands of this Commonwealth granted under specific statutory authority from the General Assembly.

(c) For purposes of this section, to occupy submerged lands of this Commonwealth includes:

(1) The placement of a physical structure on, under or over submerged lands of this Commonwealth.

(2) The use or control of the space overlying submerged lands of this Commonwealth, associated with use of a structure with the regularity and in a manner that substantially restrict or prevent navigation, fishing, recreation or other public trust uses by the general public on or over the lands.

Authority

The provisions of this § 105.31 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.31 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313660) to (313661).

Cross References

The provisions of this § 105.25 (relating to transfer of permits).

§ 105.32. Projects—proper purpose.

(a) If the applicant does not have an estate or interest in the submerged lands of this Commonwealth under other specific authority from the General Assembly

at the time of application for a permit under the act, the Department may, with the approval of the Governor, grant an easement, right-of-way, license or lease to occupy submerged lands of this Commonwealth in a navigable lake or river or stream declared a public highway for a dam, water obstruction or encroachment regulated under this chapter which is constructed for the purpose of:

- (1) Improving navigation or public transportation.
 - (2) Recreation, fishing or other public trust purposes.
 - (3) Protecting public safety or the environment.
 - (4) Providing water supply, energy production or waste treatment.
 - (5) Providing a public utility service by a government agency or subdivision, public utility or electric cooperative.
 - (6) Other activities which require access to water.
- (b) The total area of land which any such project may occupy under one or more easements, rights-of-way, licenses or leases granted by the Department under this section may not exceed 25 acres.

Source

The provisions of this § 105.32 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38855) to (38856).

Cross References

This section cited in 25 Pa. Code § 105.25 (relating to transfer of permits); 25 Pa. Code § 105.31 (relating to property rights); and 25 Pa. Code § 105.35 (relating to charges for use and occupation of submerged lands of this Commonwealth).

§ 105.33. Licenses for public service corporations.

In accordance with section 514 of The Administrative Code of 1929 (71 P. S. § 194), a permit issued to a public service corporation to place a public service line upon, in or over submerged land of this Commonwealth will incorporate a license for the privilege of crossing Commonwealth lands.

Source

The provisions of this § 105.33 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (4577) to (4578).

Cross References

This section cited in 25 Pa. Code § 105.25 (relating to transfer of permits); and 25 Pa. Code § 105.31 (relating to property rights).

§ 105.34. Navigation and public trust.

An easement, right-of-way, lease or license will not be granted by the Department if it may adversely affect navigation or significantly impair the right in lands of the public held in trust by the Commonwealth.

Authority

The provisions of this § 105.34 amended under section 5 of the Dam Safety and Encroachment Act (32 P. S. § 693.5).

Source

The provisions of this § 105.34 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313662).

Cross References

This section cited in 25 Pa. Code § 105.25 (relating to transfer of permits).

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

(a) Except as provided in subsections (b) and (c), the following charges apply to the granting of an easement, right-of-way, license or lease to occupy submerged lands of this Commonwealth issued under section 15 of the act (32 P. S. § 693.15) and § 105.32 (relating to projects—proper purpose):

(1) For commercial utility and other dams, water obstructions and encroachments except as listed in subsection (c), annual license charges:

- (i) For areas occupied by facilities, \$150 per tenth of an acre.
- (ii) For barge fleeting and mooring areas, \$30 per tenth of an acre.
- (iii) Minimum annual charge, \$750.

(2) For private recreation docks, owned and used solely by the owners of adjacent riparian property, unless the project is otherwise authorized by a general permit issued under section 7 of the act (32 P. S. § 693.7), an annual charge of \$250.

(b) Licenses for public service lines crossing or occupying submerged lands of this Commonwealth, issued under section 15 of the act or section 514 of The Administrative Code of 1929 (71 P. S. § 194) are subject to the following schedule of annual charges:

<i>Length of Crossings (in feet)</i>	<i>Charges (in dollars)</i>
Less than 500	750
500 to 999	1,500
1000 to 1499	3,000

<i>Length of Crossings (in feet)</i>	<i>Charges (in dollars)</i>
1500 to 1999	4,500
2000 to 2499	6,000
2500 to 2999	7,500
3000 to 3499	9,000
3500 to 3999	10,500
4000 to 4499	12,000
4500 to 4999	13,500
5000 and over	15,000

(c) Charges may not be imposed under section 15 of the act or section 514 of The Administrative Code of 1929 for the following categories of activities and structures:

(1) An activity or structure constructed, owned or operated by a department, commission or agency of the Commonwealth or the Federal government.

(2) A project or activity constructed, or operated primarily for the benefit of a State building or a State institution.

(3) A flood control project constructed, owned or operated by an agency of the Commonwealth, the Federal government or a municipality.

(4) A project or activity constructed, owned or operated by a political subdivision of this Commonwealth which provides potable water supply, sewage disposal or other similar services necessary for public health and welfare, or in connection with a service for which no fees or charges other than general taxes are imposed.

(5) A facility to provide access to the general public to water for recreational boating, fishing, hunting, swimming or other recreation where the access is provided without charge or on a nonprofit basis.

(6) A structure or facility constructed and operated exclusively to improve fish habitat, under a cooperative agreement with the Fish and Boat Commission.

(7) A private recreational dock constructed under a general permit.

(d) The annual charges imposed in subsections (a) and (b) may be revised by the EQB after approval by the Governor and reasonable notice to the holder of a license issued under this section.

(e) This section does not apply to a crossing contiguous to or in a State park or State forest lands. Easements for the crossings shall be administered in accor-

dance with section 514 of The Administrative Code of 1929 and the park and forest land management practices of the Department of Conservation and Natural Resources.

(f) The removal of sand, gravel and other valuable minerals from submerged lands of this Commonwealth are subject to the royalty and agreement provisions established under section 1908-A of The Administrative Code of 1929 (71 P. S. § 510-8).

Authority

The provisions of this § 105.35 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.35 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219; amended February 15, 2013, effective February 16, 2013, 43 Pa.B. 967. Immediately preceding text appears at serial pages (355005) to (355007).

Cross References

This section cited in 25 Pa. Code § 105.25 (relating to transfer of permits).

§ 105.36. [Reserved].

Source

The provisions of this § 105.36 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4579).

§ 105.37. [Reserved].

Source

The provisions of this § 105.37 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4579).

§ 105.38. [Reserved].

Source

The provisions of this § 105.38 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial pages (4579) to (4580).

§ 105.39. [Reserved].

Source

The provisions of this § 105.39 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4580).

§ 105.40. [Reserved].**Source**

The provisions of this § 105.40 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4580).

CONSTRUCTION REQUIREMENTS AND PROCEDURES**§ 105.41. Notices and reports.**

(a) Except for work authorized under §§ 105.12(a), 105.64 and Subchapter L (relating to waiver of permit requirements; emergency permits; and general permits), the permittee shall meet the following:

(1) For permits or approvals issued for water obstructions or encroachments, requirements to provide notice of commencement of work and status reports, if any, shall be identified in conditions of the permit or by order of the Department.

(2) For permits or approvals issued for dams, the permittee or owner shall schedule a preconstruction meeting between the permittee or owner, the Department, the contractor and the engineer responsible for construction supervision. The preconstruction meeting must be conducted at least 15 days but not more than 30 days prior to the commencement of construction unless a different time is established by the Department. Thereafter, a detailed report on the status of construction must be submitted monthly to the Department of Environmental Protection, Division of Dam Safety, until construction has been completed.

(b) The Department may require submission of additional reports, as it deems necessary, on the status of construction.

Authority

The provisions of this § 105.41 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.41 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313665) to (313666).

Cross References

This section cited in 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.42. Terms and conditions of Department permits and approvals.

(a) The permittee shall fully inform the engineer or contractor responsible for the supervision and conduct of work of the terms, conditions, restrictions and covenants covered by a permit, Letter of Amendment, Letter of Authorization, or other Department approval issued under this chapter.

(b) Prior to the commencement of construction, the permittee shall file an acknowledgment form provided by the Department, signed by the permittee and other project personnel, as specified on the form, acknowledging the terms, conditions, restrictions and covenants in the permit and, required by the Department, for a Letter of Amendment or Letter of Authorization. Unless the acknowledgment form has been completed and filed, the permit or other Department approval is void.

(c) A copy of the permit or other Department approval and the acknowledgment form must be available at the work site for inspection upon request by an officer or agent of the Department or another Federal, State, county or municipal agency.

Authority

The provisions of this § 105.42 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.42 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313666).

Cross References

This section cited in 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.43. Time limits.

(a) The Department will set time limits for the commencement and completion of work under a permit and may set time limits for the commencement and completion of work under a Letter of Amendment or Letter of Authorization issued under this chapter that it deems reasonable and appropriate to carry out the purposes of this chapter.

(b) For water obstruction and encroachments, if the construction is not completed on or before the dates established in the permit, unless extended by the Department in writing, the permit shall become void without further notification by the Department.

(c) For dams, unless otherwise stated, if work authorized by the dam permit or other Department approval has not commenced on or before December 31 of the 5th year following permit issuance or other Department approval, the permittee or owner shall notify the Department 6 months prior to the anticipated commencement of work so that the project design can be reassessed and reauthorized in writing. During the design reassessment, the permittee or owner may be required to make revisions due to changes in site conditions, dam classification, new technology or revisions to this chapter. At any time if the permittee or owner does not intend to perform the work, the Department shall be notified in writing and the Dam Permit or Department approval will become void without further notification by the Department.

Authority

The provisions of this § 105.43 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.43 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended effective September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313667).

§ 105.44. Implementation of work according to specifications.

(a) Work undertaken under a permit or other Department approval issued under this chapter must be conducted in accordance with the maps, plans, profiles and specifications as approved by the Department.

(b) Changes in the maps, plans, profiles and specifications for work covered by a permit or other Department approval which would affect the waterway area or structural stability of the project may not be made except with the written approval of the Department. Upon written approval by the Department, the changes shall become part of the permit.

(c) The Department will have the right during the progress of work to require changes or modifications in the maps, plans, profiles and specifications for work covered under a permit or other Department approval it may determine are necessary and proper to protect public health, public safety and the environment.

Authority

The provisions of this § 105.44 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.44 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313667).

§ 105.45. Inspections by the Department.

Work, structures and land covered under a permit or other Department approval issued under this chapter shall at all times be subject to inspection by representatives of the Department, and the permittee or owner shall allow representatives of the Department to enter a property, premises or place associated with the permitted or approved project for the purposes of the inspection.

Authority

The provisions of this § 105.45 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.45 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313667).

§ 105.46. Implementation of erosion and sedimentation control plans.

(a) During the construction of a dam, water obstruction or encroachment, the permittee shall follow the erosion and sediment control plan prepared in accordance with Chapter 102 (relating to erosion and sediment control) and submitted as part of the application.

(b) Construction must be done in a manner to minimize erosion of banks and bed of the stream and disturbance of the regimen of the stream.

Authority

The provisions of this § 105.46 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.46 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313668).

§ 105.46a. Collection and disposal of waste materials.

Waste materials, scrap or excess construction materials shall be collected, stored and disposed of in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904), The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and related rules and regulations.

Authority

The provisions of this § 105.46a issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.46a adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

§ 105.47. Removal of dams and removal or abandonment of water obstructions and encroachments.

(a) If construction work has not been completed within the time specified in the permit or other Department approval and the time limit specified in the permit has not been extended in writing by the Department or if a permit has been revoked for any reason, the permittee or owner shall, at his own expense and in a manner that the Department may prescribe, remove all or any portion of the work as the Department requires and restore the regulated waters of this Commonwealth to their former condition.

(b) Prior to discontinuing use or abandonment, the permittee or owner of a water obstruction or encroachment covered by this chapter, shall remove all or part of the facility and take other actions as necessary to protect safety and the environment in accordance with a permit or other approval issued by the Department.

(c) The owner of a dam covered by this chapter, shall remove all or part of the facility and take other actions as necessary to protect safety and the environment in accordance with a permit or other approval issued by the Department.

Authority

The provisions of this § 105.47 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.47 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313668) and (207707).

OPERATION, MAINTENANCE AND INSPECTION**§ 105.51. Operation and maintenance.**

The permittee or owner of a dam, water obstruction or encroachment shall operate and maintain the facility and appurtenant structures in a safe condition in accordance with permit terms and conditions, the provisions of this chapter, and Operation and Maintenance Manual as required by the Department so that the facility cannot imperil life, health, safety or property located above or below the facility.

Authority

The provisions of this § 105.51 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. 693.5).

Source

The provisions of this § 105.51 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207707).

Cross References

This section cited in 25 Pa. Code § 105.131 (relating to operation and monitoring plans).

§ 105.52. [Reserved].**Authority**

The provisions of this § 105.52 reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.52 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207707).

Cross References

This section cited in 25 Pa. Code § 105.131 (relating to operation and monitoring plans).

§ 105.53. Inspections by permittees or owners and inspection reports.

(a) The permittee or owner of a dam, water obstruction or encroachment shall inspect the facility and appurtenant works according to the following schedule:

(1) Dams, reservoirs and their appurtenant works shall be inspected at least once every 3 months.

(2) For Hazard Potential Category 1 dams and Category 2 dams as classified in § 105.91 (relating to classification of dams and reservoirs), annual reports regarding the condition of the dam, affixed with the seal of a registered professional engineer and certification, which reads “This is to certify that the above dam has been inspected and the following are the results of the inspection.”, shall be submitted to the Department on or before December 31 of each year. More frequent reports of dam conditions may be required by the Department if, in its discretion, conditions indicate the reports are necessary to assure adequate protection of health, safety and property.

(3) For local flood protection projects, annual reports regarding the condition of the flood protection facility shall be submitted to the Department on or before December 31 of each year.

(4) The permittee or owner of a water obstruction or encroachment shall conduct periodic inspections to ensure the safe operation, monitoring and maintenance of the facility in accordance with this title, terms and conditions of the permit and approved operating or monitoring plans.

(5) The permittee or owner shall retain records of the inspections, including records of actions taken to correct conditions found in the inspections. Copies of the records shall be provided to the Department on request.

(6) The Department may, through terms and conditions of the permit or by request at any time, require the permittee or owner to submit certified reports regarding the condition of the facility to the Department.

(7) For water obstructions and encroachments, in lieu of inspections conducted by the permittee or owner and certified reports submitted by the permittee or owner, the Department may accept reports of equivalent inspections conducted and prepared by governmental agencies. In addition, the Department may accept equivalent inspection reports certified by the permittee or owner and submitted to other governmental agencies.

(b) Regardless of the date of construction of a dam, water obstruction or encroachment or whether or not it was permitted by the Department or its predecessors, it shall be the duty of the permittee or owner of a dam, water obstruction or encroachment to evaluate the safety of the facility and appurtenant structures and to modify the facility in accordance with the permit requirements of § 105.11 (relating to permit requirements) to ensure the protection of life and property with respect to changed conditions and current safety criteria. If structural or operation modifications are required as a result of the inspection findings, the permittee or owner shall apply for a permit, or request an amendment to an existing permit to perform the modifications.

Authority

The provisions of this § 105.53 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.53 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207708) to (207709).

Cross References

This section cited in 25 Pa. Code § 105.131 (relating to operation and monitoring plans); 25 Pa. Code § 105.132 (relating to inspection); 25 Pa. Code § 105.281 (relating to maintenance and repair of levees or floodwalls); and 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.54. Monitoring systems.

The permittee or owner of a dam, water obstruction or encroachment shall set up and implement monitoring systems that are required by the Department in the terms and conditions of the permit.

