WEST VIRGINIA CODE CHAPTER 22 ARTICLE 14

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§22-14-1. Short title.

This article shall be known and cited as the Dam Control and Safety Act.

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§22-14-2. Legislative findings; intent and purpose of article.

The Legislature finds that dams may constitute a potential hazard to people and property; therefore, dams in this state must be properly regulated and controlled to protect the health, safety and welfare of people and property in this state. It is the intent of the Legislature by this article to provide for the regulation and supervision of dams in this state to the extent necessary to protect the public health, safety and welfare. The Legislature has ordained this article to fulfill its responsibilities to the people of this state and to protect their lives and private and public property from the danger of a potential or actual dam failure. The Legislature finds and declares that in light of the limited state resources available for the purposes of this article, and in view of the high standards to which the United States natural resources conservation service designs dams, independent state review of the plans and specifications for dams designed by the natural resources conservation service and construction oversight should not be required. The Legislature further finds and declares that dams designed and constructed by the natural resources conservation service but not owned or operated by it should be subject to the same provisions of inspection, after construction and certification by the natural resources conservation service, as other dams covered by this article, so long as any dam under the natural resources conservation service program is designed with standards equal to or exceeding state requirements under this article.

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§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;

(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

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(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 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

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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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§22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

The secretary has the following powers and duties:

(a) To control and exercise regulatory jurisdiction over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;

(d) To propose, modify, repeal and enforce rules and issue orders, to implement and make effective the powers and duties vested in the secretary by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article;

(f) To establish and charge reasonable fees not to exceed $300 for the review of applications for certificates of approval and the issuance thereof and for assessment of an annual registration fee not to exceed $100 for persons holding a certificate of approval for existing dams. The secretary shall promulgate rules to establish a schedule of application fees and to establish annual registration fees: Provided, That no fee shall be assessed for dams designed and constructed by the natural resources conservation service for natural resources conservation districts;

(g) To employ qualified consultants or additional persons as necessary to review applications for certificates of approval and to recommend whether they should be approved, to inspect dams and to enforce the provisions of this article;

(h) To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety and dam technology within this state;

(i) To investigate and inspect dams as is necessary to implement or enforce the provisions of this article and when necessary to enter the public or private property of any dam owner. The secretary may investigate, inspect or enter private or public property after notifying the dam owner or other person in charge of the dam of an intent to investigate, inspect or enter: Provided, That where the owner or person in charge of the dam is not available, the secretary may investigate, inspect and enter without notice; and

(j) To prepare and publish within a reasonable time, criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved technology for inclusion in such criteria.

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§22-14-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of the secretary until he or she has first: (a) Filed an application for a certificate of approval with the department; and (b) obtained from the department a certificate of approval: Provided, That routine repairs which do not affect the safety of a dam are not subject to the application and approval requirements. A separate application for a certificate of approval must be submitted by a person for each dam he or she desires to place, construct, enlarge, alter, repair, remove or abandon. One application may be valid for more than one dam involved in a single project or in the formation of a reservoir.

Each application for a certificate of approval shall be made in writing on a form prescribed by the secretary and shall be signed and verified by the applicant. The application shall contain and provide information which may be reasonably required by the secretary to administer the provisions of this article.

In the case of dams designed by the natural resources conservation service for transfer to any political subdivision, the director shall, within sixty days after receipt of a completed application therefor, issue a certificate of approval without review of the plans and specifications: Provided, That the state, its employees and agents are not responsible or liable for errors, omissions or flaws in the design, construction or modification of such dams.

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§22-14-6. Plans and specifications for dams to be in charge of registered professional engineer.

Plans and specifications for the placement, construction, enlargement, alteration, repair or removal of dams shall be in the charge of a registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the department shall bear the seal of a registered professional engineer.

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§22-14-7. Granting or rejecting applications for certificate of approval by division; publication of notice of application; hearing upon application.

Upon receipt of an application for a certificate of approval and the fee required under the provisions of this article, the secretary shall proceed to consider the application for sufficiency. The secretary shall approve or disapprove the application within sixty days after receipt.

If an application is defective, it shall be returned to the applicant by certified or registered mail, return receipt requested, in order that the applicant may correct any defect: Provided, That a defective application must be returned to the department by the applicant within thirty days after it has been returned to the applicant or it shall be treated as a new application: Provided, however, That for good cause shown, the secretary may extend the thirty-day period.

Upon approval by the secretary of the sufficiency of the application, the applicant shall immediately publish the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for the publication is the county in which the proposed dam is to be located or in which the existing dam is located. The notice shall include, but not be limited to, the name and address of the owner of the dam and the location of the dam for which the application was filed.

Any person whose life or property may be adversely affected by the issuance of a certificate of approval has a right to a hearing before the secretary if the person demands the hearing in writing within fifteen days of publication of the certificate of approval. The written request for hearing shall include specific objections to the certificate of approval.

