

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1612 Session of  
2012

INTRODUCED BY WAUGH, OCTOBER 10, 2012

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 10, 2012

AN ACT

1 Amending the act of November 26, 1978 (P.L.1375, No.325),  
2 entitled, as amended, "An act providing for the regulation  
3 and safety of dams and reservoirs, water obstructions and  
4 encroachments; consolidating and clarifying the programs of  
5 the Department of Environmental Resources and Navigation  
6 Commission for the Delaware River; establishing penalties and  
7 repealing certain acts," further providing for definitions,  
8 for proof of financial responsibility and for duties of  
9 owners.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 3 of the act of November 26, 1978  
13 (P.L.1375, No.325), known as the Dam Safety and Encroachments  
14 Act, amended October 23, 1979 (P.L.204, No.70) and May 16, 1985  
15 (P.L.32, No.15), is amended to read:

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall  
18 have, unless the context clearly indicates otherwise, the  
19 meanings given to them in this section:

20 "Appurtenant works." Include, but are not limited to, such  
21 structures as spillways, either in the dam or separate  
22 therefrom; low level outlet works; and conduits such as tunnels,

1 pipelines or penstocks through the dam or its abutments.

2 "Body of water." Any natural or artificial lake, pond,  
3 reservoir, swamp, marsh or wetland.

4 "Category 1 dam." A regulated dam or reservoir with a hazard  
5 potential that poses any of the following:

6 (1) A risk to a substantial number of homes, businesses  
7 or schools.

8 (2) A risk of excessive economic loss, such as extensive  
9 residential, commercial or agricultural damage or substantial  
10 inconvenience.

11 "Category 2 dam." A regulated dam or reservoir with a hazard  
12 potential that poses any of the following:

13 (1) A risk to a small number of homes or small  
14 businesses.

15 (2) A risk of appreciable economic loss, such as limited  
16 residential, commercial or agricultural damage or moderate  
17 public inconvenience.

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

20 "Dam." Any artificial barrier, together with its appurtenant  
21 works, constructed for the purpose of impounding or storing  
22 water or any other fluid or semifluid; or any refuse bank fill  
23 or structure for highway, railroad or other purposes which does  
24 or may impound water or any other fluid or semifluid.

25 "Department." The Department of Environmental Resources of  
26 the Commonwealth of Pennsylvania.

27 "Encroachment." Any structure or activity which in any  
28 manner changes, expands or diminishes the course, current or  
29 cross-section of any watercourse, floodway or body of water.

30 "Hearing board." The Environmental Hearing Board.

1 ["High hazard dam." Any dam so located as to endanger  
2 populated areas downstream by its failure.]

3 "Navigation Commission." The Navigation Commission for the  
4 Delaware River or its navigable tributaries.

5 "Operation." Elements of the use, control and functioning of  
6 a facility which may affect primarily the storage, release or  
7 flow of water, the structural safety of a facility or  
8 navigation, with due consideration of the other purposes of this  
9 act.

10 "Owner." Any person who owns, controls, operates, maintains,  
11 or manages a dam or reservoir, water obstruction or  
12 encroachment.

13 "Person." Includes any natural person, partnership,  
14 association, corporation, municipality, municipal authority,  
15 receiver or trustee and any department, board, commission or  
16 authority of the Commonwealth. Whenever used in a section  
17 prescribing and imposing a penalty or sanction, the term  
18 "person" shall include the members of an association and the  
19 officers of a corporation, municipality or municipal authority.

20 "Regulated dam." A dam so located as to pose a hazard to  
21 populated areas downstream by its failure.

22 "Reservoir." Any basin which contains or will contain the  
23 water or other fluid or semifluid impounded by a dam.

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

26 "Water obstruction." Includes any dike, bridge, culvert,  
27 wall, wing wall, fill, pier, wharf, embankment, abutment or  
28 other structure located in, along, across or projecting into any  
29 watercourse, floodway or body of water.

30 "Watercourse" or "stream." Any channel of conveyance of

1 surface water having a defined bed and banks, whether natural or  
2 artificial, with perennial or intermittent flow.

3 Section 2. Section 11 of the act, amended October 23, 1979  
4 (P.L.204, No.70), is amended to read:

5 Section 11. Proof of financial responsibility.

6 (a) As a requirement for approval of a permit under this act  
7 for any [category of] Category 1 dam, water obstruction or  
8 encroachment which may present a substantial potential risk to  
9 life or property, the Environmental Quality Board may, by  
10 regulation, authorize the department to require proof of  
11 financial responsibility or security assuring the proper  
12 construction, operation, maintenance and termination of such  
13 projects.

14 (b) As proof of such responsibility or security, the  
15 regulations may require one or more of the following:

16 (1) a Certificate of Public Convenience from the Public  
17 Utility Commission if the owner of the proposed facility is  
18 subject to regulation under the act of May 28, 1937

19 (P.L.1053, No.286), known as the "Public Utility Law";

20 (2) ownership or management of the facility by an agency  
21 of the Federal, interstate, State, county or municipal  
22 government; or

23 (3) a bond or other legal device of a form acceptable to  
24 the department, payable to the Commonwealth, which guarantees  
25 proper construction, repair, operation and maintenance,  
26 inspections and monitoring of the facility and removal, if  
27 necessary. [The] For a Category 1 dam, the amount of such  
28 shall be sufficient to cover all costs of entry, correction,  
29 repair, operation, maintenance, inspection, monitoring or  
30 removal of the facility by the Commonwealth in the event of

1 failure of the owner to comply with the provisions of this  
2 act, or any regulation, permit or order issued hereunder.

3 (c) The Commonwealth may seek reimbursement of incurred  
4 necessary costs if the owner fails to properly construct,  
5 operate, maintain or remove any Category 1 dam, Category 2 dam  
6 or any other dam subject to this act.

7 Section 3. Section 13 of the act, amended May 16, 1985  
8 (P.L.32, No.15), is amended to read:

9 Section 13. Duties of owners.

10 (a) The owner of any dam, water obstruction or encroachment  
11 shall have the legal duty to:

12 (1) monitor, operate and maintain the facility in a safe  
13 condition in accordance with the regulations, terms and  
14 conditions of permits, approved operating plans and orders of  
15 the department issued pursuant to this act;

16 (2) conduct periodic inspections and analyses, as  
17 reasonably required by the department considering the type of  
18 facility and degree of potential hazard, and as required  
19 submit certified reports regarding the condition of the  
20 facility to the department: Provided, That in lieu of  
21 certified reports from the owner, the department may accept  
22 reports of equivalent inspections prepared by governmental  
23 agencies;

24 (3) immediately notify the department and responsible  
25 authorities in downstream communities of any condition which  
26 threatens the safety of the facility, and take all necessary  
27 actions to protect life and property, including any action  
28 required under an emergency plan or department order issued  
29 pursuant to this act; and

30 (4) prior to discontinuing use or abandonment, remove

1 all or part of the facility and take other actions necessary  
2 to protect safety and the environment in a manner approved by  
3 the department.

4 (b) In addition to the duties of subsection (a), the owner  
5 of any [high hazard] regulated dam which has been classified as  
6 such by the Department of Environmental Resources shall post  
7 notices in public places in any area which might be affected by  
8 the failure of the dam.

9 Section 4. This act shall take effect in 60 days.