Source

The provisions of this § 105.54 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

Cross References

This section cited in 25 Pa. Code § 105.131 (relating to operation and monitoring plans).

**INVESTIGATION AND CORRECTION OF UNSAFE
CONDITIONS—EMERGENCY PROCEDURES****§ 105.61. Procedures for investigations.**

The Department may, if it finds there is reasonable cause to suspect the existence of conditions adversely affecting the safety of a dam, water obstruction or encroachment, order the owner to conduct investigations, studies, tests and analyses that may be required to properly evaluate the safety of the structure. The investigations, studies, tests and analyses shall be accomplished under the supervision of a registered professional engineer, experienced in the design, construction, operation and maintenance of the facilities and approved by the Department, and shall be accomplished in accordance with methods the Department may prescribe. Failure to conduct the ordered investigations, studies, tests and analyses and provide the investigation results of the activities to the Department on request will constitute adequate grounds for revocation or suspension of a permit.

Authority

The provisions of this § 105.61 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.61 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207709).

§ 105.62. Correction of unsafe conditions.

(a) If the Department determines that a dam, water obstruction or encroachment is unsafe or adversely affects property or the environment or has not been properly constructed, operated, monitored or maintained in compliance with legal requirements, it may require the owner of the facility to repair, alter, maintain or remove the facility or take other actions necessary to carry out the purposes of this chapter within the time prescribed by the Department.

(b) The Department or its authorized agents may enter and conduct investigations, tests and analyses and take corrective action required to carry out the purposes of this chapter if one or more of the following conditions exist:

- (1) The owner cannot be ascertained or found.

(2) The owner refuses or fails to comply with an order issued by the Department under section 14 of the act (32 P. S. § 693.14) or this section.

(3) The condition of the facility is so dangerous as to require immediate remedial action.

(c) The Department may recover from the owner, in the name of the Commonwealth, the expenses incurred in taking the action described in subsection (b) in the same manner as debts are recoverable by law.

Source

The provisions of this § 105.62 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; added September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (4584).

§ 105.63. Emergency procedures.

(a) The permittee or owner of a dam, water obstruction or encroachment shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition which may threaten the safety of the facility and take necessary actions to protect life and property, including action required under an emergency plan or Department order issued under the act.

(b) The permittee or owner of a dam or reservoir shall immediately notify the Department and responsible emergency management authorities in adjacent and downstream communities of conditions which may indicate a potential dam hazard emergency in accordance with § 105.135 (relating to dam hazard emergencies) including one or more of the following conditions:

(1) The lake or pond level is at or near the top of the dam and water is flowing, or about to flow, over the top of the dam.

(2) The overflow pipe or spillway is damaged, or clogged with debris or ice, which is resulting in a rapid rise in the lake or pond level.

(3) The primary or emergency spillway is experiencing heavy flows which are causing severe erosion to the spillway or the dam embankment.

(4) Any structural movement or failure of the concrete (masonry) spillway or the spillway abutment walls.

(5) Any sloughing or sliding of the dam embankment's upstream or downstream slope. Also, earth slides in the spillway channel, either upstream or downstream of the dam's crest, which could impede the flow in the spillway.

(6) Subsidence, sinkholes or cracks found in any part of the dam embankment or abutting slopes.

(7) Any new discharge of water is observed through the dam embankment or abutting slopes, adjacent to any conduit outlets, or under the dam, which appears as a boil along the downstream toe. If a discharge occurs and the water is cloudy or muddy in color, then a very serious problem exists.

(8) Other conditions, which the owner's engineer knows are a concern for the dam's safety.

(c) In case of emergency, telephone calls should be directed to the Public Safety Answering Point (PSAP)—911, the Pennsylvania Emergency Management Agency at (717) 651-2001 or 800-424-7312 and the Department's emergency number at (717) 787-4343 or (800) 541-2050.

Authority

The provisions of this § 105.63 amended under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1–693.27); The Clean Streams Law (35 P.S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P.L. 704, No. 294) (32 P.S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P.S. §§ 679.101–679.601).

Source

The provisions of this § 105.63 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207710) and (250791).

Cross References

This section cited in 25 Pa. Code § 105.135 (relating to dam hazard emergencies).

§ 105.64. Emergency permits.

The Department may issue emergency permits if it finds that immediate remedial action is necessary to alleviate an imminent threat to life, property or the environment.

- (1) The emergency permit will be provided in writing, on a form developed for this purpose.
- (2) The emergency permit will contain conditions as the Department determines appropriate.
- (3) The Department may institute proceedings, legal or administrative, that it deems appropriate for violations of the emergency permit or conditions of the emergency permit.
- (4) The emergency permit will expire 60 days after the effective date of the permit unless extended in writing by the Department.
- (5) The permittee shall notify the affected municipality of the issuance of an emergency permit as soon as possible and provide a follow-up notice in writing to the affected municipality within 48 hours from the issuance of the emergency permit.

Authority

The provisions of this § 105.64 issued under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1–693.27); The Clean Streams Law (35 P.S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P.L. 704, No. 294) (32 P.S. § 597); sections 514, 1901-A, 1908-A, 1917-A and

1920-A of The Administrative Code of 1929 (71 P.S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P.S. §§ 679.101—679.601).

Source

The provisions of this § 105.64 adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (250791) to (250792).

Cross References

This section cited in 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines); 25 Pa. Code § 105.21a (relating to public notice); and 25 Pa. Code § 105.41 (relating to notices and reports).

Subchapter B. DAMS AND RESERVOIRS

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- 105.121. Fishways.
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OPERATION, MAINTENANCE AND EMERGENCIES

- 105.131. Operation, maintenance and monitoring.
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- 105.132. [Reserved].
- 105.133. Directed repairs.
- 105.134. EAP.
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Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

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GENERAL PROVISIONS**§ 105.71. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter governs the construction, operation, maintenance and modification of a dam or reservoir regulated under the act.

Authority

The provisions of this § 105.71 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. 693.5).

Source

The provisions of this § 105.71 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended November 29, 1974, effective December 16, 1974, 4 Pa.B. 2452; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (250793).

§ 105.72. [Reserved].**Source**

The provisions of this § 105.72 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47991).

§ 105.73. [Reserved].**Source**

The provisions of this § 105.73 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended November 29, 1974, effective December 16, 1974, 4 Pa.B. 2452; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47991).

§ 105.74. [Reserved].**Source**

The provisions of this § 105.74 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47992).

§ 105.75. [Reserved].**Source**

The provisions of this § 105.75 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47992).

§ 105.76. [Reserved].**Source**

The provisions of this § 105.76 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47992).

§ 105.77. [Reserved].**Source**

The provisions of this § 105.77 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (47992) to (47993).

§ 105.78. [Reserved].**Source**

The provisions of this § 105.78 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (47993) to (47994).

§ 105.79. [Reserved]**Source**

The provisions of this § 105.79 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (47994).

**PERMITS, LETTERS OF AMENDMENTS AND
LETTERS OF AUTHORIZATIONS****§ 105.81. Permit applications for construction and modification of dams and reservoirs.**

(a) In addition to the information required under §§ 105.13, 105.13a, 105.13b and 105.15, permit applications under this subchapter for the construction or modification of dams and reservoirs must provide the following information:

- (1) Reports and data detailing the conduct and results of investigations and tests necessary to determine the safety, adequacy and suitability of design, including:
 - (i) Data concerning subsoil and rock foundation conditions.
 - (ii) Data concerning exploratory pits, drilling, coring and tests to determine seepage rates.
 - (iii) Data concerning the strength tests necessary to measure the physical properties and behavior of foundations and embankment materials at the dam or reservoir site.
 - (iv) Data concerning the geology of the dam site or reservoir area, indicating possible hazards such as faults, weak seams and joints.
 - (v) Data concerning availability and quality of construction materials.
 - (vi) A "Dam Stability Report" as required under § 105.97 (relating to stability of structures).
 - (vii) Other information as may be necessary to determine the safety, adequacy and suitability of the design, including the design calculations for the dam, which shall be made available to the Department on request.
- (2) Site plan and cross sectional views required under § 105.13(d)(1)(i) (relating to permit applications-information and fees).
- (3) Construction plans, specifications and design reports to evaluate the safety, adequacy and suitability of the proposed dam, reservoir and appurtenant works in order to determine compliance with this chapter.
- (4) A schedule indicating proposed commencement and completion dates for construction.
- (5) For projects involving storage of fluids or semifluids other than water, information concerning the chemical content, viscosity and other pertinent physical characteristics of the fluid or semifluid impounded.
- (6) An instrumentation plan including justification and design for the installation of permanent monitoring instruments to measure the performance of the dam. If no instrumentation is considered necessary, justification shall be provided.
- (7) A hydrologic and hydraulic analysis, submitted as a separate report, which includes:
 - (i) The size, shape and characteristics of the drainage basin.
 - (ii) Current precipitation data and precipitation distribution information as required by the Department.
 - (iii) Streamflow records.
 - (iv) Flood flow records and estimates.
 - (v) An incremental dam breach analysis, storage capacity and reservoir surface area for normal pool and maximum storage elevations.
 - (vi) Other hydrologic and hydraulic determinations necessary for the design and operation of the dam.

- (8) For existing dams, copies of the structure's most recent inspection reports.
 - (9) EAP if required under § 105.134 (relating to EAP).
 - (10) Proof of title or adequate flowage easements for land area below the top of the dam elevation that is subject to inundation.
 - (11) An Operation and Maintenance Manual for the dam as required under § 105.131 (relating to operation, maintenance and monitoring).
 - (12) Other information the Department may require.
- (b) The Department may waive specific information requirements of this section in writing, if the Department finds that specific information is not necessary to review the application.

Authority

The provisions of this § 105.81 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.81 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 12, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207715) to (207716).

Cross References

This section cited in 25 Pa. Code § 105.88 (relating to dam permit issuance).

§ 105.82. Permit applications for operation and maintenance of existing dams and reservoirs.

- (a) In addition to information required under §§ 105.13, 105.13b and 105.15 (relating to permit applications—information and fees; proof of financial responsibility; and environmental assessment), a permit application for the operation and maintenance of existing dams and reservoirs must provide the following information:
- (1) Site plan and cross sectional views required under § 105.13 (d)(1)(i).
 - (2) “As built” construction plans, specifications and design reports not already on file with the Department, which show the type, size, height and other pertinent dimensions and features of the existing dam and reservoir and appurtenant works.
 - (3) For projects involving storage of fluids or semifluids other than water, information concerning the chemical and physical characteristics of the fluid or semifluid impounded.
 - (4) A description of facilities and plans for monitoring the performance of the dam.
 - (5) A hydrologic and hydraulic analysis, submitted as a separate report, which includes:
 - (i) The size, shape and characteristics of the drainage basin.
 - (ii) Current precipitation data and precipitation distribution information as required by the Department.

- (iii) Streamflow records.
 - (iv) Flood flow records and estimates.
 - (v) An incremental dam breach analysis, storage capacity and reservoir surface area for normal pool and maximum storage elevations.
 - (vi) Other relative hydrologic and hydraulic information that may be available.
 - (6) Information available regarding the foundation, embankment stability, specifications and construction of the dam.
 - (7) A manual which includes plans for the operation and maintenance of the dam in accordance with § 105.131 (relating to operation, maintenance and monitoring).
 - (8) The EAP for the dam or reservoir, if completed, or work plan to prepare and submit an EAP in accordance with § 105.134 (relating to EAP).
 - (9) Proof of title or flowage easements for land areas below the top of the dam elevation that is subject to inundation.
 - (10) Reports of the most recent inspections of the dam conducted by the owner or by the State or Federal government agencies.
 - (11) Other information as the Department may require.
- (b) The Department may waive or modify one or more of the application content requirements set forth in subsection (a) if the information required is not available and is not essential to determining the safety of the dam or reservoir or compliance by the dam or reservoir with the requirements of this chapter.

Authority

The provisions of this § 105.82 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.82 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207716) and (313669).

Cross References

This section cited in 25 Pa. Code § 105.88 (relating to dam permit issuance).

§ 105.83. [Reserved].

Source

The provisions of this § 105.83 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38864).

§ 105.84. [Reserved].**Source**

The provisions of this § 105.84 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38864).

§ 105.85. [Reserved].**Source**

The provisions of this § 105.85 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38864) to (38865).

§ 105.86. [Reserved].**Source**

The provisions of this § 105.86 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38865).

§ 105.87. [Reserved].**Source**

The provisions of this § 105.87 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38865).

§ 105.88. Dam permit issuance.

(a) Upon the Department's review and approval of the dam permit application for the construction or modification of a dam in accordance with § 105.81 (relating to permit applications for construction and modification of dams and reservoirs), the Department will issue a dam construction permit.

(b) For newly constructed or modified dams permitted under subsection (a), the Department will issue a dam operation and maintenance permit after the following conditions have been met:

(1) Meeting the requirements of §§ 105.107—105.109 (relating to final inspection; completion certification and project costs; and as-built plans) by the owner or permittee.

(2) Acceptance of construction or modification by the Department.

(c) Upon the Department's review and approval of the dam permit application for operation and maintenance of existing dams in accordance with § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs), the Department will issue a dam operation and maintenance permit.

Authority

The provisions of this § 105.88 issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.88 adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

§ 105.89. Letters of Amendment and Letters of Authorization for modification of dams and reservoirs.

(a) Projects which do not modify top of dam elevation, normal pool elevation, or normal operation of the pool level may be authorized by Letter of Amendment when the dam has an existing permit or by Letter of Authorization when the dam meets § 105.12(b) (relating to waiver of permit requirements). The permittee or owner shall provide the following information:

(1) Reports and data detailing the conduct and results of investigations and tests necessary to determine the safety, adequacy and suitability of design, including:

- (i) Data concerning subsoil and rock foundation conditions.
- (ii) Data concerning exploratory pits, drilling, coring and tests to determine seepage rates.
- (iii) Data concerning the strength tests necessary to measure the physical properties and behavior of foundations and embankment materials at the dam or reservoir site.
- (iv) Data concerning the geology of the dam site or reservoir area, indicating possible hazards such as faults, weak seams and joints.
- (v) Data concerning availability and quality of construction materials.
- (vi) A "Dam Stability Report" as required under § 105.97 (relating to stability of structures).
- (vii) Other information as may be necessary to determine the safety, adequacy and suitability of the design, including the design calculations for the dam, which shall be made available to the Department on request.

(2) In addition to the site plan and cross sectional views required under § 105.13(d)(1)(i) (relating to permit applications—information and fees), construction plans, specifications and design reports in sufficient detail to evaluate the safety, adequacy and suitability of the proposed dam, reservoir and appurtenant works, and a schedule indicating proposed commencement and completion dates for construction.

(3) For projects involving storage of fluids or semifluids other than water, information concerning the chemical content, viscosity and other pertinent physical characteristics of the fluid or semifluid impounded.

(4) Plans for proposed permanent monitoring of performance by instrument installations in the dam, including the purposes of the instrumentation. If no instrumentation is considered necessary, reasons for this engineering judgment shall be stated.

(5) A hydrologic and hydraulic analysis, submitted as a separate report, which includes the following:

(i) The size, shape and characteristics of the drainage basin.

(ii) Current precipitation data and precipitation distribution information as required by the Department.

(iii) Streamflow records.

(iv) Flood flow records and estimates.

(v) An incremental dam breach analysis, storage capacity and reservoir surface area for normal pool and maximum storage elevations.

