

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2905

Session of  
1996

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INTRODUCED BY PLATTS, B. SMITH, STETLER, NICKOL, WAUGH AND  
SAYLOR, SEPTEMBER 26, 1996

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 12, 1996

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## AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated  
2 Statutes, providing for marking of dams.

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 low head or run-of-the-river dams on the <—  
10 waters of this Commonwealth, the department shall include a  
11 permit condition requiring the permittee to mark the areas above <—  
12 PERMIT ADVISORY NOTIFYING THE PERMITTEE OF THE REQUIREMENTS OF <—  
13 THIS SECTION. THE PERMITTEE OF A NEW RUN-OF-THE-RIVER DAM SHALL  
14 MARK THE AREAS ABOVE and below the dam and on the banks  
15 immediately adjacent to the dam with signs and buoys of a design  
16 and content determined by the commission to warn the swimming,  
17 fishing and boating public of the hazards posed by the dam.

1     (b) Existing dams.--The department shall compile and  
2 maintain a current list of existing dams on the waters of this  
3 Commonwealth that the department determines to be ~~low head or~~ <—  
4 run-of-the-river type dams. Within three months of the effective  
5 date of this section, the department shall notify the permittees  
6 and owners of those ~~low head or~~ run-of-the-river dams of the <—  
7 requirements of this section. Within six months of the effective  
8 date of this section or within three months of receiving  
9 notification of the requirements of this section from the  
10 department, whichever date occurs sooner, the permittees and  
11 owners of ~~low head and~~ run-of-the-river dams shall mark the <—  
12 areas above and below the dam and on the banks immediately  
13 adjacent to the dam with signs and buoys of a design and content  
14 determined by the commission to warn the swimming, fishing and  
15 boating public of the hazards posed by the dam.

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

17         (1) It shall be the responsibility of the permittees and  
18 owners of ~~low head and~~ run-of-the-river dams to maintain at <—  
19 all times in proper location and legible condition signs and  
20 buoys installed pursuant to the requirements of this section.

21         (2) When a permittee or owner learns that signs or any  
22 buoys installed under this section have been removed or  
23 defaced by an act of God or the acts or omissions of third  
24 parties other than the permittee or owner or his agent, he  
25 shall repair or replace the signs or buoys within 30 days. If  
26 a permittee or owner or his agent removes any signs or buoys,  
27 he shall have five days thereafter to repair or replace the  
28 signs or buoys.

29     (d) Size, content and location of signs and buoys marking  
30 ~~low head and~~ run-of-the-river dams.--The commission, after <—

1 consultation with the department, shall establish requirements  
2 for the content and location of signs and buoys to be installed  
3 under the authority of this section and the time periods of the  
4 year when the signs and buoys shall be required to be in place.  
5 The commission shall describe the requirements by notice  
6 published in the Pennsylvania Bulletin and may from time to time  
7 revise the requirements as circumstances require.

8 (e) Standard of care.--A dam permittee or owner who complies  
9 with the provisions of this section to mark a dam and who  
10 maintains signs and buoys as required by this section shall be  
11 deemed to have met the standard of care for marking a low-head <—  
12 or run-of-the-river dam.

13 (f) Regulations.--The commission may promulgate regulations  
14 to implement the provisions of this section.

15 (g) Penalties.--

16 (1) Any low-head or run-of-the-river dam permittee or <—  
17 owner who fails to mark his dam in the manner prescribed by  
18 the commission pursuant to this section commits a misdemeanor  
19 of the third degree with a fine of not less than \$500. Each  
20 calendar year of noncompliance shall constitute a separate  
21 violation.

22 (2) Any low-head or run-of-the-river dam permittee or <—  
23 owner who fails to maintain the signs or buoys required by  
24 and erected under the provisions of this section commits a  
25 misdemeanor of the third degree.

26 (3) Any person who enters an exclusion zone marked under  
27 the provisions of this section commits a summary offense of  
28 the ~~second~~ THIRD degree provided that it shall not be a <—  
29 violation of this section for the permittee or owner and his  
30 agents and officers of the Commonwealth and local government

1 to enter the exclusion zone for purposes of maintaining the  
2 dams and signs and buoys or for enforcement and rescue  
3 purposes.

4 (h) Definitions.--As used in this section, the following  
5 words and phrases shall have the meanings given to them in this  
6 subsection:

7 "Department." The Department of Environmental Protection of  
8 the Commonwealth.

9 ~~"Low head dam." A dam or structure in the waters of this~~ <—  
10 ~~Commonwealth regulated or permitted by the Department of~~  
11 ~~Environmental Protection pursuant to the act of November 26,~~  
12 ~~1978 (P.L.1375, No.325), known as the Dam Safety and~~  
13 ~~Encroachments Act, and which the department determines to have~~  
14 ~~hydraulic characteristics such that at certain flows persons~~  
15 ~~entering the area immediately below the dam may be caught in the~~  
16 ~~backwash.~~

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

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

24 "Permittee." The person who has been issued a permit by the  
25 Department of Environmental Protection to maintain a low head or <—  
26 run-of-the-river dam.

27 "Run-of-the-river dam." A manmade structure regulated or <—

28 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, and built across a river or~~ DAM SAFETY AND <—  
3 ENCROACHMENTS ACT;

4 (2) IS BUILT ACROSS A RIVER OR stream for the purposes  
5 of impounding water where the impoundment, at normal flow  
6 levels, is completely within the banks and all flow passes  
7 directly over the structure within the banks to a natural  
8 channel downstream; AND <—

9 (3) THE DEPARTMENT DETERMINES TO HAVE HYDRAULIC  
10 CHARACTERISTICS SUCH THAT AT CERTAIN FLOWS PERSONS ENTERING  
11 THE AREA IMMEDIATELY BELOW THE DAM MAY BE CAUGHT IN THE  
12 BACKWASH.

13 Section 2. This act shall take effect immediately.