

**DAM SAFETY AND ENCROACHMENTS ACT**

**Act of Nov. 26, 1978, P.L. 1375, No. 325**

**Cl. 32**

AN ACT

Providing for the regulation and safety of dams and reservoirs, water obstructions and encroachments; consolidating and clarifying the programs of the Department of Environmental Resources and Navigation Commission for the Delaware River; establishing penalties and repealing certain acts. (Title amended Oct. 23, 1979, P.L.204, No.70)

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

Section 1. Short title.

This act shall be known and may be cited as the "Dam Safety and Encroachments Act."

(1 amended Oct. 23, 1979, P.L.204, No.70)

Section 2. Purposes.

The purposes of this act are to:

(1) Provide for the regulation of dams and reservoirs, water obstructions and encroachments in the Commonwealth, in order to protect the health, safety and welfare of the people and property.

(2) Assure proper planning, design, construction, maintenance, monitoring and supervision of dams and

reservoirs, including such preventative measures as are necessary to provide an adequate margin of safety.

(3) Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution and conserve the water quality, natural regime and carrying capacity of watercourses.

(4) Assure proper planning, design, construction, maintenance and monitoring of water obstructions and encroachments, in order to prevent unreasonable interference with waterflow and to protect navigation.

(2 amended Oct. 23, 1979, P.L.204, No.70)

### Section 3. Definitions.

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

"Appurtenant works." Include, but are not limited to, such structures as spillways, either in the dam or separate therefrom; low level outlet works; and conduits such as tunnels, pipelines or penstocks through the dam or its abutments.

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

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

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

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

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

"Hearing board." The Environmental Hearing Board.

"High hazard dam." Any dam so located as to endanger populated areas downstream by its failure. (Def. added May 16, 1985, P.L.32, No.15)

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

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

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

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

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

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

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

"Watercourse" or "stream." Any channel of conveyance of surface water having a defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

(3 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 4. Scope.

This act shall apply to:

(1) All dams on a natural or artificial watercourse, other than those licensed pursuant to the Federal Power Act, where:

(i) the contributory drainage area exceeds 100 acres; or

(ii) the greatest depth of water at maximum storage elevation exceeds 15 feet; or

(iii) the impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(2) All dams used for the storage of water not located on a watercourse and which have no contributory drainage, where the greatest depth of water at maximum storage elevation exceeds 15 feet and the impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(3) All dams used for the storage of fluids or semifluids other than water, the escape of which may result in air, water or land pollution, or may result in danger to persons or property.

(4) All water obstructions and encroachments other than dams, located in, along, across or projecting into any watercourse, floodway or body of water, whether temporary or permanent.

(4 amended Oct. 23, 1979, P.L.204, No.70)

Section 5. Regulations and standards.

(a) The Environmental Quality Board shall have the power, and its duty shall be, to adopt such regulations and standards for the design, construction, operation, monitoring, maintenance, modification, repair and removal of dams and reservoirs, water obstructions and encroachments as are necessary and proper to carry out the purposes of this act. The regulations shall include, but are not limited to, rules establishing:

(1) Standards and criteria for the siting and design of dams, water obstructions and encroachments considering both existing and projected conditions which may affect the safety of a project during its construction and operational life.

(2) Requirements for operation of dams including operational plans to be prepared and implemented by owners.

(3) Requirements for monitoring, inspection and reporting of conditions affecting the safety of dams, water obstructions and encroachments.

(4) Requirements for emergency warning and action plans to be prepared and implemented by owners, in cooperation with civil authorities.

(5) Reasonable fees for the processing of applications and periodic inspections, for the purpose of reimbursing the Commonwealth for the costs of administration of this act.

(b) In promulgating regulations pursuant to this act applicable to dams, and to water obstructions and encroachments

which may present a substantial potential risk to life or property, the Environmental Quality Board shall consider:

(1) the inclusion of the best available preventative measures necessary to assure protection of life, health, property and the environment with an adequate margin of safety;

(2) water management and the impacts of development in watersheds as a whole;

(3) the state of scientific and technological knowledge at the time the regulations are adopted; and

(4) the immediate and long-range economic impact upon the Commonwealth and its citizens.