(vi) Other hydrologic and hydraulic determinations necessary for the design and operation of the dam.

(6) For an existing dam, copies of the structure's most recent inspection reports.

(7) An EAP if required under § 105.134 (relating to EAP).

(8) A manual documenting the operation and maintenance procedures for the dam.

(9) For projects impacting wetlands or exceptional value waters, or if the project requires 401 water quality certification, environmental assessment approval will be required under § 105.15 (relating to environmental assessment).

(b) The Department may waive the specific information requirements of this section in writing, if upon review of the request for Letter of Amendment or Letter of Authorization, the Department finds that specific information is not necessary to approve the project.

Authority

The provisions of this § 105.89 issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.89 adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

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**CLASSIFICATION AND DESIGN CRITERIA FOR APPROVAL OF
CONSTRUCTION, OPERATION, MODIFICATION
AND MAINTENANCE**

§ 105.91. Classification of dams and reservoirs.

(a) A dam or reservoir shall be classified in accordance with Size Category and the Hazard Potential Category which might occur in the event of an operational or structural failure. In approving a classification, the Department will consider, without limitation:

- (1) The height of the dam and storage capacity of the reservoir.
- (2) The physical characteristics and extent of actual and projected development of the dam site and downstream areas.
- (3) The relationship of the site to existing or projected industrial, commercial and residential areas and other land uses downstream which may be affected by a dam failure.

(b) Size Category will be determined by either storage or height of structure, whichever results in the higher category. Hazard Potential Category will be determined by either loss of life or economic loss, whichever results in the higher category. The following shall be the categories and descriptions as used in this subchapter:

SIZE CATEGORY

<i>Category</i>	<i>Impoundment Storage (Acre Feet)</i>	<i>Dam Height (Feet)</i>
A	Equal to or greater than 50,000	Equal to or greater than 100
B	Less than 50,000 but greater than 1000	Less than 100 but greater than 40
C	Equal to or less than 1000	Equal to or less than 40

HAZARD POTENTIAL CATEGORY

<i>Category</i>	<i>Population at Risk</i>	<i>Economic Loss</i>
1	Substantial (Numerous homes or small businesses or a large business or school).	Excessive such as extensive residential, commercial, or agricultural damage, or substantial public inconvenience.

<i>Category</i>	<i>Population at Risk</i>	<i>Economic Loss</i>
2	Few (A small number of homes or small businesses.)	Appreciable such as limited residential, commercial, or agricultural damage, or moderate public inconvenience.
3	None expected (no permanent structures for human habitation or employment.)	Significant damage to private or public property and short duration public inconvenience such as damage to storage facilities or loss of critical stream crossings.
4	None expected (no permanent structures for human habitation or employment.)	Minimal damage to private or public property and no significant public inconvenience.

Authority

The provisions of this § 105.91 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.91 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (313670) and (207719) to (207720).

Cross References

This section cited in 25 Pa. Code § 87.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 90.112 (relating to hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance); 25 Pa. Code § 105.12 (relating to waiver of permit requirements); 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.13b (relating to proof of financial responsibility); 25 Pa. Code § 105.53 (relating to inspections by owners and inspection reports); 25 Pa. Code § 105.98 (relating to design flood criteria); and 25 Pa. Code § 105.442 (relating to authorization for general permits).

§ 105.92. Foundations.

- (a) The foundation of a dam or reservoir must be stable under all probable conditions.
- (b) In analyzing the stability of the foundation of a proposed or existing dam or reservoir, the applicant shall consider the following factors:
- (1) The seismic forces and liquefaction potential at the site.
 - (2) The shear strength of the foundation.
 - (3) Settlement, subsidence, and carbonate karst solution features, such as sinkholes and solution channels.

- (4) Seepage potential through the soil and rock components of the foundation.
- (5) The dispersive characteristics of the soil foundation and borrow areas.

Authority

The provisions of this § 105.92 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.92 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207720).

§ 105.93. Design stress.

In the construction of dams and reservoirs, allowable stresses must conform to the current standards accepted by the engineering profession.

Source

The provisions of this § 105.93 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 12, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207720).

§ 105.94. Spillways.

(a) Every dam must be provided with a spillway system which is capable of safely conveying the design flood, as provided in § 105.98 (relating to design flood criteria), of the dam without endangering the safety or integrity of the dam. The Department may require submission of models utilizing current acceptable methodologies to demonstrate this capability without excessive erosion and failure of the spillway system.

(b) Each spillway must include a satisfactory means of dissipating the energy flow at its outlet to assure conveyance of flow without endangering the safety and integrity of the dam or the natural environment of the stream.

(c) Each spillway floor slab must be provided with adequate drainage, anchors, or drainage and anchors to be stable against uplift.

Authority

The provisions of this § 105.94 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.94 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; added September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207720) to (207721).

§ 105.95. Freeboard.

Sufficient freeboard may be required to prevent overtopping of the dam and to allow for wave and ice action.

Authority

The provisions of this § 105.95 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.95 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; added September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (149140).

§ 105.96. Outlet works.

(a) Dams must include a device to allow the complete draining of the reservoir unless the Department determines that an outlet works is not feasible for a specific dam. At minimum, the device must be sized to pass a minimum of 70% of the highest mean monthly inflow at the site plus the capacity to drain the top 2 feet of reservoir storage below normal pool in 24 hours. The highest mean monthly flow shall be determined from statistics of an appropriate stream gage, as approved by the Department, transferred to the dam site by the ratio of the drainage areas. The Department may require an increased size to provide for the integrity of the dam and to protect life and property with an adequate margin of safety.

(b) In determining the reasonable time period for drainage of the reservoir, the dam owner, the dam owner's engineer, and the Department may consider, without limitation, the following factors:

- (1) The damage potential posed by possible failure of the dam.
- (2) The risk and nature of potential failure and the time likely to be available to avert the failure after notice of conditions threatening the safety or stability of the dam.
- (3) The purpose of the dam and reservoir.
- (4) The capacity and stability of available drainage courses to convey the waters released from the reservoir in the event of emergency drainage.
- (5) The influence of rapid drawdown on the stability of the dam, its appurtenant works and the upstream natural slopes of the reservoir.

(c) Under normal conditions, the maximum rate of drawdown for reservoirs impounded by earthfill dams should not exceed 1 foot per day without prior

approval by the Department. Under emergency conditions, the maximum rate of partial or complete drawdown of reservoirs must be approved by the Department, when feasible.

(d) Each outlet works must include upstream closure, trashrack, and a means of dissipating the energy of flow at its outlet to assure conveyance of flow without endangering the safety and integrity of the dam or the natural environment of the stream.

Authority

The provisions of this § 105.96 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.96 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207721).

§ 105.97. Stability of structures.

(a) Dams must be structurally sound and be constructed of sound and durable materials. The structure must be stable during and at the completion of construction.

(b) As part of the permit application for the construction or modification of a dam, the design engineer shall submit to the Department, under professional seal and certification, a report entitled "Dam Stability Report" which clearly demonstrates to the Department that the requirements of subsection (a) have been satisfied. At a minimum, this report must address the following considerations:

- (1) The physical properties of the materials available for construction.
- (2) A stability analysis based on the properties of the structure's materials and on the seismic forces and seepage conditions affecting the structure.
- (3) The methods of construction.
- (4) The conditions of operation of the dam and reservoir.

(c) Earthfill dams must be demonstrated to be stable for the following conditions:

- (1) Normal pool with steady-state seepage conditions with a factor of safety of 1.5.
- (2) Maximum pool with steady-state seepage conditions with a factor of safety of 1.4.
- (3) Sudden drawdown from normal pool conditions with a factor of safety of 1.2.
- (4) Normal pool with steady-state seepage conditions under seismic forces produced by the maximum credible earthquake with a factor of safety of 1.1.
- (5) Completion of construction with no pool with a factor of safety of 1.3.

(d) Gravity dams must be demonstrated to be stable for the following conditions:

- (1) Normal pool with appropriate uplift pressures, ice loads and silt loads with a factor of safety of 2.0.
 - (2) Maximum pool with appropriate uplift pressures and silt loads with a factor of safety of 1.7.
 - (3) Normal pool with appropriate uplift pressures and silt loads under seismic forces produced by the maximum credible earthquake with a factor of safety of 1.3.
- (e) For gravity dams, the overturning stability is acceptable when the resultant of all forces acting on the dam is located as follows:
- (1) Within the middle third of the structure for normal pool conditions.
 - (2) Within the middle half of the structure for maximum pool conditions.
 - (3) Within the structure for earthquake conditions.
- (f) For gravity dams, the foundation bearing pressures must be less than or equal to the allowable for no pool, normal pool and maximum pool conditions and less than 133% of the allowable for earthquake conditions.
- (g) The factors of safety for earthfill dams or gravity dams must be the higher of:
- (1) The factors of safety in subsections (c) and (d).
 - (2) The factors of safety in the most recent Engineering Manuals developed by the United States Army Corps of Engineers relating to stability of dam structures.
- (h) The Department may, in its discretion, consider a revised factor of safety for a class of dams or reservoirs when it can be demonstrated that the factor of safety provides for the integrity of the dams or reservoirs and adequately protects life and property.

Authority

The provisions of this § 105.97 under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.97 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207722).

Cross References

This section cited in 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); and 25 Pa. Code § 105.89 (relating to Letters of Amendment and Letters of Authorization for modification of dams and reservoirs).

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§ 105.98. Design flood criteria.

The discharge capacity or storage capacity, or both, must be capable of safely accommodating the recommended design flood for the dam as classified under § 105.91 (relating to classification of dams and reservoirs). The design flood must be determined by an incremental dam breach analysis. The minimum required design storm duration is 24 hours. When considered appropriate by the Department, engineering judgment may be used to determine the design flood within the design flood range indicated below for dams of Hazard Potential Category 3 or 4. The classification or damage, or both, resulting from dam failure will determine the design flood within the design flood range.

<i>Classification</i>	<i>Design Flood Range</i>
A-3, B-3	1/2 PMF to PMF
A-4, B-4, C-3	100 year to 1/2 PMF
C-4	50 year to 100 year frequency

Authority

The provisions of this § 105.98 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.98 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207722) to (207723).

Cross References

This section cited in 25 Pa. Code § 105.94 (relating to spillways).

§ 105.99. Dams in subdivision developments.

Whenever a dam or reservoir is proposed to be constructed in or as a part of an existing or proposed subdivision development, the Department will include in the permit the conditions as are necessary to prevent construction of structures on lands which may be subject to flooding caused by the maximum pool of the dam and to require the permittee to adequately inform potential buyers or lessees of the restrictions.

Source

The provisions of this § 105.99 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

CONSTRUCTION REQUIREMENTS AND PROCEDURES**§ 105.101. [Reserved].****Authority**

The provisions of this § 105.101 reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.101 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207723).

Cross References

This section cited in 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.102. Personnel and supervision.

(a) The permittee or owner shall file with the Department, at least 15 days prior to the commencement of construction, a statement setting forth the name and employer, including contact information, of the following:

- (1) The professional engineer responsible for oversight and supervision of construction.
- (2) Representatives of the professional engineer.
- (3) Contractors conducting the work authorized by the permit, Letter of Amendment or Letter of Authorization as required by the Department.

(b) Work must be conducted under the oversight and supervision of a professional engineer. The professional engineer or a representative of the professional engineer shall be on the work site during significant construction activities until the completion of the dam.

Authority

The provisions of this § 105.102 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.102 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207723) to (207724).

Cross References

This section cited in 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

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§ 105.103. Weather and ground conditions.

(a) No earth or other embankment material may be covered, placed, compacted, or graded when in a frozen condition.

(b) Masonry and concrete may not be placed in freezing weather except under conditions approved by the Department.

Authority

The provisions of this § 105.103 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.103 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207724).

§ 105.104. Removal and disposal of vegetation.

(a) Work shall be conducted in a manner to minimize the destruction of or damage to trees and other vegetation on and adjacent to the construction site.

(b) Vegetation cleared and removed from the site shall be disposed of in accordance with applicable laws and regulations.

Authority

The provisions of this § 105.104 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.104 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207724).

§ 105.105. [Reserved].**Source**

The provisions of this § 105.105 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117685).

§ 105.106. Activities and facilities on the construction site.

Activities and facilities on the construction site must be conducted and operated in a manner to avoid pollution of the air and waters of this Commonwealth and in accordance with applicable laws and the provisions of this title.

Authority

The provisions of this § 105.106 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.106 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207724) to (207725).

§ 105.107. Final inspection.

Within 10 days after the completion of work on a dam authorized by the Department, the permittee or owner shall schedule a final project inspection with the Department. The final inspection must include the permittee or owner, the permittee or owner's supervising engineer, and the Department's field representative. Upon conclusion of this final inspection, the Department's field representative will present the permittee or owner with a list of any deficient items, if necessary. A follow-up final inspection may be required by the Department. At the discretion of the Department, the final inspection may be waived for projects authorized by Letter of Amendment or Letter of Authorization.

Authority

The provisions of this § 105.107 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.107 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207725).

Cross References

This section cited in 25 Pa. Code § 105.88 (relating to dam permit issuance); and 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.108. Completion, certification and project costs.

Within 30 days after the final inspection or within 30 days of completion of the work if the final inspection is waived by the Department, the permittee or owner shall file with the Department a completion certification provided by the Department stating that work has been performed in accordance with the terms and conditions of the permit or other Department authorization; the approved maps, plans, profiles and specifications; and applicable laws and the provisions of this title. The completion certification must contain the following:

- (1) Original signature of the permittee or owner.
- (2) Seal and original signature of the supervising engineer.
- (3) Design cost.
- (4) Construction cost.

- (5) Construction inspection cost.
- (6) Estimated percentage of the total cost for each major feature of the project.

Authority

The provisions of this § 105.108 issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.108 adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.88 (relating to dam permit issuance); and 25 Pa. Code § 105.111 (relating to commencement of storage of water, fluid or semifluid).

§ 105.109. As-built plans.

Within 90 days after the final inspection or completion of the work, if the final inspection is waived by the Department, the permittee or owner shall file with the Department “as built” plans for the project, indicating revisions from the original plans and specifications.

Authority

The provisions of this § 105.109 issued under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.109 adopted January 7, 2011, effective January 8, 2011, 41 Pa.B. 219.

Cross References

This section cited in 25 Pa. Code § 105.88 (relating to dam permit issuance).

STORAGE AND DISCHARGE

§ 105.111. Commencement of storage of water, fluid or semifluid.

(a) The permittee shall notify the Department, in writing, at least 7 days in advance of the date proposed for the commencement of storage of water, fluid or semifluid in the reservoir created by the dam for which the permit is issued.

(b) The Department may require that a reservoir filling plan be developed and approved by the Department prior to commencement of storage of water, fluid or semifluid. This plan will provide the acceptable rate of rise of the reservoir and, if necessary, elevations and durations for constant reservoir levels within the filling period. This plan may also require lowering of the reservoir level if the prescribed rate of rise is not controlled or attained. The plan may also require monitoring of instrumentation of the dam.

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(c) The Department may require that a representative of the Department be at the site before or during the filling of the reservoir.

(d) The initial storage in the reservoir of new dams and refilling of reservoirs of rehabilitated dams may not commence prior to the submission of the information required in § 105.108 (relating to completion certification and project costs) and the acceptance of the certification, in writing, from the Department.

Authority

The provisions of this § 105.111 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.111 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207725).

Cross References

This section cited in 25 Pa. Code § 105.445 (relating to waiver of certain requirements).

