

§ 105.1. Definitions.

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Person—

(i) A natural person, partnership, association, corporation, public utility, municipality, municipal authority, political subdivision of [the] this Commonwealth, receiver or trustee [~~firm, estate~~] and a department, board, commission or authority of the Commonwealth [~~or other legal entity which is recognized by law as the subject of rights and duties~~].

(ii) Whenever used in a section prescribing and imposing a penalty or sanction, the term includes the members of an association and the officers of a corporation, municipality or municipal authority.

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[Practicable alternative—An alternative is practicable if it is available and capable of being carried out after taking into consideration construction cost, existing technology and logistics. An area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed to fulfill the basic purpose of the project will be considered as a practicable alternative.]

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§ 105.4. Delegations to local agencies.

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(b) [No] [A] delegation may be made of the authority to issue permits for a water obstruction or encroachment constructed, owned or maintained by the Commonwealth, a political subdivision or a public utility. Delegations may be made of the powers to inspect and monitor the activities, if the Department retains final authority to approve or disapprove permits, and concurrent authority to inspect, monitor and enforce the act.

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(e) A permit for a water obstruction or encroachment issued by a delegated agency is subject to review by the Department, unless the right of review is waived by the Department. A permit issued by a delegated agency shall become effective 30 days following the receipt of notice by the Department of issuance, unless the permit is disapproved by the Department or an appeal is filed with the Department under section 17 of the act ~~[(32 P. S. § 693.17)]~~.

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§ 105.14. Review of applications.

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(1) Potential threats to life ~~[or] [s]~~ property [or the environment] created by the dam, water obstruction or encroachment.

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(4) The effect of the dam, water obstruction or encroachment on regimen and ecology of the watercourse or other body of water, water quality, stream flow, fish and wildlife, aquatic habitat, instream and downstream uses and other significant environmental factors. [In reviewing permit applications, existing and designated uses will be maintained and protected.]

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§ 105.42. [Acknowledgment of] Terms and conditions of Department permits and approvals.

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~~[(b)]~~ (a) The permittee [or owner] shall fully inform the engineer or contractor responsible for the supervision and

conduct of work of the terms, conditions, restrictions and covenants covered by a permit, letter of amendment, letter of authorization, or other Department approval issued under this chapter [of the terms, conditions, restrictions and covenants of the permit].

[(c)] (b) Prior to the commencement of construction, the permittee [~~or owner~~] shall file [with the Department in writing, on a form provided by the Department, a statement] an acknowledgment form provided by the Department, signed by the permittee [~~or owner~~] and [an individual responsible for the supervision or conduct of the construction work] other project personnel, as specified on the form, acknowledging [and accepting the general and special conditions contained] the terms, conditions, restrictions and covenants in the permit and, if required by the Department, for a letter of amendment or letter of authorization. Unless the acknowledgment [and acceptance have] form has been completed and filed, the permit or other Department approval is void.

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§ 105.45. Inspections by the Department.

Work, structures and land covered under a permit or other Department approval issued under this chapter shall at all times be subject to inspection by representatives of the Department [and its authorized agents], and the permittee or owner shall allow representatives of the Department [and its authorized agents] to enter a property, premises or place associated with the [permit] permitted or approved project for the purposes of the inspection.

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§ 105.46. Implementation of erosion and sedimentation control plans.

(a) During the construction of a dam, water obstruction or encroachment, the permittee [~~or owner~~] shall follow the erosion and [~~sedimentation~~] sediment control plan prepared in accordance with Chapter 102 (relating to erosion and sediment control) and submitted [with and approved] as part of [~~his~~] the application.

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§ 105.61. Procedures for investigations.

The Department may, if it finds there is reasonable cause to suspect the existence of conditions adversely affecting the safety of a dam, water obstruction or encroachment, [~~or the environment,~~] order the owner to conduct investigations, studies, tests and analyses that may be required to properly evaluate the safety of the structure. The investigations, studies, tests and analyses shall be accomplished under the supervision of a registered professional engineer, experienced in the design, construction, operation and maintenance of the facilities and approved by the Department, and shall be accomplished in accordance with methods the Department may prescribe. Failure to conduct the ordered investigations, studies, tests and analyses and provide the investigation results of the activities to the Department on request will constitute adequate grounds for revocation or suspension of a permit.

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§ 105.81. Permit applications for construction and modification of dams and reservoirs.