(c) In promulgating regulations pursuant to this act applicable to water obstructions and encroachments which do not present substantial potential risks to life or property, the Environmental Quality Board shall consider:

(1) the state of scientific and technological knowledge and good engineering practice relating to various types of water obstructions and encroachments;

(2) the economic impact upon the Commonwealth and its citizens;

(3) the relationship of water obstructions and encroachments to hydrologic management in the watershed as a whole; and

(4) the impacts of water obstructions and encroachments upon water quality and the environment.

(5 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 5.

Section 6. Permit requirement.

(a) No person shall construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without the prior written permit of the department.

(b) Any existing dam, water obstruction or encroachment constructed pursuant to a license or permit issued in compliance with the provisions of the act of June 8, 1907 (P.L.496, No.322), entitled "An act to establish a Board of Commissioners of Navigation for the river Delaware and its navigable tributaries; regulating their jurisdiction over ships, vessels, and boats, and wharves, piers, bulkheads, docks, slips and basins; and exempting cities of the first class from certain of its provisions; and making an appropriation therefor," or the act of June 25, 1913 (P.L.555, No.355), entitled "An act providing for the regulation of dams, or other structures or obstructions, as defined herein, in, along, across, or projecting into all streams and bodies of water wholly or partly within, or forming part of the boundary of, this Commonwealth; vesting certain powers and duties in the Water Supply Commission of Pennsylvania, for this purpose; and providing penalties for the violation of the provisions hereof," shall be deemed to comply with the construction and operating permit requirements of this section. All such projects shall hereafter comply with the operating, maintenance, monitoring and other requirements of this act.

(c) The owner of any existing dam, water obstruction or encroachment who does not hold a permit issued pursuant to the act of June 8, 1907 (P.L.496, No.322), or the act of June 25, 1913 (P.L.555, No.355) shall apply for and receive a permit pursuant to this act on or before January 1, 1981. After the effective date of this act, all such projects shall comply with the operating, maintenance, monitoring and other requirements of this act.

(d) Any permit issued by the department after the effective date of this act for the construction and operation of a water obstruction or encroachment shall incorporate authorization for normal repairs and maintenance of permitted structures conducted within the original specifications for the water obstruction or encroachment. Any repairs or maintenance involving modification of the water obstruction or encroachment from its original specifications and any repairs or reconstruction involving a substantial portion of the structure, shall require the prior written permit of the department pursuant to subsection (a).

(6 amended Oct. 23, 1979, P.L.204, No.70)

Section 7. General permits and waiver of permit requirements.

(a) The Environmental Quality Board may, by regulation, waive the permit requirements for any category of dam, water obstruction or encroachment which it determines has insignificant effect upon the safety and protection of life, health, property and the environment.

(b) The department may, in accordance with rules adopted by the Environmental Quality Board, issue general permits on a regional or Statewide basis for any category of dam, water obstruction or encroachment if the department determines that the projects in such category are similar in nature, and can be adequately regulated utilizing standardized specifications and conditions.

(c) General permits shall specify such design, operating and monitoring conditions as are necessary to adequately protect life, health, property and the environment, under which such projects may be constructed and maintained without applying for and obtaining individual permits. The department may require the registration of any project constructed pursuant to a general permit.

(d) All general permits shall be published in the Pennsylvania Bulletin at least 30 days prior to the effective date of the permit.

(7 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 7.

Section 8. Permit application.

(a) Each permit application shall be accompanied by complete maps, plans, specifications, test reports and such other information as the department may require to determine compliance with the provisions of this act.

(b) Each permit application shall be a matter of public record and shall be available for inspection at the department's offices.

(c) The department may, at its discretion, hold a public hearing on any application for the purposes of gathering information.

Section 9. Permit issuance and conditions.

(a) The department shall have the power to grant a permit if it determines that the proposed project complies with the provisions of this act and the regulations adopted hereunder, and complies with all other applicable laws administered by the department, the Pennsylvania Fish Commission and any river basin commission created by interstate compact.

(b) The department may impose such permit terms and conditions regarding construction, operation, maintenance, inspection and monitoring of the project as are necessary to assure compliance with this act and other laws administered by the department, the Pennsylvania Fish Commission and any river basin commission created by interstate compact.

**Compiler's Note:** The name of the Pennsylvania Fish Commission, referred to in this section, was changed to the Pennsylvania Fish and Boat Commission by Act 39 of 1991. See 30 Pa.C.S. § 308 (relating to designation of commission).

