

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-197—sHB 6441
Environment Committee

**AN ACT CONCERNING THE DAM SAFETY PROGRAM AND
MOSQUITO CONTROL**

SUMMARY: This act makes changes in the state's dam safety laws and certain provisions regarding mosquito control.

By law, the Department of Energy and Environmental Protection (DEEP) commissioner has jurisdiction over dams, dikes, reservoirs, and other similar structures whose failure might endanger life or property. The act requires owners of certain unregistered dams or similar structures to register them by October 1, 2015. It generally shifts, from the commissioner to the owners of dams or similar structures, regularly scheduled inspection and reporting requirements. The act also makes owners generally responsible for supervising and inspecting construction work and establishes new reporting requirements for owners when the work is completed.

Under the act, the commissioner must consider tidal wetland impact when deciding whether to issue a dam construction permit. The act exempts these permit applicants from additional environmental permit requirements. It (1) allows the commissioner to issue a general permit for dam removal projects providing certain ecological benefits and (2) disallows anyone from making certain written comments on proposed activities covered by a general permit.

The act requires owners of high or significant hazard dams or similar structures to develop and implement emergency action plans. The commissioner must adopt regulations for (1) regularly scheduled dam inspections and (2) the emergency action plans.

The act also requires the DEEP commissioner to (1) establish a plan for using or applying larvicide to control mosquitoes and (2) update the plan by September 1, 2013 for certain specified purposes, including restricting the use or application of methoprene or resmethrin in the state's coastal boundary. It allows introducing methoprene or resmethrin into certain storm drains, wetlands, or other water bodies if the commissioner recommends it to prevent an increasing threat of mosquito-borne disease.

The act requires the DEEP commissioner to take certain steps to prevent West Nile virus, including (1) coordinating with the Department of Public Health (DPH) commissioner and local health departments to survey certain lands for mosquitoes, (2) enforcing a ban on standing water on private property, and (3) encouraging public outreach programs on standing water risks and West Nile virus symptoms.

It also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2013, except the mosquito control provisions take effect upon passage.

DAM SAFETY

§ 4 — *Dam Registration*

The act requires owners of unregistered dams or similar structures that may endanger life or property if they fail to register them by October 1, 2015 with the DEEP commissioner on a form he prescribes. The owner must report the location and dimensions of the dam or structure and any other information the commissioner requires. Prior law specified that any dam or similar structure had to be registered by July 1, 1984, but provided no registration requirement for dams established after that date.

Under the act, as long as the form is submitted to the commissioner by October 1, 2015, he cannot use information it contains, that he cannot otherwise independently obtain, to order payment of a civil penalty for violating (1) the dam and reservoirs laws (see BACKGROUND) or (2) a law on the payment of costs associated with DEEP administrative hearing recordings and transcripts.

The law requires owners to notify the commissioner, by registered or certified mail, return receipt requested, about a transfer in ownership of a dam or similar structure within 10 days after the transfer.

§§ 3 & 4 — *Dam Inspection*

Regularly Scheduled Inspection. Prior law required the DEEP commissioner to periodically inspect registered dams. Under the act, by January 15 of any year when an inspection is due, he must provide written notice to the owner of a registered dam or similar structure by certified mail, return receipt requested. The notice must identify the dam's classification and state the frequency of inspection, as provided in regulations. Once the owner receives the notice, he or she must cause the dam or structure to be inspected.

The act requires the owner to:

1. have it inspected by a Connecticut-licensed registered professional engineer according to regulations DEEP adopts and
2. submit the inspection results to the commissioner, on a form he prescribes, by March 15 of the year after the inspection.

The act still requires the commissioner to periodically inspect registered dams, but only (1) for quality assurance when an owner fails to undertake a regularly scheduled inspection and (2) as necessary after a flood. It retains the current \$660 inspection fee until superseding regulations are adopted for DEEP-conducted inspections.

Prior law required the commissioner to set in regulations, among other things, (1) an inspection frequency schedule and (2) fees for regularly scheduled inspections. The act requires these regulations to include (1) dam inspection procedures and (2) fees for DEEP-conducted inspections, instead of fees for regularly scheduled inspections.

Construction Inspection. The act requires a dam owner, or his or her representative, supervising work on a dam or similar structure under DEEP's jurisdiction, to have it inspected by a Connecticut-licensed registered professional engineer to determine if it will be safe and secure. Prior law (1) specified that the

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DEEP commissioner or his representative supervised the work and (2) required him or his representative to inspect or have the dam or similar structure inspected.

