



Fact Sheet

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF ENVIRONMENTAL PROTECTION

LIABILITY AND RESPONSIBILITY OF DAM OWNERS

Dam ownership carries with it significant legal responsibilities. The dam owner should be aware of the responsibilities and how to conscientiously deal with potential liabilities.

This fact sheet addresses general legal matters to help you minimize exposure to liability due to dam ownership and/or operation. This fact sheet does not answer specific legal issues. It is in the dam owner's/operator's best interest to obtain competent legal counsel when dealing with specific issues.

Potential Liability

Problems for Dam Owners

A dam owner should first be familiar with the legal obligation to maintain a dam in a safe condition. The dam owner is responsible for flood damage incurred to upstream properties by the storage of flood waters and is responsible for the damage caused by the sudden release of stored water from a failure of the dam or intentional rapid draining of the impoundment. The general rule is that a dam owner is responsible for its safety. Liability may be imposed on a dam owner if he or she fails to maintain, repair, or operate the dam in a safe and proper manner. This liability may apply not only to the dam owner, but also to any company that possesses that dam, or any person who operates or maintains the dam. If an unsafe condition existed prior to ownership of the dam, the new dam owner may not be absolved of liability should the dam fail during his term of ownership. Thus, the owner must carefully inspect the structural integrity of any dam prior to purchase and then provide inspection, maintenance, and repair thereafter.

Since the dam owner is responsible for dam safety, it is important to note what is done to comply with that legal duty. The dam owner must do whatever is necessary to avoid injuring people or property. This usually applies to foreseeable circumstances and situations which can be anticipated with reasonable certainty. A dam owner would generally not be responsible for those circumstances that a reasonable person could not anticipate such as one key action is almost universally recognized: In order to assure owners meet their responsibility to maintain their dam in a reasonable and safe condition, the department requires a dam owner to conduct regular inspections of the dam and correct deficient items. Also, regular inspections by qualified professionals are mandated so a dam owner may identify all problems and correct them.

Potential Personal Injury Liability

Dams and impoundments are popular places, even if located in remote areas. A dam may be visited by employees, contractors, invited visitors, or trespassers. The presence of these people is a potential liability to the dam owner. Liability or worker's compensation insurance should cover employees, contractors, or invited guests. However, the trespasser presents a unique problem.

The majority of trespassers at a dam site are probably members of the public who wish to use the site for fishing, boating, or swimming. While they mean no harm, their unauthorized use of the site is a serious liability problem for the dam owner.

The dam owner is responsible for making and keeping the premises safe. The general rule is that a dam owner must avoid conduct or conditions which could injure any person, even one who trespasses. If the dam owner knows that an unsafe condition exists, he is responsible to correct it and/or post warnings. Typical dangers at a dam site include fast moving water, open spillway (pipes), and thin ice. A particularly dangerous area is the portion of the weir immediately below the spillway. Boaters and swimmers have been trapped in the violent currents and eddies at the base of spillways of dams in Pennsylvania rivers and streams commonly frequented by canoeists, fishermen, and swimmers.

Owners of dams are charged with greater responsibility when the trespassers are children. By reasons of children's inability to understand the danger which a condition may pose, a dam owner is expected to protect children from the dangers of a dam site. In effect, this rule requires you to anticipate what parts of the facility would be particularly attractive to children. Since signs may not adequately warn children, security fencing may be necessary. Dam sites located near state or county roads, campgrounds, picnic areas, or near populated areas will attract many more people. These popular dam sites require frequent inspections by the dam owner to inspect and assure safety.

Potential Liability due to Operation of a Dam

In addition to liability problems arising out of dam ownership, operation of the dam is also a significant legal issue. First and foremost is the simple right to operate a dam and impound water. State law requires a permit to construct, operate, and/or maintain a dam. DEP's Division of Dam Safety should be consulted for particular matters regarding this issue. In addition, a dam on a navigable stream may involve federal government regulations which may govern operation.

Beyond the basic permitting question, all dam owners must also consider the effect of dam operation on the rights of other water users, whether they are upstream or downstream of the facility. For both upstream and downstream users, this responsibility includes a duty to avoid negligent flooding of their property.

In times of high runoff, the dam owner must assess the effects of operation which alter prevailing conditions. Increasing discharge may create flooding downstream while decreasing discharge may protect downstream property but cause flooding or other damage upstream. The dam owner must always consider the maximum discharge capacity of the structure relative to prevailing

hydrologic conditions and weather forecasts. Overtopping of a dam due to insufficient or untimely operations must be avoided.

In situations where there is no specific duty to protect downstream land owners from flooding, the dam owner must still operate the dam conscientiously. As the dam owner, you must be in a position to clearly show that your dam did not increase flooding.

Upstream users may also have the right to be protected from damaged caused by operation of the dam. Therefore, the dam owner is advised to assess the legal as well as physical impact of any change in the level of impoundment, including dam removal.

A Final Word About Liability

This fact sheet is only a general introduction to the many issues regarding dam owner liability. The discussion is intended only to provide a basis for you to consider liability potentials and to encourage you, the dam owner, to seek competent legal counsel and/or technical experts to help resolve your problems. Where the ownership and operation of dams and impoundments are concerned, the old saying, "an ounce of prevention..." is appropriate. Following it will truly save you the "pound of cure."

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