Section 10. Qualifications of persons responsible for design and supervision of projects.

The Environmental Quality Board may establish by regulation the minimum professional, education and experience qualifications of persons responsible for the preparation of plans, design analyses and specifications and the supervision of construction, operation, inspection and monitoring activities, in order to assure the proper design, construction, operation, monitoring or maintenance of any category of dam or, where necessary to protect public health and safety, of any category of water obstruction or encroachment.

(10 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 10.

Section 11. Proof of financial responsibility.

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

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

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

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

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

(3) a bond or other legal device of a form acceptable to the department, payable to the Commonwealth, which

guarantees proper construction, repair, operation and maintenance, inspections and monitoring of the facility and removal, if necessary. The amount of such shall be sufficient to cover all costs of entry, correction, repair, operation, maintenance, inspection, monitoring or removal of the facility by the Commonwealth in the event of failure of the owner to comply with the provisions of this act, or any regulation, permit or order issued hereunder.

(11 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 11.

Section 12. Projects affecting navigable waters of the Delaware Basin.

(a) No individual or general permit for a dam, water obstruction or encroachment in the commercially navigable waters of the Delaware River or of its navigable tributaries shall be issued without notice to and approval by the Navigation Commission. Any individual permit application or general permit not acted upon by the Navigation Commission within 60 days following notice to the commission, or within 60 days following receipt of any additional information required by the commission, shall be deemed approved by the Navigation Commission.

(b) A record of all permits issued for facilities in the commercially navigable waters of the Delaware River or of its navigable tributaries shall be filed with the Navigation Commission.

(c) The department and Navigation Commission shall cooperate for the purpose of assuring safe navigation in the Delaware River and eliminating any duplication of functions.

(12 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 2 of Reorganization Plan No.1 of 1982 provided that the functions, powers and duties of the Department of Commerce with regard to the Navigation Commission for the Delaware River and its navigable tributaries are transferred to the Department of State and provided that the functions, powers and duties of the commission with regard to the regulation, review and approval of dams, water obstructions and encroachments are transferred to the Department of Environmental Resources.

Section 13. Duties of owners.

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

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

(2) conduct periodic inspections and analyses, as reasonably required by the department considering the type of facility and degree of potential hazard, and as required submit certified reports regarding the condition of the facility to the department: Provided, That in lieu of certified reports from the owner, the department may accept

reports of equivalent inspections prepared by governmental agencies;

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

(4) prior to discontinuing use or abandonment, remove all or part of the facility and take other actions necessary to protect safety and the environment in a manner approved by the department.

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

(13 amended May 16, 1985, P.L.32, No.15)

**Compiler's Note:** The Department of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 14. Investigation and correction of unsafe conditions.

(a) Whenever the department finds there is reasonable cause to suspect the existence of conditions adversely affecting the safety of a dam, water obstruction or encroachment, the department may order the owner to conduct such investigations, tests and analyses as may be required to determine the continuing safety of the facility.

(b) If the department determines that any dam, water obstruction or encroachment is unsafe or adversely affects property or the environment or has not been properly constructed, operated, monitored or maintained in compliance with this act, it may order the owner of the facility to repair, alter, maintain or remove the facility or take such other action necessary to carry out the purposes of this act, within such time as prescribed in the order.

(c) If:

(1) the owner cannot be ascertained or found;

(2) the owner refuses or fails to comply with an order issued pursuant to this section; or

(3) the condition of the facility is so dangerous as to require immediate remedial action;

the department or its authorized agents may enter and conduct such investigations, tests and analyses or take such corrective action as required to carry out the purposes of this act. The department thereafter may recover from the owner, in the name of the Commonwealth, the expenses incurred in taking such action, in the same manner as debts are recoverable by law.

(14 amended Oct. 23, 1979, P.L.204, No.70)

Section 15. Projects affecting submerged lands of the Commonwealth.

(a) No permit shall be granted pursuant to this act for any project to occupy submerged lands of the Commonwealth in any navigable lake or river or stream declared a public highway, unless the applicant has obtained an easement, right-of-way, license or lease pursuant to this act, or holds an estate or interest in such submerged lands pursuant to other specific authority from the General Assembly.