But the act allows the commissioner to place a competent inspector on the work of a dam or similar structure if (1) it involves a high or significant hazard dam (see BACKGROUND) or (2) he determines a sensitive ecological condition exists. Prior law allowed him to do so when he believed circumstances warranted it. By law, unchanged by the act, the cost of such inspector is shared equally by the state and the owner.

The act requires a dam owner to submit a sworn statement from the inspecting engineer to the commissioner within 30 days after the work is completed. The statement must attest that (1) the engineer inspected the work and determined the dam or similar structure to be safe within its design parameters and (2) all appurtenances were built, repaired, altered, or removed according to the plans, specifications, and drawings approved by the commissioner under a permit or order. It must bear the engineer's professional seal.

§§ 2 & 6 — Dam Permits

Individual Permit Requirements. By law, anyone seeking to construct, alter, rebuild, substantially repair, add to, replace, or remove a dam or similar structure must obtain a DEEP permit.

The act requires the DEEP commissioner or his representative, engineer, or consultant to determine the proposed construction's impact on tidal wetlands before issuing a permit, in addition to determining its impact on the (1) environment; (2) safety of people and property; and (3) inland wetlands and watercourses, as existing law requires.

Exemptions. Under the act, a permit applicant seeking to alter, rebuild, repair, or remove an existing dam need not obtain separate permits for (1) conducting a regulated activity in tidal wetlands or (2) dredging, erecting structures, or placing fill, obstructions, or encroachments in tidal, coastal, or navigable waters. The law already exempts these applicants from needing a stream channel encroachment, diversion, or inland wetland and watercourse regulated activity permit.

The act also grants an additional exemption for new dam construction applicants. Existing law exempts them from needing a permit to conduct a regulated activity in an inland wetland or watercourse. Under the act, they no longer need a permit to conduct a regulated activity in a tidal wetland.

Additionally, state agency applicants no longer need to obtain DEEP's approval to engage in certain proposed activities within or affecting a floodplain.

General Permits. By law, the DEEP commissioner can issue a general permit for minor dam activity, such as routine maintenance and repair, which he determines would have minimal environmental effects, unless it is covered by an individual permit (see BACKGROUND). The act expands the activities that may be covered under a general permit to include dam removal to improve fish passage or provide other ecological benefits.

The law generally exempts people conducting minor dam activity under a general permit from also needing an individual permit for (1) an inland wetland or watercourse regulated activity, (2) stream channel encroachment, (3) diversion, or

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(4) dam construction. The act correspondingly extends this exemption to dam removal projects to improve fish passage or provide other ecological benefits.

Prior law required anyone intending to do work under a minor dam activity general permit to provide at least 60 days' written notice to the (1) inland wetlands agency, zoning commission, planning commission or combined planning and zoning commission, and conservation commission of any municipality that would or could be impacted by the activity and (2) departments that make such notices publicly available. The act instead requires notice only when mandated by the general permit and eliminates the deadline. It also removes a provision under prior law allowing any person or an inland wetlands agency, planning and zoning commission, or conservation commission to submit written comments on an activity covered by a general permit to the DEEP commissioner at least 25 days before the activity starts.

§ 5 — Emergency Action Plan

The act requires an owner of a high or significant hazard dam or similar structure to develop and implement an emergency action plan after the DEEP commissioner adopts regulations establishing plan requirements. The regulations must include:

1. criteria and standards for inundation (flooding) studies and zone mapping;
2. procedures to monitor dams or structures during heavy rainfall and runoff periods, including personnel assignments and dam features to be inspected at given intervals during these periods; and
3. a formal notice system to alert appropriate local officials responsible for warning and evacuating residents in the inundation zone during an emergency.

The act requires a dam owner to file a copy of the emergency action plan with the DEEP commissioner and chief executive officer of any potentially affected municipality. The plan must be updated biennially.

MOSQUITO CONTROL

§ 7 — Methoprene and Resmethrin

Prior law required the DEEP commissioner to consult with the agriculture and public health commissioners and establish a contingency plan for spraying larvicide to control mosquitoes if there are outbreaks of mosquito-borne human or animal infectious disease.

The act requires him to also consult with the Connecticut Agricultural Experiment Station (CAES) director and instead develop a plan for using or applying larvicide to control mosquitoes, regardless of a related infectious disease outbreak. As under prior law, he must develop the plan within available appropriations.