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(3) Construction plans, specifications and design reports [in sufficient detail] to evaluate the safety, adequacy and suitability of the proposed dam, reservoir and appurtenant works IN ORDER TO DETERMINE COMPLIANCE WITH THIS CHAPTER.

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§ 105.96. Outlet works.

(a) Dams [shall] must include a device to [permit] allow the complete draining of the reservoir [within a reasonable period of time as determined by the Department] unless the Department determines that an outlet works is not feasible for a specific dam. At minimum, the device must be sized to pass a minimum of 70% of the highest mean monthly inflow at the site plus the capacity to drain the top 2 feet of reservoir storage below normal pool in 24 hours. THE HIGHEST MEAN MONTHLY FLOW SHALL BE DETERMINED FROM STATISTICS OF AN APPROPRIATE STREAM GAGE, AS APPROVED BY THE DEPARTMENT, TRANSFERRED TO THE DAM SITE BY THE RATIO OF THE DRAINAGE AREAS. The Department may require an increased size to provide for the integrity of the dam and to protect life and property with an adequate margin of safety.

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§ 105.97. Stability of ~~[structure]~~ structures.

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(H) THE DEPARTMENT MAY, IN ITS DISCRETION, CONSIDER A REVISED FACTOR OF SAFETY FOR A CLASS OF DAMS OR RESERVOIRS WHEN IT CAN BE DEMONSTRATED THAT THE FACTOR OF SAFETY PROVIDES FOR THE INTEGRITY OF THE DAMS OR RESERVOIRS AND ADEQUATELY PROTECTS LIFE AND PROPERTY.

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§ 105.102. Personnel and supervision.

(a) ~~[Work]~~ [shall] [must] ~~[be conducted under the oversight and supervision of a]~~ [competent] ~~[professional]~~ ~~[engineer approved by the Department]~~, and the ~~[-The professional]~~ ~~[engineer or]~~ [a competent] ~~[Department approved]~~ [representative shall be on the work site during significant construction activities until the completion of the dam.] **THE PERMITTEE OR OWNER SHALL FILE WITH THE DEPARTMENT, AT LEAST 15 DAYS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, A STATEMENT SETTING FORTH THE NAME AND EMPLOYER, INCLUDING CONTACT INFORMATION, OF THE FOLLOWING:**

(1) THE PROFESSIONAL ENGINEER RESPONSIBLE FOR OVERSIGHT AND SUPERVISION OF CONSTRUCTION.

(2) REPRESENTATIVES OF THE PROFESSIONAL ENGINEER.

(3) CONTRACTORS CONDUCTING THE WORK AUTHORIZED BY THE PERMIT, LETTER OF AMENDMENT OR LETTER OF AUTHORIZATION AS REQUIRED BY THE DEPARTMENT.

(b) ~~[The permittee]~~ ~~[or owner]~~ [shall file with the Department, at least 15 days prior to the commencement of construction, a statement setting forth the name] [of the contractors conducting the work authorized by the permit and the names and employers of personnel responsible for the supervision of construction.] ~~[and employer, including contact information, of the following:~~

~~(1) The professional engineer responsible for oversight and supervision of construction.~~

~~(2) Representatives of the professional engineer.~~

~~(3) Contractors conducting the work authorized by the permit, letter of amendment or letter of authorization as required by the Department.~~ **WORK MUST BE CONDUCTED UNDER THE OVERSIGHT AND SUPERVISION OF A PROFESSIONAL ENGINEER APPROVED BY THE DEPARTMENT. THE PROFESSIONAL ENGINEER OR A REPRESENTATIVE OF THE PROFESSIONAL ENGINEER SHALL BE ON THE WORK SITE DURING SIGNIFICANT CONSTRUCTION ACTIVITIES UNTIL THE COMPLETION OF THE DAM.**

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§ 105.135. Dam hazard emergencies.

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(c) If a dam hazard emergency exists, **[the Department and]** the permittee or owner of the dam shall immediately notify appropriate emergency management officials **IDENTIFIED IN THE EMERGENCY ACTION PLAN REQUIRED BY §§ 105.63 AND 105.134 (RELATING TO EMERGENCY PROCEDURES; AND EMERGENCY ACTION PLAN)** of the existence of the hazard and request the authorities to initiate appropriate action to assure protection of life and property; and the permittee or owner shall immediately take **[the steps as are] actions as authorized by the Department** necessary to prevent dam failure or loss of life or property **[, including, but not limited to, the following:]**

All references to the Fish Commission have been revised to the Fish **AND BOAT** Commission.