(b) The department may, with the approval of the Governor, grant an easement, right-of-way, license or lease to occupy submerged lands of the Commonwealth in any navigable lake or river or stream declared a public highway, for any dam, water obstruction or encroachment which is constructed for the purpose of:

- (1) improving navigation or public transportation;
- (2) recreation, fishing or other public trust purposes;
- (3) protecting public safety or the environment;
- (4) providing water supply, energy production or waste treatment;
- (5) providing a public utility service by a government agency or subdivision or public utility or electric cooperative; or
- (6) other activities which require access to water.

Such easement, right-of-way, lease or license shall provide for the payment to the Commonwealth of compensation for the use of its property in such amount and shall be subject to such terms and conditions as the department shall, with the approval of the Governor, prescribe.

(c) The total area of land which any such project may occupy under one or more easements, rights-of-way, licenses or leases granted by the department pursuant to this section shall not exceed 25 acres.

(d) No easement, right-of-way, lease or license may be granted under this section which may adversely affect navigation or significantly impair the public's right in lands held in trust by the Commonwealth.

(e) No title, easement, right-of-way or other interest in submerged lands or other real estate of the Commonwealth may be granted except as expressly provided by this section or other specific authority from the General Assembly.

(15 amended Oct. 23, 1979, P.L.204, No.70)

Section 16. Investigations and searches.

(a) The department is authorized to make such inspections, conduct such tests or sampling, or examine books, papers and records pertinent to any matter under investigation pursuant to this act as it deems necessary to determine compliance with this act and for this purpose, the duly authorized agents and employees of the department are authorized at all reasonable times to enter and examine any property, facility, operation or activity.

(b) The owner, operator or other person in charge of such property, facility, operation or activity, upon presentation of proper identification and purpose for inspection by the agents or employees of the department, shall give such agents and employees free and unrestricted entry and access, and upon refusal to grant such entry or access, the agent or employee may obtain a search warrant or other suitable order authorizing such entry and inspection. It shall be sufficient probable cause to issue a search warrant authorizing such examination and inspection if there is probable cause to believe that the object of the investigation is subject to regulation under this act, and access, examination or inspection is necessary to enforce the provisions of this act.

(c) ((c) repealed Oct. 5, 1980, P.L.693, No.142)

Section 17. Intergovernmental coordination and delegations to local agencies.

(a) In accordance with regulations adopted by the Environmental Quality Board, the department may by agreement delegate to a county conservation district or other county agency one or more of its regulatory functions to permit,

inspect and monitor designated categories of dams, water obstructions and encroachments and to enforce this act and regulations adopted hereunder relating to such designated categories. Any county conservation district or other agency acting pursuant to a delegation agreement shall have the same powers and duties otherwise vested in the department to implement this act, to the extent delegated by the agreement.

(b) The department shall monitor and supervise the activities of each county conservation district or agency conducted pursuant to the agreement.

(c) Any provision of the "Local Agency Law," notwithstanding, any person aggrieved by an action of a county conservation district or other agency pursuant to a delegation agreement may appeal such action to the department within 30 days following notice of such action. Any action of the department pursuant to such an appeal may be appealed to the Environmental Hearing Board in accordance with section 24.

(d) The department shall cooperate and coordinate with the United States Army Corps of Engineers and other appropriate Federal and interstate agencies for the purpose of assuring efficient regulation, permitting and inspection of dams, water obstructions and encroachments. The department is authorized, with the approval of the Attorney General, to enter into administrative agreements with appropriate Federal and interstate agencies for the following purposes:

(1) to facilitate the submission and coordinated review of permit applications;

(2) to avoid unnecessary duplication of staff functions and hearings;

(3) to provide for coordinated inspection, monitoring and enforcement of application laws and regulations; and

(4) to accept delegations of authority from Federal and interstate agencies relating to the regulation of dams, water obstructions and encroachments.

(17 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 17.

Section 18. Unlawful conduct.

It shall be unlawful for any person to:

(1) Violate or assist in the violation of any of the provisions of this act or of any rules and regulations adopted hereunder.

(2) Fail to comply with any order by the department issued hereunder from which no appeal has been taken, which has been sustained on appeal, or which has been appealed for which no supersedeas has been granted for the period in which violation occurs.

(3) Construct, enlarge, repair, alter, remove, maintain, operate or abandon any dam, water obstruction or encroachment contrary to the terms and conditions of a general or individual permit or the rules and regulations of the department.