Upon receipt by the secretary of the written request for hearing, the secretary shall immediately set a date for the hearing and shall notify the person or persons demanding a hearing. The hearing shall be held within ten days after receipt of the written request. The secretary shall hear evidence from all interested parties and shall either: (1) Refuse to issue a certificate of approval; or (2) issue a certificate of approval which shall be subject to terms, conditions and limitations as the secretary may consider necessary to protect life and property.

Unless otherwise extended by the secretary, a certificate of approval is valid for a period of not more than one year.

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§22-14-8. Content of certificates of approval for dams; revocation or suspension of certificates.

Each certificate of approval issued by the secretary under the provisions of this article may contain other terms and conditions as the secretary may prescribe.

The secretary may revoke or suspend any certificate of approval whenever it is determined that the dam for which the certificate was issued constitutes a danger to life and property. If necessary to safeguard life and property, the secretary may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

Before any certificate of approval is amended or revoked by the secretary, the secretary shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

Any person adversely affected by an order entered following the hearing has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

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§22-14-9. Inspections during progress of work on dam.

During the placement, construction, enlargement, repair, alteration or removal of any dam, the secretary shall, either with the department's own engineers or by consulting engineers or engineering organizations, make periodic inspections for the purpose of ascertaining compliance with the certificate of approval. The secretary shall require the owner at his or her expense to perform work or tests as necessary and to provide adequate supervision during the placement, construction, enlargement, repair, alteration or removal of a dam: Provided, That with respect to dams designed by and constructed under the supervision of the natural resources conservation service, as to such dams no state inspections are required.

If at any time during placement, construction, enlargement, repair, alteration or removal of any dam, the secretary finds that the work is not being done in accordance with the provisions of the original or revised certificate of approval, the secretary shall notify the owner by certified or registered mail, return receipt requested, to correct the deficiency, cease and desist work or to show cause as to why the certificate of approval should not be revoked.

The notice shall state the reason or reasons why the work is not in accordance with the certificate of approval. The secretary may order that work on the dam cease until the owner has complied with the notice.

If the secretary finds that amendments, modifications or changes are necessary to ensure the safety of the dam, the secretary may order the owner to revise his or her plans and specifications. If conditions are revealed which will not permit the placement, construction, enlargement, repair, alteration or removal of the dam in a safe manner, the certificate of approval may be revoked.

Immediately upon completion of a new dam or enlargement, repair or alteration of a dam, the owner shall notify the secretary: Provided, That immediately upon completion of a dam constructed under the supervision of the natural resources conservation service, a certification of completion shall be sent to the director by the natural resources conservation service, and a complete set of design documents "as built" plans, and specifications and safety plan of evacuation shall be provided to the director within ninety days after completion of the dam.

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§22-14-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

The owner of a dam has the primary responsibility for determining when an emergency involving a dam exists. When the owner of a dam determines an emergency does exist, the owner shall take necessary remedial action and shall notify the secretary and any persons who may be endangered if the dam should fail.

The secretary shall notify any persons, not otherwise notified, who may be endangered if the dam should fail. The secretary may take any remedial action necessary to protect life and property if: (a) The condition of the dam so endangers life and property that time is not sufficient to permit the issuance and enforcement of an order for the owner to correct the condition; or (b) passing or imminent floods or other conditions threaten the safety of the dam. Remedial actions may include, but are not limited to:

(1) Taking full charge and control of the dam;

(2) Lowering the level of water impounded by the dam by releasing such impounded water;

(3) Completely releasing all water impounded by the dam;

(4) Performing any necessary remedial or protective work at the site of the dam;

(5) Taking any other steps necessary to safeguard life and property.

Once the secretary has taken full charge of the dam, the secretary shall remain in charge and control until in the secretary's opinion it has been rendered safe or the emergency occasioning the action has ceased and the secretary concludes that the owner is competent to reassume control of the dam and its operation. The assumption of control of the dam will not relieve the owner of a dam of liability for any negligent act or acts of the owner or the owner's agent or employee.

When the secretary declares that making repairs to the dam or breaching the dam is necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner, or by the secretary at the owner's expense, if the owner fails to do so. The owner shall notify the secretary at once of any emergency repairs or breaching the owner proposes to undertake and of work he or she has under way to alleviate the emergency. The proposed repairs, breaching and work shall be made to conform with orders of the secretary. The secretary may obtain equipment and personnel for emergency work from any person as is necessary and expedient to accomplish the required work. Any person undertaking work at the request of the department shall be paid by the department and is immune from civil liability under the provisions of section fifteen, article seven, chapter fifty-five of this code.

The costs reasonably incurred in any remedial action taken by the secretary shall be paid out of funds appropriated to the department. All costs incurred by the department shall be

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promptly repaid by the owner upon request or, if not repaid, the department may recover costs and damages from the owner by appropriate civil action.

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§22-14-11. Requirements for dams completed prior to effective date of this section.

