

No. 1998-91

AN ACT

HB 10

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

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

Section 1. Title 30 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 3510. Marking of dams.

(a) New dams.—In issuing permits for the construction or installation of new run-of-the-river dams on the waters of this Commonwealth, the department shall include a permit advisory notifying the permittee of the requirements of this section. The permittee of a new run-of-the-river dam shall mark the areas above and below the dam and on the banks immediately adjacent to the dam with signs and buoys of a design and content determined by the commission to warn the swimming, fishing and boating public of the hazards posed by the dam.

(b) Existing dams.—

(1) The department shall compile and maintain a current list of existing dams on the waters of this Commonwealth that the department determines to be run-of-the-river type dams. Within three months of the effective date of this section, the department shall notify the permittees and owners of those run-of-the-river dams of the requirements of this section by certified letter. Within six months of receiving notification of the requirements of this section from the department, the permittees and owners of run-of-the-river dams shall comply with the requirements of this section to mark the areas above and below their dams and on the banks immediately adjacent to their dams during the time periods of the year required by the commission with signs and buoys of a design and content determined by the commission to warn the swimming, fishing and boating public of the hazards posed by the dam.

(2) If the permittee or owner of a run-of-the-river dam disagrees with the determination of the department, the permittee or owner shall file written notice with the Environmental Hearing Board within 30 days of receiving the determination. The Environmental Hearing Board shall reach a decision as soon as practicable. If the decision of the board upholds the determination of the department, the permittee or owner filing such notice shall have six months to comply with this section following the decision.

(c) Maintenance of signs and buoys.—

(1) It shall be the responsibility of the permittees and owners of run-of-the-river dams to maintain in proper location, legible condition and during the time periods of the year established by the commission signs and buoys installed pursuant to the requirements of this section.

(2) When a permittee or owner learns that signs or buoys installed under this section have been removed or defaced by an act of God or the acts or omissions of third parties other than the permittee or owner or his agent, he shall repair or replace the signs or buoys within 30 days unless river conditions during that time make such repair or replacement dangerous to undertake or impracticable to effect, in which case the permittee or owner shall repair or replace the signs or buoys as soon as is reasonably practicable. If a permittee or owner or his agent removes any signs or buoys, he shall have five days thereafter to repair or replace the signs or buoys.

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

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

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

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

(h) Penalties.—

(1) Any person who fails to comply with subsection (a) or (b) shall forfeit and pay a civil penalty of not less than \$500 nor more than \$5,000. The penalty shall be recovered by civil suit or process in the name of the Commonwealth. Each calendar year of noncompliance shall constitute a separate violation.

(2) Any person who fails to comply with subsection (c) shall forfeit and pay a civil penalty of not less than \$250 nor more than \$5,000. The

penalty shall be recovered by civil suit or process in the name of the Commonwealth. Each calendar year of noncompliance shall constitute a separate violation.

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

(4) All fines received under this subsection shall be paid into the State Treasury for the use of the Fish Fund or Boat Fund, as appropriate.

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

“Department.” The Department of Environmental Protection of the Commonwealth.

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

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

“Permittee.” The person who has been issued a permit by the Department of Environmental Protection to maintain a run-of-the-river dam.

“Run-of-the-river dam.” A manmade structure which:

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

(2) is built across a river or stream for the purposes of impounding water where the impoundment at normal flow levels is completely within the banks and all flow passes directly over the entire dam structure within the banks, excluding abutments, to a natural channel downstream; and

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

Section 2. This act shall take effect January 1, 1999.

APPROVED—The 19th day of June, A.D. 1998.

THOMAS J. RIDGE