(4) Attempt to obtain a permit by misrepresentation or failure to disclose all relevant facts. Nothing in this act

shall be construed to affect the application of any provision of the Crimes Code relating to perjury, false swearing or unsworn falsification to authorities.

(5) Intentionally obstruct, impair or pervert the administration of this act by the department or any municipality by force, violence, physical interference or obstacle, breach of official duty or any other unlawful act. Nothing in this act shall be construed to affect the application of section 5101 of the Crimes Code to obstructing administration of law or other governmental function.

(18 amended Oct. 23, 1979, P.L.204, No.70)

#### Section 19. Civil remedies.

(a) Any activity or condition declared by this act to be unlawful conduct shall be restrained or prevented in the manner provided by law or equity for abatement of public nuisances, and the expense thereof shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

(b) In addition, suits to restrain or prevent any unlawful conduct as defined in this act or to compel action to discontinue any unlawful conduct may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, or upon relation of any district attorney of any county or upon relation of the solicitor of any municipality affected after 30 days notice has first been served upon the Attorney General of the intention of the district attorney or solicitor to so proceed. Except in cases of emergency where, in the opinion of the court, the exigencies of the cases require immediate abatement of said unlawful conduct, the court may, in its decree, fix a reasonable time during which the person responsible for the unlawful conduct may make provision for the same. The expense of such proceedings shall be recoverable from the violator in such manner as may now or hereafter be provided by law. ((b) repealed in part Oct. 5, 1980, P.L.693, No.142)

(19 amended Oct. 23, 1979, P.L.204, No.70)

#### Section 20. Enforcement orders.

(a) The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons to cease any activity which is in violation of the provisions of this act. Such an order may be issued if the department finds that a person is in violation of any provision of this act, or of any rule or regulation issued hereunder. The department may, in its order, require compliance with such terms and conditions as are necessary to effect the purposes of this act.

(b) An order issued under this section shall take effect upon notice, unless the order specifies otherwise.

(c) Any person violating or failing to comply with any order of the department from which no appeal has been taken or which has been sustained on appeal, or which has been appealed but where no supersedeas has been granted for the period in which the order has been violated shall be deemed to be in contempt of such order. Upon petition and certification of such order by the department or the hearing board, the court shall, if it finds, after hearing or otherwise, that the respondent is not in compliance with the order, adjudge the respondent in contempt of the order and shall assess civil penalties of an amount not less than \$100 nor greater than \$10,000 per violation plus \$500 for each continuing day of violation. Where the respondent has not as of the date of hearing before the court complied with the order of the department or board, the court shall

specifically order the respondent to immediately and fully comply with such order, and may issue any further order as may be appropriate. ((c) repealed in part Oct. 5, 1980, P.L.693, No.142)

(d) The right of the department to issue an order under this section is in addition to any penalty which may be imposed or any action taken pursuant to this act. The failure to comply with any such order is hereby declared to be unlawful conduct and a nuisance.

#### Section 21. Civil penalties.

(a) In addition to proceeding under any other remedy available at law or equity for:

- (1) a violation of a provision of this act or any rule or regulation issued hereunder;
- (2) a violation of any order of the department; or
- (3) engaging in any unlawful conduct under the provisions of this act;

the hearing board, in an action instituted before it by the department, may assess a civil penalty upon any person for such violation or unlawful conduct. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$10,000, plus \$500 for each day of continued violation. In determining the amount of the civil penalty, the board shall consider the willfulness of the violation, damage or injury to the stream regimen and downstream areas of the Commonwealth, cost of restoration, the cost to the Commonwealth of enforcing the provisions of the act against such person, and other relevant factors. The assessment of the civil penalty shall be made after hearing, unless hearing is specifically waived by the respondent.

(b) Civil penalties shall be payable to the Commonwealth and shall be collectible in any manner provided by law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after the amount of the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed. ((b) repealed in part Oct. 5, 1980, P.L.693, No.142)

(c) Any officer of any corporation, association, municipality or county, who knowingly, willfully, recklessly or with gross negligence engages in or authorizes unlawful conduct as defined in this act shall be subject to the imposition of civil penalties in accordance with subsection (a). Any civil penalty imposed upon such officer shall be in addition to and separate from any civil penalty imposed upon the corporation, association, municipality or county. Nothing in this subsection shall be construed to affect the liability or duty of any officer of a corporation, association, municipality or county for the purposes of criminal penalties imposed under this act, or for the purposes of any other rights or remedies now or hereafter existing or herein provided.

