



LIABILITY AND RESPONSIBILITY OF DAM OWNERS

Dam ownership carries significant legal responsibilities. Dam owners should be aware of the responsibilities and know how to deal with potential liabilities.

This fact sheet addresses general legal matters to help you minimize exposure to liability resulting from 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 the dam in a safe condition.

The general rule is that a dam owner is responsible for the dam's safety, and liable for damages caused by its failure. And, a dam owner is responsible for flood damage caused to upstream properties by the storage of floodwaters, as well as damage caused by the sudden release of stored water by failure of the dam or intentional rapid draining of the impoundment. Courts usually look sympathetically on the claims of those injured by a dam's failure.

Since the dam owner is responsible for dam safety, it is important to note what is done to comply with that legal duty. The concept of strict liability holds the dam owner liable for damages regardless of the cause of failure. The theory of negligence may impose a degree of liability on a dam owner, depending on how careful the dam owner was to maintain, repair, and operate the dam. Liability could also extend to former owners and permittees, or any person who operates or maintains the dam. One must carefully inspect the structural integrity of any dam prior to purchase and then perform routine inspection, maintenance and repair thereafter.

The dam owner must do whatever is necessary to prevent injury to people or damage to 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.

In order to assure that owners meet their responsibility to maintain their dams according to regulatory minimums, dam owners in Pennsylvania must periodically inspect their dams and correct deficiencies and problems. The owner of a high hazard dam must annually have a qualified professional engineer inspect the dam and report its condition to DEP.

POTENTIAL PERSONAL INJURY LIABILITY

Dams and impoundments are popular places, even in remote areas. 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 that could injure any person, even a trespasser. If the dam owner knows that an unsafe condition exists, he is responsible to correct it and/or post warnings.

The presence of employees, contractors, invited visitors or a trespasser 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 different problem.

A dam can be an attractive nuisance. Most trespassers at a dam site probably want to use the water for recreation -- fishing, boating or swimming. While they mean no harm, their presence is a significant potential liability problem for the dam owner. A prudent owner will install warning signs to advise the unwary, and security fencing to prevent the curious trespasser from accidental injury.

Typical dangers at a dam site include fast moving water, open spillways or pipes, structures to climb on, and thin ice in winter. The base of the spillway is particularly dangerous; violent currents and eddies can trap boaters, fishermen and swimmers.

A dam owner is expected to protect children from the dangers of a dam site, regardless of the reason for their presence. In effect, this requires the owner 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 roads, campgrounds, and picnic areas or near populated areas will attract many people. Security measures at such sites require frequent inspections by the dam owner to assure safety.

POTENTIAL LIABILITY DUE TO OPERATION OF A DAM

In addition to liability problems arising out of dam ownership, operation of the dam can be a significant legal issue. First and foremost is the simple right to operate a dam and impound water.

Pennsylvania law requires a permit to construct, operate, and maintain a dam. DEP's Division of Dam Safety has the authority for permitting, inspection, and compliance and enforcement of state dam safety laws. In addition, operation of a dam on a navigable stream may involve federal government regulations. A dam operated to generate electricity is subject to federal law and regulation by the Federal Energy Regulatory Commission (FERC).

Beyond the basic permitting question, all dam owners must consider the effect of dam operation on the rights of other water users, whether they are upstream or downstream of the dam. This responsibility includes a duty to avoid negligent flooding of properties upstream or downstream of the dam.

In times of high runoff, the dam owner must assess the effects of operation that would alter 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 law to protect downstream landowners from flooding, the dam owner must still operate the dam conscientiously. As a 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 damage 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 the impoundment, even if removing a dam.

A FINAL WORD ABOUT LIABILITY

This fact sheet is only a general introduction to the issues of a dam owner's liability. As the owner of a dam, you must consider your liability potential, and seek competent legal counsel and technical assistance to help to protect yourself as well as others. 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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