§ 105.112. Stream flow during construction, filling and repair.

During the period of construction, modification, enlargement or repair and during the period that the reservoir is being filled, the permittee shall allow a sufficient flow of water, as determined by the Department, into the stream below the dam to support fish and other aquatic life and to preserve the water quality in the stream.

Authority

The provisions of this § 105.112 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.112 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207725) to (207726).

§ 105.113. Releases.

(a) The Department will impose general and special conditions regarding release rates in a permit for a dam or reservoir that it deems necessary to maintain stream flows for the purposes of protection of public health, water quality control, conservation of fisheries and aquatic habitat, improvement of recreation and protection of instream and downstream water uses. The appropriate release rates for the dams and reservoirs will be established in accordance with subsections (b) and (c).

(b) For dams or reservoirs constructed after August 28, 1978:

(1) The minimum release rate unless modified in accordance with paragraph (2) shall be the average consecutive 7 day flow having a recurrence interval of once in 10 years (Q 7-10) plus an additional release rate determined by the following formula:

$$\text{Release rate (csm)} = Q7-10 + \text{PDF}(.25 \text{ csm} - Q7-10 \text{ csm})$$

where PDF = the percentage factor based on the storage capacity of the reservoir measured as percent of average annual runoff retained in the reservoir. This factor is explained in Planning Principles, State Water Plan SWP-1 (March, 1975).

.25 csm = .25 cubic feet per second of flow per square mile of watershed.

Q7-10csm = The seven-day, ten-year flow, in cubic feet per second per square mile of watershed.

The minimum release rate determined by this formula shall not exceed 0.25 cubic feet per square mile of watershed.

(2) The Department may modify the minimum release rate, or provide variable schedules or releases considering the following factors:

- (i) The purposes stated in subsection (a).
- (ii) Particular stream requirements, including the particular needs of instream and downstream water uses and riparian rights.
- (iii) The particular uses and purposes of the dam or reservoir.
- (iv) The particular engineering, hydrologic and economic factors affecting the ability of the dam or reservoir to provide the releases.

(c) For dams and reservoirs constructed prior to August 28, 1978, the Department will determine a reasonable schedule for release rates, considering all of the following:

- (1) The purposes stated in subsection (a) and the particular needs of instream and downstream water uses on the affected stream.
- (2) The capacity of existing release works at the dam and feasibility of potential modification of the release works.
- (3) The yield of the reservoir, and its capability to meet release requirements and satisfy the purposes and uses of the reservoir.

(d) Every dam must at all times be operated in a manner to allow the required flow of water into the stream below the dam as established under this section, and as otherwise necessary to support fish and other aquatic life and to assure compliance with the water quality standards in Chapter 93 (relating to water quality standards) and to provide for other instream uses for the affected stream.

Authority

The provisions of this § 105.113 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.113 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207726) to (207727).

§ 105.114. [Reserved].**Source**

The provisions of this § 105.114 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38870) to (38871).

PROTECTION AND RESTORATION OF AQUATIC LIFE**§ 105.121. Fishways.**

Upon the request of the Fish and Boat Commission, the permittee shall install and maintain chutes, slopes, fishways, gates or other devices that the Fish and Boat Commission may require under 30 Pa.C.S. §§ 3501—3505.

Authority

The provisions of this § 105.121 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.121 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207727).

§ 105.122. Drawdown of impounded waters.

Impounded waters which are inhabited by fish may not be drawn down except with the written approval of the Fish and Boat Commission under 30 Pa.C.S. § 3506 (relating to drawing off or interference with dams or devices).

Authority

The provisions of this § 105.122 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

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Source

The provisions of this § 105.122 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207728).

Cross References

This section cited in 25 Pa. Code § 105.131 (relating to operation and monitoring plans); and 25 Pa. Code § 105.136 (relating to unsafe dams).

§ 105.123. Restoration of aquatic life.

If the Department finds that construction of a dam or reservoir has substantially disrupted aquatic life to preclude natural restoration of the stream ecology within a reasonable period of time, the permittee shall be required to submit and implement a plan to restore the aquatic life of the stream to its prior condition, to the maximum extent possible. The plan shall be subject to review and modification by the Department in consultation with the Fish and Boat Commission and must include, but not be limited to, the following:

- (1) Placement of bed gravel.
- (2) Stabilization of banks and bed.
- (3) Installation of stream improvement devices.
- (4) Revegetation of stream and banks.
- (5) Stocking of fish and other aquatic life.

Authority

The provisions of this § 105.123 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.123 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207728).

§ 105.124. [Reserved].**Source**

The provisions of this § 105.124 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4594).

§ 105.125. [Reserved].**Source**

The provisions of this § 105.125 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4594).

OPERATION, MAINTENANCE AND EMERGENCIES**§ 105.131. Operation maintenance and monitoring.**

(a) In addition to the requirements of §§ 105.51—105.54 (relating to operation, maintenance and inspection), the permittee or owner of a dam shall follow the operation and maintenance manual for the dam, and the emergency action plan if required under § 105.134 (relating to EAP), as approved by the Department and shall implement a monitoring plan as required under § 105.81(a)(4) (relating to permit applications for construction and modification of dams and reservoirs).

(b) A permittee or owner of a dam or reservoir may not modify or cease implementation of all or part of the approved plans and methods of operation or monitoring without the prior approval of the Department by permit, Letter of Amendment, or Letter of Authorization. The permit will be issued in accordance with § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs). The Letter of Amendment or Letter of Authorization will be issued only after review and approval of necessary engineering calculations, construction plans and construction specifications. If the project impacts wetlands or exceptional value waters, or if the project requires 401 water quality certification, an environmental assessment shall also be submitted to the Department for review and approval under § 105.15 (relating to environmental assessment). Modifications of a dam are subject to the construction requirements and procedures under Subchapters A and B (relating to general provisions; and dams and reservoirs), unless specifically waived by the Department.

(c) The permittee or owner of a dam or reservoir shall operate and maintain the dam in accordance with the authorized plans and specifications. Routine maintenance of the dam and the reservoir's design storage capacity will not require further authorization under this chapter except as provided in § 105.122 (relating to drawdown of impounded waters).

Authority

The provisions of this § 105.131 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

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(366043) No. 462 May 13

Source

The provisions of this § 105.131 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207729).

Cross References

This section cited in 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); and 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs).

§ 105.131a. Annual dam registration.

This chapter establishes annual dam registration fees according to § 105.13(c)(1)(viii) (relating to regulated activities—information and fees) for the Department’s administration of the act.

Authority

The provisions of this § 105.131a issued under sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (32 P. S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17); sections 5, 6, 8 and 402 of The Clean Streams Law (35 P. S. §§ 691.5, 691.6, 691.8 and 691.402); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and sections 302 and 402 of the Flood Plain Management Act (32 P. S. §§ 679.302 and 679.402).

Source

The provisions of this § 105.131a adopted February 15, 2013, effective February 16, 2013, 43 Pa.B. 967.

Cross References

This section cited in 25 Pa. Code § 105.13 (relating to regulated activities—information and fees).

§ 105.132. [Reserved].**Authority**

The provisions of this § 105.132 reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.132 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207730).

§ 105.133. Directed repairs.

The permittee or owner shall immediately take steps that the Department may prescribe as necessary to preserve the structural stability and integrity of the dam and protect health, safety, property and the environment.

Authority

The provisions of this § 105.133 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.133 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (207730).

§ 105.134. EAP.

(a) The permittee or owner of an existing or proposed Hazard Potential Category 1, Category 2 or Category 3 dam as classified in § 105.91 (relating to classification of dams and reservoirs) shall develop an EAP to be followed in the event of a dam hazard emergency as defined in § 105.135 (relating to dam hazard emergencies). The EAP shall be submitted to the Department and approved by the Department and the Pennsylvania Emergency Management Agency (PEMA).

(1) Prior to submitting the EAP for review or approval, the permittee or owner shall schedule a meeting with the county emergency management coordinators for those counties affected by the dam's failure.

(2) Each submission of the EAP must be signed by the dam owners, the dam operators, and the county emergency management coordinators for those counties affected by the dam's failure signifying concurrence with the EAP.

(3) In the case of a proposed dam, the EAP shall be submitted to the Department and approved by the Department and PEMA prior to commencement of storage of water, fluid or semifluid.

(4) The EAP must be prepared in accordance with the most recent EAP guidelines developed by the Department and PEMA.

(b) Upon approval of the EAP, the permittee or owner shall provide a copy of the signed approved EAP to the municipal emergency management agencies and the emergency response agencies listed in the EAP.

(c) Within 60 days of the date of the Department's approval letter, the permittee or owner shall provide the Department a written statement certifying that a signed approved copy of the EAP has been provided to each municipal emergency management agency and to each emergency response agency listed in the EAP.

(d) In addition to the requirements in subsections (a), (b) and (c), the permittee or owner of a Hazard Potential Category 1 or Category 2 dam shall post notices in public locations in areas that may be affected by the failure of the dam.

The notice must indicate that copies of the EAP are available for review at the appropriate county and municipal emergency management offices. Also, the notice shall be posted by the permittee or owner in public places within each political subdivision situated within the inundation area downstream of the dam. The notice shall be posted in the city, borough, and township buildings in the affected municipalities, with the management's permission. Additionally, the notice shall be posted in locations within the inundation area, such as, post offices, libraries, grocery stores, or gas stations, with the management's permission.

(e) Within 60 days of the date of the Department's approval letter, the permittee or owner shall provide the Department a written statement certifying that the notice has been posted in the locations listed in the EAP. The permittee or owner shall certify in each subsequent annual inspection report, as required in § 105.53(a), that the notices remain posted or were reposted in the locations listed in the EAP.

(f) The EAP shall be reviewed and updated every 5 years or the frequency interval indicated in the most recent EAP guidelines developed by the Department and PEMA.

(g) The Department may require the EAP be updated, as necessary, if there is a new owner or operator, if changes occur in the downstream inundation area or in the Hazard Potential Category.

Authority

The provisions of this § 105.134 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.134 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207730) to (207731).

Cross References

This section cited in 25 Pa. Code § 105.81 (relating to permit applications for construction and modification of dams and reservoirs); 25 Pa. Code § 105.82 (relating to permit applications for operation and maintenance of existing dams and reservoirs); 25 Pa. Code § 105.89 (relating to Letters of Amendment and Letters of Authorization for modification of dams and reservoirs); 25 Pa. Code § 105.131 (relating to operation and monitoring plans); and 25 Pa. Code § 105.135 (relating to dam hazard emergencies).

§ 105.135. Dam hazard emergencies.

(a) For the purposes of this section, a dam hazard emergency means a condition which the Department, permittee or owner of the dam reasonably finds con-

stitutes an imminent threat to life or property above or below a dam, whether arising from the condition of the dam and appurtenant works or extraordinary natural conditions, affecting the safety and stability of the dam, including flood, earthquake and ice jam.

(b) The emergency procedures and the EAP required under §§ 105.63 and 105.134 (relating to emergency procedures; and EAP) shall be followed by the permittee and owner of a dam or reservoir in the event of an actual or potential dam hazard emergency.

(c) If a dam hazard emergency exists, the permittee or owner of the dam shall immediately notify appropriate emergency management officials identified in the emergency action plan required under §§ 105.63 and 105.134 of the existence of the hazard and request the authorities to initiate appropriate action to assure protection of life and property; and the permittee or owner shall immediately take actions as authorized by the Department necessary to prevent dam failure or loss of life or property.

(d) The Department, upon determining that a dam hazard emergency exists, will notify the owner immediately to take actions the Department determines are necessary to prevent dam failure or loss of life or property.

Authority

The provisions of this § 105.135 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.135 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207731) to (207732).

Cross References

This section cited in 25 Pa. Code § 105.63 (relating to emergency procedures); and 25 Pa. Code § 105.136 (relating to unsafe dams).

§ 105.136. Unsafe dams.

(a) For purposes of this section, an unsafe dam means a dam which meets one or more of the following criteria:

(1) A dam with deficiencies of such a nature that if not corrected could result in the failure of the dam with subsequent loss of lives or substantial property damage. This determination is based on good engineering judgment or the application of the guidelines established for the National Dam Inspection Program.

(2) A dam classified as unsafe under the National Dam Inspection Program.

(3) A dam declared as unsafe by the Department.

(b) The owner of an unsafe dam shall do the following:

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- (1) Immediately notify the Department upon receipt of any information indicating the dam is unsafe.
 - (2) Drain the reservoir as required and approved by the Department and in accordance with § 105.122 (relating to drawdown of impounded waters).
 - (3) Within time limits established by the Department, submit a plan for removal of the dam, a plan for repair of the dam or an application for a permit authorizing modification of the dam under subsection (c).
 - (4) Following approval of the plan or permit by the Department, undertake and complete actions to remove or repair the dam or implement the modifications to the dam within the time limits set by the Department.
- (c) The Department may issue a permit for modification of an unsafe dam, under section 9 of the act (32 P. S. § 693.9), which authorizes the owner of an unsafe dam to modify the dam within the time prescribed in the permit to meet the requirements of the act and this chapter. The permit shall be conditioned upon:
- (1) Compliance by the owner of the dam with a prescribed schedule for correction or modification of the unsafe condition within the shortest time period technically feasible and economically achievable.
 - (2) Implementation by the owner of the dam of measures deemed necessary by the Department to reduce risks to health, safety and the environment pending correction or modification of the unsafe condition, including, but not limited to, special provisions relating to operation, emergency planning, monitoring and warning systems, and development of an alternative source of water supply if the dam serves as a water supply dam.
 - (d) In determining whether to require removal of an unsafe dam or to permit the owner to modify the dam, the Department will consider whether there is a substantial adverse impact to the public health, safety and the environment which will result from the draining and removal of the dam. If the Department determines that this adverse impact outweighs the danger to public health, safety and the environment resulting from leaving the dam in place, the Department may decide to allow the unsafe dam to remain until it has been modified.
 - (e) At the discretion of the Department, a public hearing may be held in the affected area prior to the issuance of a permit authorizing modification of an unsafe dam over a period of more than 6 months, to inform affected communities of the risks which may result from allowing the unsafe dam to remain standing or to impound water during the time necessary to complete the modifications.
 - (f) If the Department finds that conditions upon which the permit, Letter of Amendment, or Letter of Authorization was issued have substantially changed or that the owner does not meet the schedule for modification contained in the permit, Letter of Amendment, or Letter of Authorization, the Department will review the status of the dam. An extension of the time period for completion of a modi-

fication may be issued by the Department if the owner has proceeded in good faith with the previous schedule of modification and the requirements of subsections (c) and (d) are met.

(g) Nothing in this section may be construed to limit the power of the Department to take immediate action, prior to public hearing, to do one or more of the following:

- (1) Revoke or suspend a permit, Letter of Amendment, or Letter of Authorization when deemed necessary by the Department to protect public health, safety and the environment.
- (2) Order correction or abatement of a dam hazard emergency under § 105.135 (relating to dam hazard emergencies)
- (3) Take another action authorized by law.

Authority

The provisions of this § 105.136 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.136 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207732) to (207733).

Subchapter C. CULVERTS AND BRIDGES

GENERAL PROVISIONS

Sec.

- 105.141. Scope.
- 105.142. Applicability of stream enclosure rules.
- 105.143. [Reserved].
- 105.144. [Reserved].
- 105.145. [Reserved].
- 105.146. [Reserved].

