

CHAPTER 35

DAMS, BAR RACKS AND MIGRATION DEVICES

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Enactment. Chapter 35 was added October 16, 1980, P.L.996, No.175, effective in 90 days.

§ 3501. Devices in dams to permit fish migration.

(a) **Erection on order of commission.**--Any person now or hereafter erecting or maintaining a dam in the waters of this Commonwealth shall, immediately on a written order from the commission, erect therein such chutes, slopes, fishways, gates or other devices as the commission may deem necessary to enable the fish to ascend and descend the waters at all seasons of the year.

(b) **Payments where devices not practicable.**--In lieu of requiring the erection of chutes, slopes, fishways, gates or other devices at any dam where they are not deemed by the commission to be practicable or advisable for the ascending or descending of fish, the commission may enter into an agreement with the owner, lessee or operator of the dam, to pay to the commission, annually or at other stated periods, a sum of money which shall be not less than 2 1/2% per year upon the estimated cost of the erection of chutes, slopes, fishways, gates or other devices, plus the estimated cost of reasonable depreciation and maintenance of the same, except in cases where the sum of the interest, depreciation and maintenance so calculated would be equal to or exceed the sum of \$25,000 per year, in which case the annual payment shall be \$25,000 per year.

(c) **Use of moneys.**--These moneys shall be expended by the commission for:

- (1) The stocking with fish of the waters of the stream dammed.
- (2) The propagating, rearing and distributing of fish placed in the waters and the acquisition of the necessary facilities therefor.
- (3) Carrying out such other fish managing practices in the waters as are deemed proper by the commission for the improvement of public fishing opportunities therein.

(d) **Receipt and appropriation of moneys.**--Any money received by the commission under such an agreement shall be paid into the Fish Fund and is hereby specifically appropriated to be expended by the commission for the purposes specified in subsection (c).

(e) **Surveys and experimentations by commission.**--When funds are available for those purposes, the commission shall conduct and encourage such surveys and experimentations as may be necessary and feasible in order to discover and develop such chutes, slopes, fishways, gates or other devices as may successfully pass migratory fish over the dams.

Cross References. Section 3501 is referred to in sections 3502, 3504, 3505 of this title.

§ 3502. Operation and maintenance of devices.

Every chute, slope, fishway, gate or other device referred to in section 3501 (relating to devices in dams to permit fish

migration) shall be operated in a manner prescribed by the commission and shall remain open and be maintained in good order and repair by the person owning or maintaining the dam in which the device is located.

Cross References. Section 3502 is referred to in sections 3504, 3505 of this title.

§ 3503. Closing of devices for repair or nonuse.

Any chute, fishway or other device may be closed for repairs or when not needed with written approval of the commission.

§ 3504. Civil penalty for noncompliance.

Any person failing to comply with section 3501 (relating to devices in dams to permit fish migration) or 3502 (relating to operation and maintenance of devices) within three calendar months of the date of notice provided in section 3501 shall forfeit and pay to the Commonwealth a civil penalty of \$100 for every day he fails to comply. The penalty shall be recovered by civil suit or process in the name of the Commonwealth.

§ 3505. Erection of devices by commission.

If the person owning, leasing or maintaining a dam fails to erect a chute, slope, fishway, gate or other device after the lapse of three calendar months from the date of notice provided by section 3501 (relating to devices in dams to permit fish migration), or fails to maintain the chute, slope, fishway, gate or other device in accordance with section 3502 (relating to operation and maintenance of devices), the commission may enter upon the dam and erect such chute, slope, fishway, gate or other device or make any necessary repairs and the cost thereof shall be charged by the commission to the person owning or maintaining the dam and may be recovered by civil suit or process in the name of the Commonwealth.

§ 3506. Drawing off or interference with dams or devices.

(a) **Drawing off or obstructing dams.**--No person shall draw off dam waters inhabited by fish without first applying for written permission from the commission, nor shall any person obstruct the flow of water through any such dam without allowing a minimum flow of water determined by the commission to be sufficient at all times to flow in the natural stream on which the dam is located to enable the fish to live. Any person violating the provisions of this subsection commits a summary offense of the first degree.

(b) **Interference with dams or devices.**--Dams, deflectors, retards or similar devices placed across or in any waters inhabited by fish, with permission of the owner or owners of the land adjacent thereto or through which those waters flow, shall not be destroyed, removed, breached or disturbed, except by written permission first obtained from the commission. Any person violating the provisions of this subsection commits a summary offense of the first degree.

§ 3507. Protection of fish near dams.

(a) **General rule.**--The commission shall promulgate such rules and regulations as it deems necessary to protect and manage fish within one mile or such lesser distance as it deems appropriate of any chute, slope, fishway, gate, dam, reflector, retards or similar devices.

(b) **Penalty.**--Any person violating any of the rules or regulations promulgated under this section commits a summary offense of the third degree.

(Dec. 22, 1989, P.L.735, No.102, eff. Jan. 1, 1990; Nov. 3, 1999, P.L.447, No.41, eff. Jan. 1, 2000)

§ 3508. Erection of bar racks to prevent entry of fish.

(a) **General rule.**--Any person owning, leasing or maintaining a raceway, flume or inlet pipe leading to a water wheel, turbine pump or canal shall immediately upon receipt of a written order from the commission place and maintain a bar rack of not less than one-half inch nor more than one and one-half inch space between the bars in or near that raceway, flume or inlet pipe

sufficient to prevent fish from entering it.

(b) Erection of bar racks by commission.--If one month after notice of violation of this section the person owning, leasing or operating such raceway, flume or inlet pipe has not placed a bar rack as directed, the commission may enter upon the raceway, flume or inlet pipe and place a bar rack of not less than one-half inch nor more than one and one-half inch space between the bars. The cost shall be charged against the owner, lessor or operator and may be recovered by civil suit or process in the name of the Commonwealth.

(c) Civil penalty.--Any person failing to comply with subsection (a) within one calendar month shall forfeit and pay a civil penalty of \$100 for every day of violation.

§ 3509. Obstructing migration of fish.

(a) General rule.--No person shall place any device or object in waters within this Commonwealth in a manner that obstructs the migration or passage of fish therein or obstructs any fishway but the commission may, as it deems necessary in the interest of fish management, authorize the erection of such devices and prescribe such conditions for the operation and maintenance of such devices as may be necessary for a fee of \$10.

(b) Fish rodeos.--After giving written notice to the commission, an organized fishing or sportsmen's club that has been in existence for a period of one year or more may obstruct the passage of fish for a period not exceeding 48 hours for the purpose of conducting fish rodeos the primary objective of which is to encourage fishing by children. Such obstructions shall not be erected more than twice in one year within a distance of one mile from any similar obstruction on the same stream or body of water. The obstructions shall be at least one-half mile from other such obstructions and shall be erected and designed in such a manner that fish will not normally be injured.

(c) Penalty.--Any person violating any provision of this section commits a summary offense of the first degree.

§ 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.

(June 19, 1998, P.L.702, No.91, eff. Jan. 1, 1999)

1998 Amendment. Act 91 added section 3510.