The plan must be updated by September 1, 2013 to:

1. prohibit using or applying methoprene or resmethrin in a storm drain or water conveyance in the state's coastal boundary, except in a city with over 100,000 people and a documented death from West Nile virus (see

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- below);
2. establish a record-keeping, reporting, and Internet posting requirement for the state and towns using or applying methoprene or resmethrin for mosquito control in the coastal area; and
 3. establish recommendations for a pilot program to evaluate the retail sale and use of methoprene and resmethrin in the coastal area that is labeled for mosquito control in streams, storm drains, storm gutters, and bird baths, to ensure their use is consistent with labeling requirements (see BACKGROUND).

Notwithstanding the above prohibition, the act allows introducing methoprene or resmethrin into a storm drain, wetland, or other water body where mosquito larvae are found or suspected if the DEEP commissioner, in consultation with the DPH commissioner and DEEP's mosquito management coordinator, recommends it to prevent an increasing threat of mosquito-borne disease. This recommendation must be based on CAES' surveillance in accordance with the state's mosquito management program.

§ 8 — West Nile Virus Prevention

The act requires the DEEP commissioner to coordinate with the DPH commissioner and local health departments to survey for the presence of breeding mosquitoes on land, wetlands, and watercourses in any city with a population over 100,000 (i.e., Bridgeport, Hartford, New Haven, Stamford, and Waterbury) where there has been a documented death from West Nile virus. (From 2000 to 2012, there have been three West Nile deaths in Connecticut, including one in New Haven.) It allows him to conduct any work needed to eliminate the breeding.

The act bans on private property in any such city, standing water that the DEEP commissioner determines, in consultation with the DPH commissioner and local health departments, creates a risk of mosquito-borne illness. The DEEP commissioner must enforce the ban and coordinate with the DPH commissioner and local health departments to encourage public outreach programs that instruct residents and private property owners of the (1) risks of standing water and (2) West Nile virus signs and symptoms.

BACKGROUND

Dam Safety Penalties

By law, the DEEP commissioner may issue warning notices for certain violations of the dam safety laws and take enforcement actions to correct them (CGS § 22a-6s). A violator of the dam safety laws or an order or permit issued under them is subject to a fine of up to \$1,000 for each offense, as determined by the court. The attorney general, at the commissioner's request, must take action to enjoin the violation, require its correction, and collect the fine (CGS § 22a-407).

High or Significant Hazard Dam

State regulations classify dams by the hazards they pose if they fail. A high hazard dam is one whose failure would result in (1) probable loss of life; (2)

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major damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) damage to main highways; or (4) great economic loss.

A significant hazard dam is one whose failure would result in (1) possible loss of life; (2) minor damage to habitable structures, homes, hospitals, convalescent homes, or schools; (3) utility service damage or interruption; (4) damage to primary roads or railroads; or (5) significant economic loss (Conn. Agencies Reg. § 22a-409-2(d)).

DEEP General Permits

DEEP uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant, while general permits authorize similar minor activities by one or more applicants. The authorization of an activity under a general permit is governed by that general permit.

Methoprene and Resmethrin

Methoprene is introduced into still water to combat mosquito larvae. Resmethrin is a broad-spectrum insecticide with many uses, including controlling adult mosquitoes.

Coastal Boundary

The “coastal boundary,” within the state’s coastal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high water mark, or (3) a 1,000-foot linear setback from the inland boundary of tidal wetlands (CGS § 22a-94(b)).

Coastal Area

The state’s “coastal area” includes land and water within the area delineated by the westerly, southerly, and easterly limits of the state’s jurisdiction in Long Island Sound and the towns of Branford, Bridgeport, Chester, Clinton, Darien, Deep River, East Haven, East Lyme, Essex, Fairfield, Greenwich, Groton, Guilford, Hamden, Ledyard, Lyme, Madison, Milford, Montville, New Haven, New London, North Haven, Norwalk, Norwich, Old Lyme, Old Saybrook, Orange, Preston, Shelton, Stamford, Stonington, Stratford, Waterford, West Haven, Westbrook, and Westport (CGS § 22a-94(a)).

Related Act

PA 13-209 allows the DEEP commissioner to electronically notify a dam construction permit applicant and certain municipal officials of his intent to grant or deny a permit.

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