
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

SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JUNE 8, 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.

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

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

18 (1) It shall be the responsibility of the permittees and
19 owners of run-of-the-river dams to maintain ~~at all times~~ in <—
20 proper location and, legible condition AND DURING THE TIME <—
21 PERIODS OF THE YEAR ESTABLISHED BY THE COMMISSION, signs and
22 buoys installed pursuant to the requirements of this section.

23 (2) When a permittee or owner learns that signs or buoys
24 installed under this section have been removed or defaced by
25 an act of God or the acts or omissions of third parties other
26 than the permittee or owner or his agent, he shall repair or
27 replace the signs or buoys within 30 days unless river
28 conditions during that time make such repair or replacement
29 dangerous to undertake or impracticable to effect in which
30 case the permittee or owner shall repair or replace the signs

1 or buoys as soon as is reasonably practicable. If a permittee
2 or owner or his agent removes any signs or buoys, he shall
3 have five days thereafter to repair or replace the signs or
4 buoys.

5 (d) Size, content and location of signs and buoys marking
6 run-of-the-river dams.--The commission, after consultation with
7 the department, shall establish requirements for the content and
8 location of signs and buoys to be installed under the authority
9 of this section and the time periods of the year when the signs
10 and buoys shall be required to be in place. The commission shall
11 describe the requirements by notice published in the
12 Pennsylvania Bulletin and may from time to time revise the
13 requirements as circumstances require.

14 (e) Preemption of Federal law.--Any warning sign or buoy
15 installed and maintained in the areas above or below a run-of-
16 the-river dam or on the banks immediately adjacent to such a dam
17 by a dam permittee or owner in compliance with the requirements
18 of the United States Coast Guard, the Federal Energy Regulatory
19 Commission or any Federal agency having jurisdiction over a run-
20 of-the-river dam shall be deemed to meet the requirements
21 established or imposed by or under this section regarding the
22 placement of warning signs or buoys in said areas.

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

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

30 (h) Penalties.--

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

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

11 (1) ANY PERSON WHO FAILS TO COMPLY WITH SUBSECTION (A) <—
12 OR (B) SHALL FORFEIT AND PAY A CIVIL PENALTY OF NOT LESS THAN
13 \$500 NOR MORE THAN \$5,000. THE PENALTY SHALL BE RECOVERED BY
14 CIVIL SUIT OR PROCESS IN THE NAME OF THE COMMONWEALTH. EACH
15 CALENDAR YEAR OF NONCOMPLIANCE SHALL CONSTITUTE A SEPARATE
16 VIOLATION.

17 (2) ANY PERSON WHO FAILS TO COMPLY WITH SUBSECTION (C)
18 SHALL FORFEIT AND PAY A CIVIL PENALTY OF NOT LESS THAN \$250
19 NOR MORE THAN \$5,000. THE PENALTY SHALL BE RECOVERED BY CIVIL
20 SUIT OR PROCESS IN THE NAME OF THE COMMONWEALTH. EACH
21 CALENDAR YEAR OF NONCOMPLIANCE SHALL CONSTITUTE A SEPARATE
22 VIOLATION.

23 (3) Any person who enters an exclusion zone marked under
24 the provisions of this section commits a summary offense of
25 the third degree provided that it shall not be a violation of
26 this section for the permittee or owner and his agents and
27 officers of the Commonwealth and local government to enter
28 the exclusion zone for purposes of maintaining the dams and
29 signs and buoys or for enforcement and rescue purposes.

30 (4) ALL FINES RECEIVED UNDER THIS SUBSECTION SHALL BE <—

1 PAID INTO THE STATE TREASURY FOR THE USE OF THE FISH FUND OR
2 BOAT FUND, AS APPROPRIATE.

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

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

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

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

15 "Permittee." The person who has been issued a permit by the
16 Department of Environmental Protection to maintain a run-of-the-
17 river dam.

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

19 (1) is regulated or permitted by the Department of
20 Environmental Protection pursuant to the act of November 26,
21 1978 (P.L.1375, No.325), known as the Dam Safety and
22 Encroachments Act;

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

28 (3) the department determines to have hydraulic
29 characteristics such that at certain flows persons entering
30 the area immediately below the dam may be caught in the

1 backwash.

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

5 Section 3 2. This act shall take effect ~~immediately~~ JANUARY <—
6 1, 1999.