
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 10

Session of
1997

INTRODUCED BY PLATTS, B. SMITH, STETLER, WAUGH, SAYLOR AND
STRITTMATTER, JANUARY 27, 1997

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 9, 1998

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, providing for marking of dams; ~~and making a repeal.~~ <—

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Title 30 of the Pennsylvania Consolidated
6 Statutes is amended by adding a section to read:

7 § 3510. Marking of dams.

8 (a) New dams.--In issuing permits for the construction or
9 installation of new run-of-the-river dams on the waters of this
10 Commonwealth, the department shall include a permit advisory
11 notifying the permittee of the requirements of this section. The
12 permittee of a new run-of-the-river dam shall mark the areas
13 above and below the dam and on the banks immediately adjacent to
14 the dam with signs and buoys of a design and content determined
15 by the commission to warn the swimming, fishing and boating
16 public of the hazards posed by the dam.

17 ~~(b) Existing dams. The department shall compile and~~ <—

1 (B) EXISTING DAMS.-- <—

2 (1) THE DEPARTMENT SHALL COMPILE AND maintain a current
3 list of existing dams on the waters of this Commonwealth that
4 the department determines to be run-of-the-river type dams.
5 Within three months of the effective date of this section,
6 the department shall notify the permittees and owners of
7 those run-of-the-river dams of the requirements of this
8 section BY CERTIFIED LETTER. Within ~~three~~ SIX months of <—
9 receiving notification of the requirements of this section
10 from the department, the permittees and owners of run-of-the-
11 river dams shall comply with the requirements of this section
12 to mark the areas above and below their dams and on the banks
13 immediately adjacent to their dams, during the time periods
14 of the year required by the commission, with signs and buoys
15 of a design and content determined by the commission to warn
16 the swimming, fishing and boating public of the hazards posed
17 by the dam.

18 (2) IF THE PERMITTEE OR OWNER OF A RUN-OF-THE-RIVER DAM <—
19 DISAGREES WITH THE DETERMINATION OF THE DEPARTMENT, THE
20 PERMITTEE OR OWNER SHALL FILE WRITTEN NOTICE WITH THE
21 ENVIRONMENTAL HEARING BOARD WITHIN 30 DAYS OF RECEIVING THE
22 DETERMINATION. THE ENVIRONMENTAL HEARING BOARD SHALL REACH A
23 DECISION AS SOON AS PRACTICABLE. IF THE DECISION OF THE BOARD
24 UPHOLDS THE DETERMINATION OF THE DEPARTMENT, THE PERMITTEE OR
25 OWNER FILING SUCH NOTICE SHALL HAVE SIX MONTHS TO COMPLY WITH
26 THIS SECTION FOLLOWING THE DECISION.

27 (c) Maintenance of signs and buoys.--

28 (1) It shall be the responsibility of the permittees and
29 owners of run-of-the-river dams to maintain ~~at all times~~ in <—
30 proper location and, legible condition AND DURING THE TIME <—

1 PERIODS OF THE YEAR ESTABLISHED BY THE COMMISSION, signs and
2 buoys installed pursuant to the requirements of this section.

3 (2) When a permittee or owner learns that signs or buoys
4 installed under this section have been removed or defaced by
5 an act of God or the acts or omissions of third parties other
6 than the permittee or owner or his agent, he shall repair or
7 replace the signs or buoys within 30 days unless river
8 conditions during that time make such repair or replacement
9 dangerous to undertake or impracticable to effect in which
10 case the permittee or owner shall repair or replace the signs
11 or buoys as soon as is reasonably practicable. If a permittee
12 or owner or his agent removes any signs or buoys, he shall
13 have five days thereafter to repair or replace the signs or
14 buoys.

15 (d) Size, content and location of signs and buoys marking
16 run-of-the-river dams.--The commission, after consultation with
17 the department, shall establish requirements for the content and
18 location of signs and buoys to be installed under the authority
19 of this section and the time periods of the year when the signs
20 and buoys shall be required to be in place. The commission shall
21 describe the requirements by notice published in the
22 Pennsylvania Bulletin and may from time to time revise the
23 requirements as circumstances require.

24 (e) Preemption of Federal law.--Any warning sign or buoy
25 installed and maintained in the areas above or below a run-of-
26 the-river dam or on the banks immediately adjacent to such a dam
27 by a dam permittee or owner in compliance with the requirements
28 of the United States Coast Guard, the Federal Energy Regulatory
29 Commission or any Federal agency having jurisdiction over a run-
30 of-the-river dam shall be deemed to meet the requirements

1 established or imposed by or under this section regarding the
2 placement of warning signs or buoys in said areas.