PERMITS

- 105.151. Permit applications for construction or modification of culverts and bridges.
- 105.152. Permit applications for operation and maintenance of existing culverts and bridges.
- 105.153. [Reserved].
- 105.154. [Reserved].
- 105.155. [Reserved].
- 105.156. [Reserved].
- 105.157. [Reserved].
- 105.158. [Reserved].

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DESIGN CRITERIA FOR CONSTRUCTION OR MODIFICATION

- 105.161. Hydraulic capacity.
- 105.162. Multiple pipes and spans.
- 105.163. Bridge piers.
- 105.164. Bridge abutments.
- 105.165. Height of bridges and culverts.
- 105.166. Placement of culverts.

OPERATION AND MAINTENANCE

- 105.171. Maintenance.
- 105.172. Inadequate or collapsed structures.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications); and 25 Pa. Code § 105.315 (relating to aerial crossings).

GENERAL PROVISIONS

§ 105.141. Scope.

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter governs the construction, alteration,

enlargement, repair, maintenance and removal of a bridge or culvert located in, along or across, or projecting into the regulated waters of this Commonwealth.

Source

The provisions of this § 105.141 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38872) to (38873).

§ 105.142. Applicability of stream enclosure rules.

A culvert of greater than 100 feet in upstream to downstream length shall be considered to be a stream enclosure, subject to Subchapter D (relating to stream enclosures).

Source

The provisions of this § 105.142 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38873).

§ 105.143. [Reserved].

Source

The provisions of this § 105.143 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38873).

§ 105.144. [Reserved].

Source

The provisions of this § 105.144 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38874).

§ 105.145. [Reserved].

Source

The provisions of this § 105.145 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38874).

§ 105.146. [Reserved].**Source**

The provisions of this § 105.146 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38874).

PERMITS**§ 105.151. Permit applications for construction or modification of culverts and bridges.**

In addition to the information required under § 105.13 (relating to permit applications—information and fees), applications for permits under this subchapter for the construction or modification of culverts and bridges shall contain the following:

- (1) Plans showing the location, type, size and height of the proposed bridge or culvert and detailing the topographic features, elevations and structures so as to enable an appraisal of the hazard potential of the structure.
- (2) A description of the character of the stream bed and banks and a profile of the stream for a reasonable distance above and below the proposed site, showing slopes of bed, normal water surface and flood water surface.
- (3) A hydrologic and hydraulic analysis which shall include: data on size, shape and characteristics of the watershed; the amount and frequency of the design flood; the hydraulic capacity of the structure; the hydraulic capacity of the channel upstream and downstream; and, where flooding is a problem, flood damage and backwater analysis.
- (4) Other information as the Department may require.

Source

The provisions of this § 105.151 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38874) to (38875).

Cross References

This section cited in 25 Pa. Code § 78a.68b (relating to well development pipelines for oil and gas operations).

§ 105.152. Permit applications for operation and maintenance of existing culverts and bridges.

(a) In addition to information required by § 105.13 (relating to permit applications—information and fees), a permit application for the operation and maintenance of existing culverts and bridges shall give the following information:

- (1) Plans showing the location, type, size and height of the existing bridge or culvert and detailing the topographic features, elevations and structures so as to enable an appraisal of the hazard potential of the structure.

- (2) A description of the character of the stream bed and banks and a profile of the stream for a reasonable distance above and below the existing site showing slopes of bed, normal water surface and flood water surface.
- (3) Other information as the Department may require.

Source

The provisions of this § 105.152 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38875) to (38876).

§ 105.153. [Reserved].

Source

The provisions of this § 105.153 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4597).

§ 105.154. [Reserved].

Source

The provisions of this § 105.154 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4597).

§ 105.155. [Reserved].

Source

The provisions of this § 105.155 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4597).

§ 105.156. [Reserved].

Source

The provisions of this § 105.156 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4598).

§ 105.157. [Reserved].

Source

The provisions of this § 105.157 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4598).

§ 105.158. [Reserved].**Source**

The provisions of this § 105.158 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229. Immediately preceding text appears at serial page (4598).

DESIGN CRITERIA FOR CONSTRUCTION OR MODIFICATION**§ 105.161. Hydraulic capacity.**

(a) Bridges and culverts shall be designed and constructed in accordance with the following criteria:

- (1) The structure shall pass flood flows without loss of stability.
- (2) The structure may not create or constitute a hazard to life or property, or both.
- (3) The structure may not materially alter the natural regimen of the stream.

(4) The structure may not so increase velocity or direct flow in a manner which results in erosion of stream beds and banks.

(5) The structure may not significantly increase water surface elevations.

(6) The structure shall be consistent with local flood plain management programs.

(b) In determining flood flows and frequencies for purposes of this subchapter, hydrologic analysis shall be by methods generally accepted in the engineering profession.

(c) The general criteria for design flows are as follows:

- (1) Rural area—25-year frequency flood flow.
- (2) Suburban area—50-year frequency flood flow.
- (3) Urban area—100-year frequency flood flow.

(d) The determination of flood flows for design shall be made with reasonable consideration of development which may alter the runoff characteristics of the watershed during the anticipated life of the structure. Specific design requirements in subsection (c) may be varied to fit the conditions at the site and the requirements of flood plain management regulations and ordinances.

(e) The structures shall pass the 100-year frequency flood with less than a 1.0-foot increase in the natural unobstructed 100-year water surface elevation, except where the structure would be located in a floodway which is delineated on a FEMA map, in which case no increase in the 100-year water surface elevation will be permitted. Exceptions to this criteria may be approved by the Department if the applicant prepares a risk assessment which demonstrates, and the Department finds, that the structure will not significantly increase the flooding threat to life and property or the environment, and if applicable, is consistent with municipal floodplain management programs adopted under the National Flood Insurance

Program and a FEMA Flood Insurance Study. This information may be obtained from the Department of Community Affairs, Floodplain Management Division, Forum Building, Harrisburg, Pennsylvania 17120.

Authority

The provisions of this § 105.161 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.161 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117699).

§ 105.162. Multiple pipes and spans.

Multiple pipes and multiple span bridges and culverts which may tend to collect debris, contribute to the formation of ice jams and increase head losses shall be avoided to the maximum practicable extent. Crossings of less than 15 feet shall be by one span, except where conditions make it impractical to effect the crossing without multiple spans.

Source

The provisions of this § 105.162 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.163. Bridge piers.

(a) Bridge piers shall be kept to a minimum in number and cross-sectional area and shall be designed to offer the least obstruction to the passage of water and ice, consistent with safety.

(b) Bridge piers in channels subject to unstable or super critical flow shall require special investigation and shall be so designed as to prevent the creation of excessive backwater and waves downstream of the pier.

Source

The provisions of this § 105.163 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.164. Bridge abutments.

(a) Bridge abutments shall be set well into the banks in such manner as to assure minimal increase in flood elevations.

(b) Bridge abutments shall be aligned with the flow of the stream. The Department may require, in its discretion, the construction of wing walls at the upstream side of the bridge to assist in directing flood flows through the bridge opening.

Source

The provisions of this § 105.164 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.165. Height of bridges and culverts.

Bridges and culverts shall be of sufficient height and clearance to allow the use of the stream or other body of water in its customary manner.

Source

The provisions of this § 105.165 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.166. Placement of culverts.

- (a) Culverts shall be aligned with the stream flow.
- (b) Culverts shall be of sufficient width to minimize narrowing of the stream channel.
- (c) The upstream side of culverts shall be protected by wing walls or other structures sufficient to assist in directing flood flows to and through the culvert opening.

Source

The provisions of this § 105.166 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

OPERATION AND MAINTENANCE

§ 105.171. Maintenance.

- (a) The owner or permittee of a culvert or bridge is responsible for maintaining the structure opening thereof in good repair and assuring that flood carrying capacity of the structure is maintained. The owner or permittee shall inspect the opening and approach of the culvert or bridge at regular intervals of not less than once each year and shall, after obtaining the verbal or written approval of the Department, remove silt and debris which might obstruct the flow of water through the structure. It shall be assumed that the flow of water is obstructed when there has been a reduction of the effective area of the structure opening of greater than 10%. Debris shall be disposed of in accordance with the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(b) Cleaning and maintenance operations shall be conducted to minimize erosion and sedimentation resulting therefrom.

(c) Removal of silt and debris from the stream channel for the purposes of culvert or bridge maintenance shall be accomplished in accordance with the *Standards for Channel Cleaning at Bridges and Culverts*. A copy of this document can be obtained from the Bureau of Dams and Waterway Management, Division of Waterways and Stormwater Management, Post Office Box 8554, Harrisburg, Pennsylvania 17105-8554.

Authority

The provisions of this § 105.171 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.171 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117701).

Cross References

This section cited in 25 Pa. Code § 105.211 (relating to maintenance).

§ 105.172. Inadequate or collapsed structures.

(a) The owner or permittee of a bridge or culvert shall immediately inform the Department of the collapse of the structure or a portion thereof or of the existence of unusual conditions threatening the structural integrity of the bridge or culvert, including, but not limited to, the following:

- (1) Undercutting of piers or abutments.
- (2) Excessive cracking of bridge or culvert surfacing.
- (3) Severe deterioration of piers and supports.
- (4) Diversion of all or part of the stream flow through a channel not within the normal span of the structure.

(b) Whenever a bridge or culvert or a portion thereof has collapsed or is in imminent danger thereof, the owner or permittee thereof shall immediately remove the collapsed portions to an area outside the floodplain of the stream and do one of the following:

- (1) Completely remove the structure.
- (2) Repair the structure in accordance with plans submitted to and approved by the Department.

(c) If the Department finds that the inadequate size, improper placement, collapse or imminent collapse of a bridge or culvert creates an immediate danger of stream obstruction and a hazard to life or property which not to permit the issu-

ance of an order or notice to the owner or permittee or if the owner or permittee cannot be readily contacted in sufficient time to assure adequate protection of life or property, the Department may exercise its powers under section 14 of the act (32 P. S. § 693.14) to remove or repair the conditions and take the actions it deems necessary to protect life and property and recover the cost and expense thereof from the owner or permittee.

Source

The provisions of this § 105.172 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

Cross References

This section cited in 25 Pa. Code § 105.211 (relating to maintenance).

Subchapter D. STREAM ENCLOSURES

GENERAL PROVISIONS

Sec.
105.181. Scope.
105.182. [Reserved].

PERMITS

105.191. Permit applications for construction or modification of stream enclosures.
105.192. Permit applications for operation and maintenance of existing stream enclosures.

CRITERIA FOR APPROVAL OF CONSTRUCTION OR MODIFICATION

105.201. Hydraulic capacity.
105.202. Local government approval.

MAINTENANCE

105.211. Maintenance.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications); and 25 Pa. Code § 105.142 (relating to applicability of stream enclosure rules).

GENERAL PROVISIONS**§ 105.181. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to the construction, alteration, enlargement, repair and removal of a stream enclosure or a culvert in regulated waters of this Commonwealth of upstream to downstream length in excess of 100 feet.

Source

The provisions of this § 105.181 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38877) to (38878).

§ 105.182. [Reserved].**Source**

The provisions of this § 105.182 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38878).

PERMITS**§ 105.191. Permit applications for construction or modification of stream enclosures.**

In addition to the information required by § 105.13 (relating to permit applications—information and fees), applications for permits under this subchapter for the construction and modification of stream enclosures shall contain the following information:

- (1) The location, type, size and height of the proposed stream enclosure.
- (2) A profile of the stream for a reasonable distance above and below the proposed site showing slopes of bed, normal water surface and flood water surface.
- (3) Estimates of flood frequencies and flood flows at the site of the proposed structure, including such information as can be reasonably obtained regarding actual rainfall and flood flow records on the stream.
- (4) An analysis of the hydraulic capacity of the proposed structure.
- (5) A description of the purposes of the proposed structure.
- (6) A complete listing and description of other enclosures and culverts, bridges, dams and other water obstructions located a reasonable distance upstream and downstream of the proposed enclosure.
- (7) Proof of title or adequate flowage and other easements for lands included in the site of the proposed structure, including lands which may be subject to flooding by backwater from the structure during a 100-year flood.

- (8) Other information as the Department may require.

Source

The provisions of this § 105.191 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38878).

§ 105.192. Permit applications for operation and maintenance of existing stream enclosures.

(a) In addition to information required by § 105.13 (relating to permit applications—information and fees), a permit application for the operation and maintenance of existing stream enclosures shall give the following information:

- (1) The location, type, size and height of the proposed stream enclosure.
- (2) A profile of the stream for a reasonable distance above and below the existing site.
- (3) An analysis of the hydraulic capacity of the existing structure.
- (4) A description of the purposes of the existing structure.
- (5) Other information the Department may require.

Source

The provisions of this § 105.192 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

**CRITERIA FOR APPROVAL OF CONSTRUCTION OR
MODIFICATION**

§ 105.201. Hydraulic capacity.

(a) A stream enclosure shall be designed and constructed to pass the flows from a flood of 100-year frequency, with no more than a 1.0-foot increase in the 100-year water surface elevation over the water surface elevation of the natural unimpeded 100-year flow, except where the stream enclosure would be located in a floodway which is delineated on a FEMA map in which case no increase in the 100-year water surface elevation will be permitted. The 100-year discharge shall be based upon the degree of development of the contributing watershed projected throughout the lifetime of the structure. The Department may require capacity in excess of that necessary to carry the flows from a 100-year flood if it determines the capacity is necessary to protect the structure or to assure the safety of life and property upstream or downstream of the enclosure.

(b) An exception to the criteria of subsection (a) may be approved by the Department if the applicant prepares a risk assessment which demonstrates, and the Department finds, that the structure will not significantly increase the flooding threat to life, property or the environment, and if applicable, is consistent with municipal floodplain management programs adopted pursuant to the National Flood Insurance Program and a FEMA Flood Insurance Study. This information

can be obtained from the Department of Community Affairs, Floodplain Management Division, Forum Building, Harrisburg, Pennsylvania 17120.

Authority

The provisions of this § 105.201 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.201 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117704) to (117705).

§ 105.202. Local government approval.

No political subdivision may issue a building or other permit which allows for the construction of a stream enclosure unless and until the Department has approved the enclosure.

Source

The provisions of this § 105.202 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

MAINTENANCE

§ 105.211. Maintenance.

(a) Stream enclosures shall be maintained in accordance with §§ 105.171 and 105.172 (relating to maintenance; and inadequate or collapsed structures).

(b) Stream enclosures shall include provisions for adequate access to allow maintenance of the entire length of the enclosure. The access points shall be protected, to the maximum extent possible, in a manner which will prevent the entrance of unauthorized persons.

Source

The provisions of this § 105.211 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38879) to (38880).

Subchapter E. CHANNEL CHANGES AND DREDGING FOR FACILITY CONSTRUCTION AND MAINTENANCE

Sec.
105.221. Scope.
105.222. [Reserved].
105.223. [Reserved].
105.224. [Reserved].

PERMITS

- 105.231. Permit applications for construction or modification of channel changes and dredging for facility construction and maintenance.
- 105.232. Maintenance dredging.
- 105.233. Removal of sand, gravel and other valuable minerals.

**CRITERIA FOR APPROVAL FOR CONSTRUCTION OR
MODIFICATION**

- 105.241. Flood effect.
- 105.242. Channel alignment and cross section.
- 105.243. Temperature of water and shading.
- 105.244. Protection of fish life.
- 105.245. Disposal of waste materials.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

CONSTRUCTION AND MAINTENANCE**§ 105.221. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to channel changes in the regulated waters of this Commonwealth, and to dredging in the regulated waters of this Commonwealth conducted for purposes of construction, operation or maintenance of a dam, water obstruction or encroachment.