#### Section 22. Criminal penalties.

(a) Any person who engages in unlawful conduct as defined in this act is guilty of a summary offense and, upon conviction, shall be sentenced to pay a fine of not less than \$100 nor more

than \$1,000 for each separate offense, and, in default of the payment of such fine, to imprisonment for a period of not more than 60 days.

(b) Any person who, within two years after a conviction in a summary proceeding as provided in subsection (a) engages in unlawful conduct as defined in this act is guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$500 nor more than \$5,000 for each separate offense or to imprisonment for a period of not more than one year, or both.

(c) Each day of continued violation of any provision of this act or any rule or regulation or order of the department issued pursuant to this act shall constitute a separate offense under subsections (a) and (b).

Section 23. Summary proceedings.

In the case of any appeal from any such conviction in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

(23 amended Oct. 23, 1979, P.L.204, No.70 and repealed in part Oct. 5, 1980, P.L.693, No.142)

Section 24. Administrative procedure and judicial review.

(a) Any person who shall be aggrieved by any action of the department under this act shall have the right within 30 days of receipt of notice of such action to appeal to the Environmental Hearing Board. Any appeal of a general permit issued pursuant to section 7 shall be filed within 30 days of the date of publication of the general permit in the Pennsylvania Bulletin. Hearings under this subsection and any subsequent appeal shall be in accordance with section 1921(a) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and the "Administrative Agency Law."

(b) An appeal to the hearing board of any action of the department shall not act as a supersedeas. A supersedeas may be granted by the hearing board upon a showing by the petitioner:

(1) the irreparable harm to the petitioner or other interested parties will result if the supersedeas is denied;

(2) that there is a likelihood of the petitioner's success on the merits; and

(3) that the grant of a supersedeas will not result in irreparable harm to the Commonwealth. The board may grant such a supersedeas subject to such security as it may deem proper.

Section 25. Preservation of existing rights and remedies.

The collection of any penalty under the provisions of this act shall not be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate conduct forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to abate unsafe dams, water obstructions or encroachments in this Commonwealth, and nothing in this act contained shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts

of law or equity to suppress nuisances, or to abate any unsafe dam now or hereafter existing, or enforce common law or statutory rights.

(25 amended Oct. 23, 1979, P.L.204, No.70)

Section 26. Dams and Encroachments Fund.

All fines collected under the penal provisions of this act and all civil penalties collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the Dams and Encroachments Fund, which shall be administered by the department for use in protecting the citizens of the Commonwealth from the hazards to life, property, and the environment resulting from unsafe dams, water obstructions and encroachments. Disbursements from the fund shall be in accordance with rules and regulations prescribed by the Environmental Quality Board.

(26 amended Oct. 23, 1979, P.L.204, No.70)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 26.

Section 27. Repealer and savings clause.

(a) The following acts and parts of acts and supplements thereto are hereby repealed absolutely:

The act of March 23, 1803 (P.L.389, No.140), entitled "An act to authorize any person or persons owning lands adjoining navigable streams of water, declared public highways, to erect dams upon such streams, for mills and other water-works."

Sections 7 and 8 of the act of June 8, 1907 (P.L.496, No.322), entitled "An act to establish a Board of Commissioners of Navigation for the river Delaware and its navigable tributaries; regulating their jurisdiction over ships, vessels, and boats, and wharves, piers, bulkheads, docks, slips, and basins; and exempting cities of the first class from certain of its provisions; and making an appropriation therefor."

The act of June 25, 1913 (P.L.555, No.355), entitled "An act providing for the regulation of dams, or other structures or obstructions, as defined herein, in, along, across, or projecting into all streams and bodies of water wholly or partly within, or forming part of the boundary of, this Commonwealth; vesting certain powers and duties in the Water Supply Commission of Pennsylvania, for this purpose; and providing penalties for the violation of the provisions hereof."

(b) All other acts or parts of acts inconsistent herewith are hereby repealed to the extent of such inconsistency.

(c) The provisions of this act shall not effect any suit, prosecution, or order instituted to enforce any right or abate any violation of any act or part thereof repealed by this act.

(27 amended Oct. 23, 1979, P.L.204, No.70)

Section 28. Effective date.

This act shall take effect July 1, 1979.