# WEST VIRGINIA CODE: §22-14-3

**§22-14-3. Definition of terms used in article.**

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam that may affect its safety to be determined by the secretary.

(b) "Application for a certificate of approval" means the written application provided to the secretary requesting that a person be issued a certificate of approval.

(c) "Appurtenant works" means any structure or facility that is an adjunct of, or connected, appended or annexed to, a dam, including, but not limited to, spillways, a reservoir and its rim, low-level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

(d) "Authority" means the Water Development Authority provided in section four, article one, chapter twenty-two-c of this code.

(e) "Certificate of approval" means the written approval issued by the secretary to a person who has applied to the secretary for a certificate of approval that authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

(f)(1) "Dam" means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and:

(A) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or

(B) Is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water;

(2) "Dam" does not mean:

(A) Any dam owned by the federal government;

(B) Any dam for which the operation and maintenance of the dam is the responsibility of the federal government;

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(C) Farm ponds constructed and used primarily for agricultural purposes, including, but not limited to, livestock watering, irrigation, retention of animal wastes and fish culture and that have no potential to cause loss of human life in the event of embankment failure; or

(D) Road fill or other transportation structures that do not or will not impound water under normal conditions and that have a designed culvert or similar conveyance or capacity that would be used under a state-designed highway at the same location: Provided, That the secretary may apply the provisions of section ten of this article for road fill or other transportation structures that become a hazard to human life or property through the frequent or continuous impoundment of water.

(g) "Deficient dam" means a noncoal-related dam that exhibits one or more design, maintenance or operational problems that may adversely affect the performance of the dam over a period of time or during a major storm or other inclement weather that may cause loss of life or property; or a noncoal-related dam that otherwise fails to meet the requirements of this article.

(h) "Department" means the Department of Environmental Protection.

(i) "Enlargement" means any change in or addition to an existing dam which: (1) Raises the height of the dam; (2) raises or may raise the water storage elevation of the water impounded by the dam; (3) increases or may increase the amount of water impounded by the dam; or (4) increases or may increase the watershed area from which water is impounded by the dam.

(j) "Noncompliant dam owner" means an owner who has received two or more orders to repair or remove a deficient dam without completion of the repairs or removal within time frames established by the secretary.

(k) "Owner" means any person who:

(1) Holds legal possession, ownership or partial ownership of an interest in a dam, its appurtenant works or the real property the dam is situated upon;

(2) Has a lease, easement or right-of-way to construct, operate or maintain a dam; or

(3) Is a sponsoring organization with existing or prior agreement with the Natural Resources Conservation Service for a dam or its appurtenant works constructed with assistance from Public Law 78-534, Section 13 of the Flood Control Act of 1944; Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; the pilot watershed program authorized under the heading "Flood Prevention" of the Department of Agriculture Appropriation Act of 1954, Public Law 156, 67 Stat. 214; or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program, 16 U. S. C. §3451: Provided, That the owner of the land upon which a dam is owned, maintained or operated by a sponsoring agency, such as a conservation

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district or other political subdivision of the state, is not responsible for or liable for repairs, maintenance or damage arising from the regular operation, maintenance, deficiencies or ownership of the dam. The owner of the land shall not be cited as a noncompliant dam owner for any deficiencies of the dam, so long as the owner of the land does not intentionally damage or interfere with the regular operation and maintenance of the dam.

(l) "Person" means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust or estate; a person or individual; a group of persons or individuals acting individually or as a group; or any other legal entity. The term "person", when used in this article, includes and refers to any authorized agent, lessee or trustee of any of the foregoing or receiver or trustee appointed by any court for any of the foregoing.

(m) "Reservoir" means any basin which contains or will contain impounded water.

(n) "Secretary" means the Secretary of the Department of Environmental Protection.

(o) "Natural Resources Conservation Service" means the Natural Resources Conservation Service of the United States Department of Agriculture or any successor or predecessor agency, including the Soil Conservation Service.

(p) "Water" means any liquid, including any solids or other matter that may be contained in the liquid, which is or may be impounded by a dam.

(q) "Water storage elevation" means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.

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