Source

The provisions of this § 105.221 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38880).

§ 105.222. [Reserved].**Source**

The provisions of this § 105.222 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38880).

§ 105.223. [Reserved].**Source**

The provisions of this § 105.223 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38880).

§ 105.224. [Reserved].**Source**

The provisions of this § 105.224 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38881).

PERMITS**§ 105.231. Permit applications for construction or modification of channel changes and dredging for facility construction and maintenance.**

(a) *Construction or modification of channel changes.* Construction or modification of channel changes includes the following:

(1) In addition to the information required by § 105.13 (relating to permit applications—information and fees), permit applications under this subchapter for the construction or modification of channel changes shall contain the following information:

(i) The location and length of the proposed channel change.

(ii) A stream profile for a reasonable distance upstream and downstream of the proposed change, showing bed slopes, normal water surface and depths, flood water surfaces, existing obstructions and the location of public and industrial water supply intake.

(iii) Cross-channel sections necessary to indicate the scope of the proposed work.

(iv) Estimates of flood frequencies and flood flows at the site of the proposed channel change, including information reasonably available regarding actual rainfall and flood flow records on the stream.

(v) A description of the purposes of the proposed channel change.

(vi) A plan for the disposal of excavated material.

(vii) Proof of title or adequate flowage and other easements for lands included in the site of the proposed channel change.

(2) The Department may require additional information or waive one or more of the requirements of paragraph (1) in specific cases.

(b) *Dredging.* Dredging includes the following:

(1) In addition to the information required by § 105.13, permit applications for dredging for facility construction and maintenance under this subchapter shall contain the following information:

- (i) The location and area of the proposed dredging.
- (ii) A stream profile for a reasonable distance upstream and downstream of the proposed dredging showing normal water surface and depths.
- (iii) A description of the equipment to be employed in the dredging operation and a plan for the disposal of the dredge soil.
- (iv) Proof of title or easements for lands included in the site of the proposed dredging.

(2) The Department may require additional information or waive one or more of the requirements of paragraph (1) in specific cases.

Source

The provisions of this § 105.231 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38882).

Notes of Decisions

Dredging

The terms and conditions attached to a dredging permit are terms and conditions of the permit, rather than rules and regulations. *Warren Sand and Gravel Co. v. Department of Environmental Resources*, 341 A.2d 556 (Pa. Cmwlth. 1975).

Editor's Note: Chapter 105 has been extensively amended since this case was decided. The case actually referred to §§ 105.21 and 105.77.

§ 105.232. Maintenance dredging.

Permits issued for the construction, operation and maintenance of water obstruction or encroachment shall include specific authorization for maintenance dredging.

Source

The provisions of this § 105.232 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.233. Removal of sand, gravel and other valuable minerals.

The removal of sand, gravel or other valuable minerals from submerged lands of this Commonwealth in quantities which are commercially usable or marketable, in conjunction with a channel change or dredging permitted under this chapter, shall be subject to the royalty and agreement provisions of the act of July 31, 1970 (P. L. 699, No. 225) and the act of December 3, 1970 (P. L. 834, No. 275) (71 P. S. § 468) (repealed).

Source

The provisions of this § 105.233 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

**CRITERIA FOR APPROVAL FOR CONSTRUCTION OR
MODIFICATION**

§ 105.241. Flood effect.

No channel change which creates a flooding potential greater than that created by the natural conditions of the existing channel will be approved.

Source

The provisions of this § 105.241 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (3882) to (3883).

§ 105.242. Channel alignment and cross section.

(a) Abrupt bends in channel changes are prohibited, unless necessitated by the alignment of existing bridges or encroachments.

(b) The relocated channel shall rejoin the natural channel of the stream at a point on the permittee's property to insure that alignment of stream flow at the downstream property line is identical to the flow alignment prior to the channel change.

(c) A grade of the changed channel shall not be significantly greater than or significantly less than the grade of the original channel, unless the length of the relocated channel requires.

(d) Where the width of a channel change is greater than the width of the pre-existing channel, provision shall be made to assure proper depth and velocity of normal flows, subchannels and installation of stream habitat improvement devices.

(e) In streams having substantial fisheries value, provision shall be made in channel changes to maintain existing pool-riffle ratios.

Source

The provisions of this § 105.242 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.243. Temperature of water and shading.

Channel changes shall be so designed and implemented to assure that the water temperature does not substantially increase over that in the preexisting channel. Where necessary, provisions shall be made to provide adequate shading of the relocated channel to duplicate, to the maximum extent possible, the preexisting conditions.

Source

The provisions of this § 105.243 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.244. Protection of fish life.

A low flow channel and habitat improvement device will be required when, in the opinion of the Fish Commission, it is necessary to provide a satisfactory channel for maintenance of fish life.

Source

The provisions of this § 105.244 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.245. Disposal of waste materials.

(a) Discharge of dredged material into the regulated waters of this Commonwealth shall be subject to Subchapter J (relating to discharges of dredged and fill material).

(b) Dredged spoil and sludge deposits collected during the operation shall be deposited in a location and a manner approved by the Department.

(c) Bilge, ballast or wastewater from dredging operations shall not be discharged to the stream without removal of oils, petroleum products or toxic or hazardous compounds as defined by the Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986) in a manner approved by the Department.

Source

The provisions of this § 105.245 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

**Subchapter F. FILLS, LEVEES, FLOODWALLS AND
STREAMBANK RETAINING DEVICES****GENERAL PROVISIONS**

Sec.

105.251. Scope.

105.252. [Reserved].

105.253. [Reserved].

105.254. [Reserved].

105.255. [Reserved].

105.256. [Reserved].

PERMITS

- 105.261. Permit applications for construction or modification of fills, levees, floodwalls and streambank retaining devices.
- 105.262. Permit applications for existing fills, levees, floodwalls and streambank retaining devices.

**DESIGN CRITERIA FOR APPROVAL FOR CONSTRUCTION
OR MODIFICATION**

- 105.271. General criteria.
- 105.272. Waste materials.
- 105.273. Slopes.
- 105.274. Top width of levees.
- 105.275. Interior drainage.
- 105.276. Freeboard allowance.

MAINTENANCE AND REPAIR

- 105.281. Maintenance and repair of levees or floodwalls.
- 105.282. Maintenance of fills.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

GENERAL PROVISIONS**§ 105.251. Scope**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to the construction, alteration, enlargement, repair or removal of fills, levees, floodwalls and streambank retaining walls located in or along the regulated waters of this Commonwealth.

Source

The provisions of this § 105.251 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38883).

§ 105.252. [Reserved].**Source**

The provisions of this § 105.252 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38883).

§ 105.253. [Reserved].**Source**

The provisions of this § 105.253 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38884).

§ 105.254. [Reserved].**Source**

The provisions of this § 105.254 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38884).

§ 105.255. [Reserved].**Source**

The provisions of this § 105.255 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38884).

§ 105.256. [Reserved].**Source**

The provisions of this § 105.256 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38884).

PERMITS**§ 105.261. Permit applications for construction or modification of fills, levees, floodwalls and streambank retaining devices.**

In addition to the information required by § 105.13 (relating to permit applications—information and fees), applications for permits for construction or modification of structures under this subchapter shall contain the following information:

- (1) A plan detailing the location of the structures and properties 1000 feet upstream and downstream of the proposed fill, levee or similar structure and within the flood plain of the flood of record on both sides of the stream or body of water.
- (2) Basement and first floor elevations of structures indicated on the plan required by paragraph (1).
- (3) A complete hydraulic and hydrologic report on the proposed project, including, if the Department so requires, a backwater analysis of the project.

- (4) Complete cross sections of the stream and floodway of the flood or record.
- (5) Stream profiles showing the bed slope and the normal and flood water elevations for points sufficiently upstream and downstream in effect on the project.
- (6) The type of materials to be used on the fill, levee or similar structure.
- (7) Plans for the protection of the fill, levee or similar structure from erosion, both during and after construction.
- (8) The design flood for the fill, levee or similar structure.
- (9) A copy of the local flood plain management regulations or ordinances.
- (10) Plans for interior drainage.
- (11) Other information as the Department may require.

Source

The provisions of this § 105.261 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38884).

§ 105.262. Permit applications for existing fills, levees, floodwalls and streambank retaining devices.

In addition to the information required by § 105.13 (relating to permit applications—information and fees), applications for permits for existing structures under this subchapter shall contain the following information:

- (1) A plan detailing the location of the existing fill, levee, floodwall or streambank retaining device.
- (2) Cross sections of the stream and floodway.
- (3) The type of all materials used in the fill, levee, floodwall or streambank retaining device.
- (4) Plans of interior drainage, if available.
- (5) Other information as the Department may require.

Source

The provisions of this § 105.262 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38884) to (38885).

**DESIGN CRITERIA FOR APPROVAL FOR CONSTRUCTION OR
MODIFICATION**

§ 105.271. General criteria.

(a) An application for a proposed levee, fill or similar structure in or along the regulated waters of this Commonwealth will not be approved by the Department where one or more of the following will occur:

- (1) It will increase flood heights, either on the opposite bank or upstream and flood easements or flood protection has not been provided.
 - (2) It will create erosive velocities in the stream and appropriate protection has not been provided.
 - (3) It will increase flood damages downstream through a loss of flood plain storage.
- (b) An application for a proposed levee, fill or similar structure within the floodway of a regulated water of this Commonwealth will not be approved by the Department unless the applicant demonstrates that the project is consistent with local floodplain management programs.

Source

The provisions of this § 105.271 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38885).

§ 105.272. Waste materials.

Waste materials of any type may not be used in the construction of fills, levees or similar structures, except under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and related rules and regulations.

Authority

The provisions of this § 105.272 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.272 adopted September 27, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117714).

§ 105.273. Slopes.

The slope of a fill, levee or similar structure shall not be steeper than two horizontal to one vertical, unless special circumstances are demonstrated and adequate steps are taken to assure permanent stabilization of the slope.

Source

The provisions of this § 105.273 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.274. Top width of levees.

The top width of a levee shall not be less than 10 feet.

Source

The provisions of this § 105.274 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.275. Interior drainage.

Adequate facilities shall be provided to drain the interior area behind the levee or floodwall.

Source

The provisions of this § 105.275 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.276. Freeboard allowance.

The height of a levee or floodwall shall provide an allowance for freeboard above the design flood of the structure.

Source

The provisions of this § 105.276 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

MAINTENANCE AND REPAIR**§ 105.281. Maintenance and repair of levees or floodwalls.**

(a) The owner of a levee or floodwall shall inspect the levee or floodwall and appurtenant structures, including drainage facilities, at least annually and shall comply with § 105.53 (relating to inspections by owners and inspection reports).

(b) Trees and other vegetation with deep roots shall not be allowed on a levee used for flood control purposes, and vegetation shall at all times be controlled.

Source

The provisions of this § 105.281 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38885).

§ 105.282. Maintenance of fills.

Fills shall at all times be maintained in a manner to prevent erosion and to assure the stability of the slopes.

Source

The provisions of this § 105.282 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

Subchapter G. STREAM CROSSINGS, OUTFALLS AND HEADWALLS**GENERAL PROVISIONS**

- Sec.
105.291. Scope.
105.292. [Reserved].
105.293. [Reserved].
105.294. [Reserved].

PERMITS

- 105.301. Permit applications for construction or modification.
105.302. Permit applications for existing stream crossings by pipelines for conveyance of petroleum products and gas.

CRITERIA FOR APPROVAL OF CONSTRUCTION OR MODIFICATION

- 105.311. General criteria.
105.312. Cover material.
105.313. Pipelines under stream beds.
105.314. Pipelines along streams.
105.315. Aerial crossings.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

GENERAL PROVISIONS**§ 105.291. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to stream crossings, outfalls, headwalls, pipelines, aerial crossings and other analogous structures which are placed in, along, across, over or under the regulated waters of this Commonwealth.

Source

The provisions of this § 105.291 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38886).

§ 105.292. [Reserved].**Source**

The provisions of this § 105.292 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38886).

§ 105.293. [Reserved].**Source**

The provisions of this § 105.293 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38887).

§ 105.294. [Reserved].**Source**

The provisions of this § 105.294 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38887).

PERMITS**§ 105.301. Permit applications for construction or modification.**

In addition to the information required under § 105.13 (relating to permit applications—information and fees), applications for stream crossings shall contain the following, where applicable:

- (1) The shore lines of the affected body of water, including both high and low water marks.
- (2) Existing structures and stream crossings in the vicinity of the proposed crossings.
- (3) The alignment of the proposed pipe or cable.
- (4) The depth of the proposed pipe or cable and the clear depth below the data plane to be afforded by the pipe or cable in navigable channels.
- (5) A cross section of the stream from bank to bank with the location of the stream crossing to be affixed thereon.
- (6) In the case of outfalls, the discharge capacity of the structures.
- (7) A statement indicating the purpose of the proposed stream crossing.
- (8) The amount and type of cover material.
- (9) Adequate provisions for shut-off in the event of break or rupture.
- (10) Other information as the Department may require.

Source

The provisions of this § 105.301 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38888).

§ 105.302. Permit applications for existing stream crossings by pipelines for conveyance of petroleum products and gas.

In addition to the information required under § 105.13 (relating to permit applications—information and fees), applications for existing stream crossings by pipelines for conveyance of petroleum products and gas shall contain the following:

- (1) The shore lines of the affected body of water, including both high and low water marks.
- (2) The alignment and depth of the pipe or cable, and the clear depth below the data plane afforded by the pipe in navigable channels.
- (3) A cross section of the stream from bank to bank with the location of the pipeline affixed thereon.
- (4) The amount and type of cover material.
- (5) Provisions for shut-off in the event of break or rupture.
- (6) Other information as the Department may require.

Source

The provisions of this § 105.302 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

CRITERIA FOR APPROVAL OF CONSTRUCTION OR MODIFICATION

§ 105.311. General criteria.

In evaluating applications for stream crossings, outfalls, headwalls, pipelines, aerial crossings and other analogous structures, the Department will not approve an application if one or more of the following is true:

- (1) The stream crossings are placed in such a manner as to be displaced by flood waters.
- (2) The stream crossing alters the cross section of the stream and its banks.
- (3) There is unnecessary paralleling or crossing of streams by pipelines or cables.
- (4) Pipelines or cables are placed on the bed of streams.

Source

The provisions of this § 105.311 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38888).

§ 105.312. Cover material.

No waste material of any type may be used as cover material for stream crossings.

Source

The provisions of this § 105.312 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38888).

§ 105.313. Pipelines under stream beds.

(a) Pipelines under stream beds shall be located such that there will be a minimum of 3 feet of cover between the top of the pipe or encasement and the lowest point in the stream bed; provided, that if the pipeline is in rock, it shall have the depth of granular soil plus 6 inches for cover, but never less than 1 foot of total cover.

(b) Pipelines under the stream bed shall be as near to horizontal as possible.

(c) The Department may require additional information or waive the requirements of subsection (a) in specific cases.

Source

The provisions of this § 105.313 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.314. Pipelines along streams.

Pipelines along streams shall be located a sufficient distance away from the bank to prevent damage to the bank as a result of erosion; pipelines shall be located a minimum of 25 feet away from the streambank unless other erosion protection measures are approved by the Department.

Source

The provisions of this § 105.314 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.315. Aerial crossings.

Aerial crossings shall comply with the criteria of Subchapter C (pertaining to culverts and bridges) with regard to hydraulic capacity, height and clearance.

Authority

The provisions of this § 105.315 issued under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.315 adopted October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911.

