

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2404 Session of 2022

INTRODUCED BY OWLETT, PICKETT, FRITZ, HAMM, ARMANINI, O'NEAL, SMITH, HERSHEY, JAMES, RYAN, MILLARD, CAUSER, BROOKS, RAPP, GROVE, DeLUCA, ROWE, KEEFER AND MARSHALL, APRIL 11, 2022

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 24, 2022

AN ACT

1 Amending the act of November 26, 1978 (P.L.1375, No.325),
2 entitled "An act providing for the regulation and safety of
3 dams and reservoirs, water obstructions and encroachments;
4 consolidating and clarifying the programs of the Department
5 of Environmental Resources and Navigation Commission for the
6 Delaware River; establishing penalties and repealing certain
7 acts," providing for issuance of and conditions for municipal
8 continuous maintenance permits.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. The act of November 26, 1978 (P.L.1375, No.325),
12 known as the Dam Safety and Encroachments Act, is amended by
13 adding a section to read:

14 Section 9.1. Issuance of and conditions for municipal
15 continuous maintenance permits.

16 (a) The department shall develop a municipal continuous
17 maintenance permit for which THE DEPARTMENT OF TRANSPORTATION OR <--
18 a municipality may apply. The permit shall allow permittees to
19 maintain, inspect and monitor watercourses, water obstructions,
20 appurtenant works and encroachments within the municipality as

1 specified within the permit.

2 (B) THE DEPARTMENT SHALL APPROVE AN APPLICATION FOR A PERMIT <--  
3 TO A MUNICIPALITY UNDER THIS SECTION IF THE APPLICANT MEETS ALL  
4 OF THE FOLLOWING CRITERIA:

5 (1) THE MUNICIPALITY IS WITHOUT A SUSTAINED HISTORY OF  
6 SIGNIFICANT PERMIT VIOLATIONS UNDER THIS ACT.

7 (2) THE MUNICIPALITY TAKES AN AFFIRMATIVE DUTY OVER THE  
8 WATERCOURSES, WATER OBSTRUCTIONS, APPURTENANT WORKS AND  
9 ENCROACHMENTS DELINEATED IN THE PERMIT APPLICATION.

10 ~~(b) (C) Submission of a watercourse alone within the <--~~  
11 ~~application shall be interpreted as submitting the publicly~~  
12 ~~owned water obstructions, appurtenant works or encroachments~~  
13 ~~within and alongside the watercourse unless otherwise specified~~  
14 ~~within the permit.~~

15 ~~(c) (D) A municipality granted the permit PERMITTEE may <--~~  
16 ~~amend the permit through the addition of watercourses, water~~  
17 ~~obstructions, appurtenant works or encroachments for which a~~  
18 ~~duty to maintain, inspect and monitor shall apply with the~~  
19 ~~approval of the department. The department shall approve a~~  
20 ~~request to remove watercourses, water obstructions, appurtenant~~  
21 ~~works or encroachments from the permit when a written order to~~  
22 ~~do so is provided by the municipality granted the permit <--~~  
23 ~~PERMITTEE. <--~~

24 ~~(d) (E) A municipality granted a permit under this section <--~~  
25 ~~PERMITTEE may not be required to seek preapproval or further <--~~  
26 ~~authorization from the department for maintenance conducted~~  
27 ~~under the permit.~~

28 ~~(e) (F) The permit shall provide for the maintenance, <--~~  
29 ~~inspection and monitoring of watercourses, water obstructions,~~  
30 ~~appurtenant works and encroachments in a manner consistent with~~

1 previously prepared applicable plans, specifications, reports  
2 and designs for the operation of any category of watercourses,  
3 water obstructions, appurtenant works or encroachments prepared,  
4 signed and certified by a registered professional engineer and  
5 affixed with the seal of a registered professional engineer.

6 ~~(f)~~ (G) A municipality PERMITTEE shall provide to the <--  
7 department, by January 15 of each year, a compilation of the  
8 maintenance projects undertaken between January 1 and December  
9 31 of the previous year that were permitted under this section.  
10 The compilation shall delineate the persons, ~~municipal~~ equipment <--  
11 operators and contractors operating as agents of the  
12 municipality PERMITTEE who maintained, inspected and monitored <--  
13 watercourses, water obstructions, appurtenant works and  
14 encroachments within the municipality.

15 ~~(g)~~ (H) A permit granted under this section by the <--  
16 department to a ~~municipality~~ PERMITTEE shall be in effect for no <--  
17 less than 10 years.

18 ~~(h)~~ (I) The department shall extend a permit under this <--  
19 section to a ~~municipality~~ PERMITTEE for 10 years following 10 <--  
20 years of operation under this section without a permit  
21 violation. A permit violation shall be found to have occurred  
22 when the permittee failed to address an alleged violation in the  
23 manner prescribed by the department within one year of receipt  
24 of the notice of an alleged permit violation.

25 ~~(i)~~ The department may impose permit terms and conditions <--  
26 regarding construction methods, operation, maintenance,  
27 inspection and monitoring to ensure compliance with this act and  
28 other laws administered by the department.

29 (J) A PERMIT VIOLATION SHALL NOT BE FOUND TO HAVE OCCURRED <--  
30 WHEN A PERMITTEE REMOVES OR MANIPULATES OBSTRUCTIONS OR DEBRIS

1 WITHIN OR ALONG A WATERCOURSE IN A MANNER THAT ENABLES WATER  
2 OBSTRUCTIONS, APPURTENANT WORKS OR ENCROACHMENTS SPECIFIED  
3 WITHIN THE PERMIT TO OPERATE CONSISTENT WITH APPLICABLE PLANS,  
4 SPECIFICATIONS, REPORTS AND DESIGNS PREVIOUSLY PREPARED BY A  
5 REGISTERED PROFESSIONAL ENGINEER.

6 ~~(j)~~ (K) ~~The municipality granted the permit~~ PERMITTEE shall <--  
7 accept an affirmative duty to maintain, inspect and monitor  
8 watercourses, water obstructions, appurtenant works and  
9 encroachments within the municipality as specified within the  
10 permit.

11 (L) AS USED IN THIS SECTION, THE TERM "MUNICIPALITY" MEANS A <--  
12 COUNTY, CITY, TOWN, BOROUGH, TOWNSHIP OR SCHOOL DISTRICT IN THIS  
13 COMMONWEALTH.

14 Section 2. This act shall take effect in 60 days.