3 (f) Standard of care.--A dam permittee or owner who complies
4 with the provisions of this section to mark a dam and who
5 maintains signs and buoys as required by this section shall be
6 deemed to have met the standard of care for warning the public
7 of the hazards posed by the dam.

8 (g) Regulations.--The commission may promulgate regulations
9 to implement the provisions of this section.

10 (h) Penalties.--

11 ~~(1) Any run of the river dam permittee or owner who~~ <—
12 ~~fails to mark his dam in the manner prescribed by the~~
13 ~~commission pursuant to this section commits a misdemeanor of~~
14 ~~the third degree with a fine of not less than \$500. Each~~
15 ~~calendar year of noncompliance shall constitute a separate~~
16 ~~violation.~~

17 ~~(2) Any run of the river dam permittee or owner who~~
18 ~~fails to maintain the signs or buoys required by and erected~~
19 ~~under the provisions of this section commits a misdemeanor of~~
20 ~~the third degree.~~

21 (1) ANY PERSON WHO FAILS TO COMPLY WITH SUBSECTION (A) <—
22 OR (B) SHALL FORFEIT AND PAY A CIVIL PENALTY OF NOT LESS THAN
23 \$500 NOR MORE THAN \$5,000. THE PENALTY SHALL BE RECOVERED BY
24 CIVIL SUIT OR PROCESS IN THE NAME OF THE COMMONWEALTH. EACH
25 CALENDAR YEAR OF NONCOMPLIANCE SHALL CONSTITUTE A SEPARATE
26 VIOLATION.

27 (2) ANY PERSON WHO FAILS TO COMPLY WITH SUBSECTION (C)
28 SHALL FORFEIT AND PAY A CIVIL PENALTY OF NOT LESS THAN \$250
29 NOR MORE THAN \$5,000. THE PENALTY SHALL BE RECOVERED BY CIVIL
30 SUIT OR PROCESS IN THE NAME OF THE COMMONWEALTH. EACH

1 CALENDAR YEAR OF NONCOMPLIANCE SHALL CONSTITUTE A SEPARATE
2 VIOLATION.

3 (3) Any person who enters an exclusion zone marked under
4 the provisions of this section commits a summary offense of
5 the third degree provided that it shall not be a violation of
6 this section for the permittee or owner and his agents and
7 officers of the Commonwealth and local government to enter
8 the exclusion zone for purposes of maintaining the dams and
9 signs and buoys or for enforcement and rescue purposes.

10 (4) ALL FINES RECEIVED UNDER THIS SUBSECTION SHALL BE ←
11 PAID INTO THE STATE TREASURY FOR THE USE OF THE FISH FUND OR
12 BOAT FUND, AS APPROPRIATE.

13 (i) Definitions.--As used in this section, the following
14 words and phrases shall have the meanings given to them in this
15 subsection:

16 "Department." The Department of Environmental Protection of
17 the Commonwealth.

18 "Owner." The person who owns a run-of-the-river dam
19 regulated by the Department of Environmental Protection pursuant
20 to the act of November 26, 1978 (P.L.1375, No.325), known as the
21 Dam Safety and Encroachments Act.

22 "Permit." A permit issued by the Department of Environmental
23 Protection pursuant to the act of November 26, 1978 (P.L.1375,
24 No.325), known as the Dam Safety and Encroachments Act.

25 "Permittee." The person who has been issued a permit by the
26 Department of Environmental Protection to maintain a run-of-the-
27 river dam.

28 "Run-of-the-river dam." A manmade structure which:

29 (1) is regulated or permitted by the Department of
30 Environmental Protection pursuant to the act of November 26,

1 1978 (P.L.1375, No.325), known as the Dam Safety and
2 Encroachments Act;

3 (2) is built across a river or stream for the purposes
4 of impounding water where the impoundment, at normal flow
5 levels, is completely within the banks and all flow passes
6 directly over the ENTIRE DAM structure within the banks, <—
7 EXCLUDING ABUTMENTS, to a natural channel downstream; and

8 (3) the department determines to have hydraulic
9 characteristics such that at certain flows persons entering
10 the area immediately below the dam may be caught in the
11 backwash.

12 ~~Section 2. The act of February 4, 1808 (P.L.34, No.18),~~ <—
13 ~~entitled "An act declaring part of Wallenpaupack Creek, in Wayne~~
14 ~~County, a Public Highway," is repealed.~~

15 Section 3 2. This act shall take effect immediately JANUARY <—
16 1, 1999.