Subchapter H. DOCKS, WHARVES AND BULKHEADS**GENERAL PROVISIONS**

Sec.

105.321. Scope.

PERMITS

105.331. Permit applications.

105.332. Riparian property.

CRITERIA FOR APPROVAL

105.341. Passage of ice and flood waters.

OPERATION AND MAINTENANCE

105.351. Removal of structure.

105.352. [Reserved].

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

GENERAL PROVISIONS**§ 105.321. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to the construction, operation and maintenance of docks, wharves and bulkheads in the regulated waters of this Commonwealth.

Source

The provisions of this § 105.321 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38889).

PERMITS**§ 105.331. Permit applications.**

In addition to the information required under § 105.13 (relating to permit applications—information and fees), applications for new and existing docks, wharves and bulkheads shall contain the following information:

- (1) The exact location of the structure.

- (2) A plan showing the dimensions of the structure, and if applicable, the dimensions of the mooring area.
- (3) A plan indicating the relation of the structure and mooring area to the banks and channel, neighboring structures and mooring areas, the navigation channel and the normal pool elevation or ordinary low water mark.
- (4) Cross sections indicating elevations of structures, location of pilings and water depth.
- (5) The purposes for which the structure will be used.
- (6) Other information the Department may require.

Authority

The provisions of this § 105.331 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.331 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117720).

§ 105.332. Riparian property.

When an applicant proposes location of a structure on or in front of riparian property not owned by the applicant, the applicant shall obtain and furnish to the Department notarized and signed releases from the owners of the affected riparian property.

Source

The provisions of this § 105.332 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

CRITERIA FOR APPROVAL

§ 105.341. Passage of ice and flood waters.

Structures shall be able to pass flood waters and ice without property damage and without increasing the upstream flood hazard.

Source

The provisions of this § 105.341 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38890).

OPERATION AND MAINTENANCE**§ 105.351. Removal of structure.**

Upon termination of the useful life of the structure, the owner shall remove it completely and restore the banks.

Source

The provisions of this § 105.351 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38890) to (38891).

§ 105.352. [Reserved].**Source**

The provisions of this § 105.352 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38891).

Subchapter I. COMMERCIAL DREDGING**GENERAL PROVISIONS**

- Sec.
105.361. Scope.
105.362. [Reserved].
105.363. [Reserved].
105.364. [Reserved].
105.365. [Reserved].

PERMITS

- 105.371. Permits: content of application.
105.372. Prior requisite approvals.

OPERATIONAL CRITERIA

- 105.381. Location of dredging.
105.382. Washing and classification of materials.
105.383. Disposal of waste materials.
105.384. Protection of stream users.
105.385. Reporting.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications).

GENERAL PROVISIONS**§ 105.361. Scope.**

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to dredging in the regulated waters of this Commonwealth for sand, gravel and other minerals for the purposes of commercial exploitation. This subchapter shall not be construed to restrict the Department in managing the Commonwealth's proprietary interests under the act of July 31, 1970 (P. L. 699, No. 225) (71 P. S. § 468) (repealed), repealed by the act of December 3, 1970 (P. L. 834, No. 275); section 15 of the act (32 P. S. § 693.15); and section 1908-A(3) of The Administrative Code of 1929 (71 P. S. § 510-8(3)), from exercising its discretion to issue or not to issue permit agreements or to impose terms and conditions in permit agreements that it deems to be in the best interests of the Commonwealth; in the event, however, that the Department issues a permit agreement conveying the Commonwealth's proprietary interests in a deposit of sand, gravel or other minerals, this subchapter constitutes the minimum requirements for dredging under the Commonwealth's regulatory authority under the act.

Source

The provisions of this § 105.361 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial pages (38891) to (38892).

§ 105.362. [Reserved].**Source**

The provisions of this § 105.362 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38892).

§ 105.363. [Reserved].**Source**

The provisions of this § 105.363 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38892).

§ 105.364. [Reserved].**Source**

The provisions of this § 105.364 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38892).

§ 105.365. [Reserved].**Source**

The provisions of this § 105.365 adopted August 11, 1978, effective August 28, 1978, 8 Pa.B. 2229; reserved September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843. Immediately preceding text appears at serial page (38893).

PERMITS**§ 105.371. Permits: content of application.**

In addition to the requirements of § 105.13 (relating to permit applications—information and fees), applications for commercial dredging permits shall contain the following information:

- (1) The delineation of areas to be dredged, with reference to river miles of distances from fixed reference points or sufficient courses and distances referenced to permanent shore points to allow a fix to be made on the boundary points of a dredging area in a lake.
- (2) Stream depths in the proposed dredging area if known or approximate estimated depths, if accurate measures are not available.
- (3) The equipment to be employed in the dredging operation and its capabilities.
- (4) The proposed rate of production.
- (5) The location of public and industrial water supply intakes.
- (6) A plan for the disposal of solid waste, dredge spoil and sewage from the dredging vessel.
- (7) Other information as the Department may require.

Source

The provisions of this § 105.371 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.372. Prior requisite approvals.

Provided the other requirements of this subchapter are met, approval by the Department of dredging permit applications is conditioned upon the applicant's obtaining a permit/agreement under the act of July 31, 1970 (P. L. 699, No. 225) (71 P. S. § 468) (repealed), repealed by the act of December 3, 1970 (P. L. 834, No. 275) or an interest in land under section 15 of the act (32 P. S. § 693.15), where the bed of the regulated waters is owned by the Commonwealth.

Source

The provisions of this § 105.372 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

OPERATIONAL CRITERIA**§ 105.381. Location of dredging.**

- (a) Dredging may not occur within 500 feet of a bridge pier or abutment.
- (b) Dredging may not occur within 5000 feet above a public water supply intake unless the applicant can satisfactorily demonstrate to the Department that drinking water standards for turbidity will not be exceeded and no other adverse effects on the operations of a water user will occur. Water supplies within 5 miles downstream of the dredging operation shall be notified of proposed dredging or start up, or both, of operations. The applicant/permittee shall provide proof of the notification.
- (c) Dredging may not occur within a distance of the channel or island shore line at normal pool less than the depth of the dredging, but in no event, less than 125 feet.
- (d) Dredging may not occur in reaches of streams where water levels are controlled by dams if the water depth is less than 6 feet at normal pool.
- (e) Dredging may not occur in, encroach upon or cause siltation in areas of riffles or shallow pools whenever the areas are contributing to the sustenance of game fish or endangered species in a free-flowing reach of a stream. Game fish includes species and varieties defined as such by 30 Pa.C.S. § 102 (relating to definitions). Endangered species include those species so defined by the Fish Commission, under 30 Pa.C.S. § 102 or defined by 50 CFR 17.12 (relating to endangered and threatened plants). A free-flowing reach of a stream includes a reach, segment or area of a stream except where a pool has been created by a dam.

Authority

The provisions of this § 105.381 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.381 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (117724) to (117725).

Notes of Decisions

In remanding and ordering a new trial to determine whether a dredging company violated its permit by dredging too close to shore, the Court noted that the Department of Environmental Resources is authorized to impose conditions which preclude dredging within an established distance from the shore and that such conditions under statute and regulations, 71 P. S. § 510-8 and 25 Pa. Code § 150.381(c), impose a binding duty of care upon parties to a dredging contract. *Hawthorne v. Dravo Corp.* 460 A.2d 266 (Pa. Super. 1983).

§ 105.382. Washing and classification of materials.

Wash water from the classification process may not be returned to the stream, unless a permit in accordance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) has been obtained.

Source

The provisions of this § 105.382 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended February 1, 1985, effective February 2, 1985, 15 Pa.B. 361. Immediately preceding text appears at serial page (82601).

§ 105.383. Disposal of waste materials.

(a) The permittee shall not throw, discharge or deposit or cause or permit to be thrown, discharged or deposited from or out of a ship, barge or other floating craft employed in the dredging operation any refuse matter, including oil and petroleum products.

(b) Bilge, ballast or wastewater pumped from barges shall not be discharged to the stream without acceptable removal of oils or toxic compounds in a manner approved by the Department.

(c) Discharge of dredged material into the regulated waters of this Commonwealth is subject to Subchapter J (relating to discharges of dredged or fill material).

(d) Dredge spoil and sludge deposits collected during the operation shall be deposited in a location and a manner approved by the Department.

(e) Litter, refuse and sanitary waste from dredging vessels shall be disposed of in a manner approved by the Department.

Source

The provisions of this § 105.383 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.384. Protection of stream users.

(a) A dock or portage shall be constructed around the upstream face of the operation in order to facilitate navigation of small craft where the dredging operation will substantially obstruct the waterway.

(b) The permittee shall post signs 1000 feet upstream of where the dredge is operating and 500 feet from the downstream end of the dredging area warning users of the stream that dredging operations are in progress; the warnings shall be in large block printing, readable at a distance of 300 feet, and contain the warning, "DANGER, DREDGING 1000 FEET AHEAD" or "DANGER, DREDGING 500 FEET AHEAD."

Source

The provisions of this § 105.384 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.385. Reporting.

The permittee shall submit to the Department an annual report indicating the amount of sand, gravel or other minerals dredged from the stream bed during the preceding calendar year.

Source

The provisions of this § 105.385 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

Subchapter J. DISCHARGES OF DREDGED OR FILL MATERIAL

GENERAL PROVISIONS

Sec.
105.391. Scope.

PERMITS

105.401. Permit applications.

CRITERIA FOR APPROVAL

105.411. General criteria.

OPERATION AND MAINTENANCE

105.421. General.
105.422. Use of heavy equipment.
105.423. Removal of temporary fill.

Cross References

This subchapter cited in 25 Pa. Code § 105.14 (relating to review of applications); 25 Pa. Code § 105.245 (relating to disposal of waste materials); and 25 Pa. Code § 105.383 (relating to disposal of waste materials).

GENERAL PROVISIONS

§ 105.391. Scope.

Except as provided in §§ 105.3 and 105.12 (relating to scope; and waiver of permit requirements), this subchapter applies to the discharge of dredged or fill material into the regulated waters of this Commonwealth.

Source

The provisions of this § 105.391 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

PERMITS**§ 105.401. Permit applications.**

In addition to the requirements of § 105.13 (relating to permit applications—information and fees) and other applicable requirements of this chapter, applications for discharges of dredged or fill material into the regulated waters of this Commonwealth shall contain the following information:

- (1) The location of a public water supply intake located within 1 mile upstream and 10 miles downstream.
- (2) The location of areas of shell-fish production.
- (3) The impact of the activity upon a threatened or endangered species as identified under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 460l-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531—1543), and the critical habitat of the species.
- (4) The impact of the activity upon those species of aquatic life indigenous to the waterbody.
- (5) The amount of percentage of the discharge that will consist of toxic material regulated under section 6 of the Toxic Substances Control Act (15 U.S.C.A. § 2605) or hazardous materials as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986) in other than trace quantities.
- (6) Other information as the Department may require.

Source

The provisions of this § 105.401 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

CRITERIA FOR APPROVAL**§ 105.411. General criteria.**

The Department will not approve an application to discharge dredged or fill material into regulated waters of this Commonwealth, unless the applicant demonstrates to the Department a public benefit which outweighs the damage to the public natural resources, if one or more of the following is true:

- (1) The discharge is to a spawning area during spawning season.
- (2) The discharge would restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the waters unless the primary purpose of the fill is to impound waters.

(3) The discharge is into regulated waters of this Commonwealth, except wetlands, which are breeding, feeding or nesting areas for migratory water birds.

Authority

The provisions of this § 105.411 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); The Clean Streams Law (35 P. S. §§ 691.1–691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101–679.601).

Source

The provisions of this § 105.411 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial page (117728).

OPERATION AND MAINTENANCE

§ 105.421. General.

Discharges of dredged or fill material shall be properly maintained to prevent erosion and other types of pollution.

Source

The provisions of this § 105.421 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.422. Use of heavy equipment.

Heavy equipment used in wetlands shall be placed on mats where practicable.

Source

The provisions of this § 105.422 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

§ 105.423. Removal of temporary fill.

Temporary fill shall be completely removed.

Source

The provisions of this § 105.423 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843.

Subchapter K. DISBURSEMENTS OF MONIES FROM THE DAMS AND ENCROACHMENTS FUND

Sec.

105.431. General provisions.

105.432. [Reserved].

§ 105.431. General provisions.

(a) Fines collected under the penal provisions of the act and civil penalties collected under the act shall be paid into the treasury of the Commonwealth in a special fund known as the Dams and Encroachments Fund.

(b) Moneys paid into the Dams and Encroachments Fund may be disbursed at the discretion of the Department for use in the elimination of hazards to life, property and the environment resulting from unsafe dams, water obstructions and encroachments.

(c) For purposes of this chapter, the full and normal range of program activities necessary to administer this chapter will be considered to contribute to the elimination of hazards from unsafe dams, water obstructions and encroachments. Disbursement of moneys from the Dams and Encroachments Fund moneys may therefore be made for, but will not be limited to, the following purposes:

(1) Conducting investigations, tests and analyses as required to carry out the purposes of the act, including costs of entry; testing and sampling; and examining books, papers and records.

(2) Undertaking corrective action, repair work or removal to eliminate an actual or potentially dangerous or hazardous condition of a dam, water obstruction or encroachment as provided under section 14(c) of the act (32 P. S. § 693.14(c)).

(3) Purchasing contractual services and consultation from firms and individuals with relevant expertise in the field of safety of dams, water obstructions and encroachments.

(4) Purchasing materials, equipment, services and travel necessary for personnel training and provision of information and educational materials on the safety of dams, water obstructions and encroachments to schools, colleges, institutions and citizens.

(5) Covering extraordinary costs of litigation arising out of the enforcement of dam safety and encroachments laws of the Commonwealth, such as the printing of briefs and records, taking of depositions and expert witness fees.

Authority

The provisions of this § 105.431 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and

1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.431 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911; amended January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial pages (207770) and (313671).

Cross References

This section cited in 25 Pa. Code § 105.432 (relating to authorization for disbursement).

§ 105.432. [Reserved].

Authority

The provisions of this § 105.432 reserved under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.432 adopted September 26, 1980, effective September 27, 1980, 10 Pa.B. 3843; reserved January 7, 2011, effective January 8, 2011, 41 Pa.B. 219. Immediately preceding text appears at serial page (313671).

Subchapter L. GENERAL PERMITS

Sec.

- 105.441. Scope.
- 105.442. Authorization for general permits.
- 105.443. Nature of a general permit; substitution for individual applications and permits.
- 105.444. Contents of general permits.
- 105.445. Waiver of certain requirements.
- 105.446. Procedure for issuance.
- 105.447. Registration requirements.
- 105.448. Determination of applicability of a general permit.
- 105.449. Compliance with permit conditions, regulations and laws.

Cross References

This subchapter cited in 25 Pa. Code § 105.13 (relating to regulated activities—information and fees); 25 Pa. Code § 105.21a (relating to public notice); and 25 Pa. Code § 105.41 (relating to notices and reports).

§ 105.441. Scope.

This subchapter applies to the issuance of general permits by the Department under section 7(b)—(d) of the act (32 P. S. § 693.7(b)—(d)).

Source

The provisions of this § 105.441 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9.

§ 105.442. Authorization for general permits.

(a) In accordance with this subchapter, the Department may issue general permits on a regional or Statewide basis for a category of dam, water obstruction or encroachment if the Department determines the following:

- (1) The projects in the category are similar in nature.

(2) The projects in the category can be adequately regulated utilizing standardized specifications and conditions, including reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the particular category of dam, water obstruction or encroachment.

(3) The projects which are in the category and meet the specifications and conditions will comply with the requirements for permit issuance in §§ 105.14—105.17 and 105.21 and the standards and requirements for design, construction, operation, maintenance and monitoring in this chapter.

(b) General permits issued under this subchapter may be issued on a State-wide basis or limited to specific watersheds, particular categories of streams or designated geographic regions.

(c) The Department will not issue a general permit for the following:

(1) A dam in size classifications A or B or hazard potential classifications 1 or 2, as defined in § 105.91 (relating to classification of dams or reservoirs).

(2) A dam used for storage of fluids or semifluids other than water the escape of which may result in air, water or land pollution or in danger to persons or property unless the impoundment created by the dam is otherwise adequately regulated by another program requiring individual permits issued by the Department or another Federal or State agency.

(3) A dam, water obstruction or encroachment which may present a substantial risk to life and property, requiring proof of financial responsibility under § 105.20 (relating to proof of financial responsibility).

Authority

The provisions of this § 105.442 amended under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); section 7 of the act of June 14, 1923 (P. L. 704, No. 294) (32 P. S. § 597); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

Source

The provisions of this § 105.442 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9; amended October 11, 1991, effective October 12, 1991, 21 Pa.B. 4911. Immediately preceding text appears at serial pages (156661) to (156662).

§ 105.443. Nature of a general permit; substitution for individual applications and permits.

(a) When the Department issues a general permit for a specified category of dam, water obstruction or encroachment on either a regional or Statewide basis, persons who intend to construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment in accordance with the specifications and conditions of the general permit may do so without filing an individual application for, and first obtaining, an individual permit.

(b) Use of an applicable general permit shall satisfy the permit requirements set forth in § 105.11 (relating to permit requirements), so long as:

(1) Activities are conducted in accordance with the specifications and conditions of the applicable general permit.

(2) The owner of the dam, water obstruction or encroachment complies with the registration requirements set forth in the general permits, as authorized by § 105.448 (relating to determination of applicability of a general permit).

Source

The provisions of this § 105.443 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9.

§ 105.444. Contents of general permits.

Each general permit issued by the Department will include, but not be limited to, the following contents:

(1) A concise description of the category of dam, water obstruction or encroachment covered by the general permit, including exceptions to that category.

(2) A specification of the watersheds, streams or geographic areas where the general permit is effective.

(3) A set of standardized specifications or plans for the particular category of dam, water obstruction or encroachment or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulates the particular category of dam, water obstruction or encroachment.

(4) A set of conditions governing the construction, operation, maintenance, inspection and monitoring of the projects covered by the general permit as are necessary to assure compliance with the act and this chapter and with other laws administered by the Department, the Fish and Boat Commission and a river basin commission created by interstate compact.

(5) A specification of registration requirements if any, established under § 105.447 (relating to registration requirements) and registration or general permit fees established under § 105.13 (relating to regulated activities—information and fees).

Authority

The provisions of this § 105.131a amended under sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (32 P. S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17); sections 5, 6, 8 and 402 of The Clean Streams Law (35 P. S. §§ 691.5, 691.6, 691.8 and 691.402); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and sections 302 and 402 of the Flood Plain Management Act (32 P. S. §§ 679.302 and 679.402).

Source

The provisions of this § 105.444 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9; amended February 15, 2013, effective February 16, 2013, 43 Pa.B. 967. Immediately preceding text appears at serial page (313674).

§ 105.445. Waiver of certain requirements.

In issuing a general permit, the Department may waive the procedural requirements of any or all of the following sections of this chapter as applied to a particular category of dams, water obstructions or encroachments covered by the general permit:

- (1) Section 105.41 (relating to notices and reports).
- (2) Section 105.42 (relating to acknowledgment of conditions).
- (3) Section 105.53 (relating to inspections by owners and inspection reports).
- (4) Section 105.101 (relating to notices and reports).
- (5) Section 105.102(b) (relating to personnel and supervision).
- (6) Section 105.107 (relating to completion certificate and final plans).
- (7) Section 105.111 (relating to commencement of water storage).

Source

The provisions of this § 105.445 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9.

Cross References

This section cited in 25 Pa. Code § 105.449 (relating to compliance with permit conditions, regulations and laws).

§ 105.446. Procedure for issuance.

(a) At least 60 days prior to issuance of a general permit, the Department will:

- (1) Publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit and locations for obtaining standardized plans.
- (2) Provide written notice of the proposed general permit to the United States Army Corps of Engineers; the United States Coast Guard; the United States Fish and Wildlife Service; the United States Environmental Protection Agency; the Fish Commission; the Game Commission; applicable river basin commissions created by interstate compact; county agencies holding delegations under § 105.4 (relating to delegations to local agencies) and other interested Federal, State or interstate agencies.

(b) An opportunity shall be provided for interested members of the public, Federal and State agencies to provide written comments on a proposed general permit.

(c) The Department may, at its discretion, hold a public hearing on a proposed general permit for the purposes of gathering information and comments.

(d) General permits issued by the Department will be published in the *Pennsylvania Bulletin* at least 30 days prior to the effective date of the permits, as required by section 7(d) of the Dam Safety and Encroachments Act (32 P. S. § 693.7(d)).

Authority

The provisions of this § 105.446 amended under section 5 of the Dam Safety and Encroachments Act (32 P. S. § 693.5).

Source

The provisions of this § 105.446 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9; amended February 18, 1983, effective February 19, 1983, 13 Pa.B. 781. Immediately preceding text appears at serial pages (59051) and (59052).

§ 105.447. Registration requirements.

(a) The Department will require the registration of a project constructed, operated, maintained, modified or enlarged under a general permit, within a specified time limit.

(b) Registration requirements and time limits, if any, shall be set forth in the general permit governing each category of dam, water obstruction or encroachment.

(c) Registration statements shall set forth:

- (1) The name and address of the person responsible for the project.
- (2) The location of the project.
- (3) The name or number of the general permit being utilized for the project.

(d) For a project requiring registration under this section, an amended registration shall be filed if there is a change of ownership of the dam, water obstruction or encroachment.

Source

The provisions of this § 105.447 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9.

Cross References

This section cited in 25 Pa. Code § 105.444 (relating to contents of general permits); and 25 Pa. Code § 105.448 (relating to determination of applicability of a general permit).

§ 105.448. Determination of applicability of a general permit.

(a) A person who desires to utilize a general permit issued under this subchapter, but is uncertain as to the potential application of the general permit to a particular proposed dam, water obstruction or encroachment, should consult with the Department. The Department may issue a determination as to whether the general permit applies to the proposed dam, water obstruction or encroachment.

(b) A request for a determination of the applicability of a general permit may not be considered a permit application for purposes of this chapter.

(c) A project requiring registration under § 105.447 (relating to registration requirements) may be charged an application fee as set forth in § 105.13 (relating to regulated activities—information and fees).

Authority

The provisions of this § 105.131a amended under sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (32 P. S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17); sections 5, 6, 8 and 402 of The Clean Streams Law (35 P. S. §§ 691.5, 691.6, 691.8 and 691.402); sections 514, 1901-A, 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 194, 510-1, 510-8, 510-17 and 510-20); and sections 302 and 402 of the Flood Plain Management Act (32 P. S. §§ 679.302 and 679.402).

Source

The provisions of this § 105.448 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9; amended February 15, 2013, effective February 16, 2013, 43 Pa.B. 967. Immediately preceding text appears at serial page (313677).

Cross References

This section cited in 25 Pa. Code § 105.443 (relating to nature of a general permit; substitution for individual applications and permits).

§ 105.449. Compliance with permit conditions, regulations and laws.

A person who constructs, operates, maintains, modifies, enlarges or abandons a dam, water obstruction or encroachment under a general permit shall comply with the terms and conditions of the general permit, with this chapter, except as expressly waived under § 105.445 (relating to waiver of certain requirements), and with the Flood Plain Management Act (32 P. S. §§ 679.101—679.601), and other applicable laws, to the same extent as if the dam, water obstruction or encroachment were covered by an individual permit.

Source

The provisions of this § 105.449 adopted January 2, 1981, effective January 3, 1981, 11 Pa.B. 9.

Subchapter M. STATEMENTS OF POLICY**WETLANDS**

Sec.

105.451. Identification and delineation of wetlands—statement of policy.

105.452. Status of prior converted cropland—statement of policy.

WETLANDS**§ 105.451. Identification and delineation of wetlands—statement of policy.**

(a) This section sets forth the policy of the Department as to the methodology to be used for the identification and delineation of wetlands.

(b) The use of some delineation method is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P. S.

§§ 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.

(c) The Department adopts and incorporates by reference the 1987 *Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1)* along with the guidance provided by the United States Army Corps of Engineers, Major General Arthur E. Williams' memorandum dated 6 March 1992, *Clarification and Interpretation of the 1987 Manual* and any subsequent changes as the methodology to be used for identifying and delineating wetlands in this Commonwealth. The 1987 *Corps Wetland Delineation Manual*, Publication No. ADA 176734 is available from the National Technical Information Service (NTIS), Springfield, VA 21161, or telephone: (703) 487-4650. Copies of the Supplemental Guidance issued by the Corps concerning use of the 1987 Manual, (that is, the October 7, 1991, Questions and Answers, and the March 6, 1992, Clarification and Interpretation Memorandum) as well as the Administration's Wetlands Plan of August 24, 1993, may be obtained by contacting the regulatory branch of a local Corps District, or the EPA Wetlands Hotline at (800) 832-7828. For more information, contact Pennsylvania Department of Environmental Protection, Bureau of Dams, Waterways and Wetlands, Post Office Box 8554, Harrisburg, Pennsylvania 17105-8554, telephone (717) 787-6827.

Source

The provisions of this § 105.451 adopted October 27, 1989, effective December 27, 1989, 19 Pa.B. 4612; amended February 2, 1996, effective February 3, 1996, 26 Pa.B. 494. Immediately preceding text appears at serial pages (207778) to (207781).

Cross References

This section cited in 25 Pa. Code § 96.3 (relating to water quality protection requirements); and 25 Pa. Code § 105.13 (relating to regulated activities—information and fees).

§ 105.452. Status of prior converted cropland—statement of policy.

(a) This section sets forth the policy of the Department as to the status of prior converted cropland in this Commonwealth.

(b) The use of some procedure for determining wetlands is necessary in order to administer, implement, enforce and determine compliance with the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), the Oil and Gas Act (58 P. S. §§ 601.101—601.605) and other applicable statutes administered by the Department and regulations promulgated under these statutes.

(c) Naturally occurring events may result in either creation or alteration of wetlands. It is necessary to determine whether alterations to an area have resulted in changes that are now “normal circumstances” of the particular area. The Department recognizes “prior converted cropland,” as defined in the *National Food Security Act Manual* (180-V-NFSAM, Third Edition, March 1994), as “normal circumstances” as the term is used in the definition of wetlands in § 105.1 (relating to definitions). These prior converted croplands are not regulated as wetlands under the Commonwealth’s Wetland Protection Program contained in this chapter. Prior converted cropland is defined in the *National Food Security Act Manual*, as wetlands that were drained, dredged, filled, leveled or otherwise manipulated, including the removal of woody vegetation, before December 23, 1985, and have not been abandoned, for the purpose of, or to have the effect of making the production of an agricultural commodity possible, and an agricultural commodity was planted or produced at least once prior to December 23, 1985.

(1) Abandonment is the cessation of cropping, forage production or management on prior converted cropland for 5 consecutive years, so that:

- (i) Wetland criteria are met.
- (ii) The area has not been enrolled in a conservation set-aside program.
- (iii) The area was not enrolled in a State or Federal wetland restoration program other than the Wetland Reserve Program.

(2) Prior converted cropland may also be considered abandoned if the landowner provides written intent to abandon the area and wetland criteria are met.

(d) This policy change does not affect the exemption for plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products or the waiver for maintenance of field drainage systems found at § 105.12(a)(7) and (8) (relating to waiver of permit requirements).

Source

The provisions of this § 105.452 adopted February 2, 1996, effective February 3, 1996, 26 Pa.B. 494.

APPENDIX A [Reserved]

Source

The provisions of this Appendix A adopted July 24, 1981, effective July 25, 1981, 11 Pa.B. 2636; amended August 28, 1987, effective August 29, 1987, 17 Pa.B. 3569; amended October 6, 1989, effective October 7, 1989, 19 Pa.B. 4328; amended August 5, 1994, effective August 6, 1994, 24 Pa.B. 3899; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (210123) to (210126), (207785) to (207788), (266265) to (266268) and (207793) to (207797).

APPENDIX B
[Reserved]**Source**

The provisions of this Appendix B adopted December 28, 1990, effective December 29, 1990, 20 Pa.B. 6419; amended August 19, 1994, effective August 20, 1994, 24 Pa.B. 3907; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207797) to (207807).

APPENDIX C
[Reserved]**Source**

The provisions of this Appendix C adopted July 22, 1983, effective July 23, 1983, 13 Pa.B. 2290; amended July 22, 1988, effective July 23, 1988, 18 Pa.B. 3257; amended August 19, 1988, effective August 20, 1988, 18 Pa.B. 3749; amended August 5, 1994, effective August 6, 1994, 24 Pa.B. 3913; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207807) to (207820).

APPENDIX D
[Reserved]**Source**

The provisions of this Appendix D adopted February 3, 1984, effective February 4, 1984, 14 Pa.B. 398; amended May 26, 1989, effective June 26, 1989, 19 Pa.B. 2281; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207820) to (207824), (266269) to (266270) and (207827) to (207839).

APPENDIX E
[Reserved]**Source**

The provisions of this Appendix E adopted January 15, 1988, effective February 16, 1988, 18 Pa.B. 276; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207839) to (207842), (266271) to (266272) and (207845) to (207851).

APPENDIX F
[Reserved]**Source**

The provisions of this Appendix F adopted February 8, 1991, effective February 9, 1991, 21 Pa.B. 547; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207851) to (207854), (266273) to (266274) and (207857) to (207867).

APPENDIX G
[Reserved]**Source**

The provisions of this Appendix G adopted April 12, 1991, effective April 13, 1991, 21 Pa.B. 1607; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207867) to (207872), (266275) to (266278) and (207877) to (207885).

APPENDIX H
[Reserved]**Source**

The provisions of this Appendix H adopted October 5, 1984, effective October 6, 1984, 14 Pa.B. 3658; amended December 1, 1989, effective December 2, 1989, 19 Pa.B. 5165; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5992; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207885) to (207888), (266279) to (266282), (207893) to (207900) and (266283) to (266284).

APPENDIX I
[Reserved]**Source**

The provisions of this Appendix I adopted January 24, 1992, effective January 25, 1992, 22 Pa.B. 392; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (266284) and (207903) to (207912).

APPENDIX J
[Reserved]**Source**

The provisions of this Appendix J adopted July 8, 1994, effective August 8, 1994, 24 Pa.B. 3404; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (207912), (250799) to (250800) and (266285) to (266286).

APPENDIX O
[Reserved]**Source**

The provisions of this Appendix O adopted February 2, 1996, effective March 4, 1996, and will remain in effect indefinitely unless specifically modified, suspended or revoked by the Department, 26 Pa.B. 526; amended March 7, 1997, effective April 7, 1997, 27 Pa.B. 1195; reserved July 5, 2013, effective July 6, 2013, 43 Pa.B. 3775. Immediately preceding text appears at serial pages (266286) to (266290) and (227157) to (277160).

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