The secretary shall give notice to file an application for a certificate of approval to every owner of a dam which was completed prior to the effective date of this section: Provided, That no such notice need be given to a person who has applied for and obtained a certificate of approval on or after July 1, 1973, in accordance with the provisions of the prior enactment of section five of this article. The notice shall be given by certified or registered mail, return receipt requested, to the owner at his or her last address of record in the office of the county assessor of the county in which the dam is located; mailing constitutes service. A separate application for each dam a person owns shall be filed with the director in writing upon forms supplied by him or her and shall include or be accompanied by appropriate information concerning the dam as the secretary requires.

The secretary shall make inspections of such dams or reservoirs at state expense. The secretary shall require owners of dams to perform at their expense work or tests as may reasonably be required to disclose information sufficient to enable the secretary to determine whether to issue a certificate of approval or to issue an order directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the secretary may require an owner to lower the water level of, or to empty, water impounded by the dam adjudged by the secretary to be unsafe. If, upon inspection or upon completion to the satisfaction of the secretary of all work that he or she ordered, the secretary finds that the dam is safe to impound water, a certificate of approval shall be issued.

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§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.

Nothing in this article relieves the owner of a dam of the legal duties, obligations or liabilities incident to the ownership or operation of a dam.

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§22-14-13. Offenses and penalties.

(a) Any person who violates any of the provisions of this article or any certificate of approval, order, rule or requirement of the secretary or department is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or incarcerated in a county or regional jail not more than six months, or both fined and incarcerated.

(b) Any person who willfully obstructs, hinders or prevents the secretary or department or its agents or employees from performing the duties imposed on them by the provisions of this article or who willfully resists the exercise of the control and supervision conferred by the provisions of this article upon the secretary or department or its agents or employees or any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the placement, construction, enlargement, repair, alteration, maintenance or removal of any dam who knowingly does work or permits work to be executed on the dam without a certificate of approval or in violation of or contrary to any approval as provided for by the provisions of this article; and any inspector, agent or employee of the department who has knowledge of and who fails to notify the secretary of unapproved modifications to a dam is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or incarcerated in the county jail not more than one year, or both fined and incarcerated.

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§22-14-14. Enforcement orders; hearings.

(a) If the secretary, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any certificate of approval, notice, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or amending certificates of approval, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c), section fifteen of this article;

(3) Institute a civil action in accordance with subsection (c), section fifteen of this article; or

(4) Request the Attorney General, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section twelve of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the secretary not more than seven days from the issuance of the order and shall have a hearing before the secretary contesting the terms and conditions of the order within ten days of the filing of the notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the cease and desist order.

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§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the secretary, of not more than $5,000 for each day the violation continues, not to exceed a maximum of $20,000. In assessing any penalty, the secretary shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by rules proposed by the secretary for legislative approval pursuant to article three, chapter twenty-nine-a of this code. No assessment may be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, notice, order or statement of the certificate of approval's terms that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the civil administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the secretary a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration date of the twenty-day period. If a hearing is requested, the secretary shall inform the alleged violator of the time and place of the hearing. Within thirty days following the informal hearing, the secretary shall issue and furnish to the violator a written decision, and the reasons for the decision, concerning the assessment of a civil administrative penalty. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator shall exceed $20,000 per day of each violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this subsection is not subject to a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. Civil administrative penalties shall be levied in accordance with the rules promulgated under the authority of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the dam safety fund established pursuant to section eighteen of this article. Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the Environmental Quality Board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) Any person who violates any provision of any certificate issued under or subject to the provisions of this article is subject to a civil penalty not to exceed $25,000 per day of the violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article is subject to a civil penalty not to exceed $25,000 per day of the violation. The civil

penalty may be imposed and collected only by a civil action instituted by the secretary in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place.

Upon application by the secretary, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article and rules proposed in accordance with section four of this article, the terms and conditions of any certificate of approval granted under the provisions of this article or any order of the secretary or Environmental Quality Board and the venue of any action shall be in the circuit court of Kanawha County or in the county in which the violation or noncompliance exists or is taking place. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. In seeking an injunction, it is not necessary for the secretary to post bond or to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom the relief is sought.

The judgment of the circuit court upon any application filed or in any civil action instituted under the provisions of this section is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. An appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking review of an order in any injunction proceeding must be filed with the Supreme Court of Appeals within ninety days from the date of entry of the judgment of the circuit court.

(d) Upon request of the secretary, the Attorney General or the prosecuting attorney of the county in which the violation occurs shall assist the secretary in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state or any agency of the state which prevails may be awarded costs and reasonable attorney's fees.

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§22-14-16. Schedule of application fees established.

The secretary shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of application fees which shall be submitted by the applicant to the department together with the application for a certificate of approval filed pursuant to this article. The schedule of application fees shall be designed to establish reasonable categories of certificate application fees based upon the complexity of the permit application review process required by the secretary pursuant to the provisions of this article and the rules promulgated under this article. The secretary shall not process any certificate application pursuant to this article until the certificate application fee has been received.

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§22-14-17. Schedule of annual registration fees established.

The secretary shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of annual registration fees which shall be assessed annually upon each person holding a certificate of approval issued pursuant to this article. Each person holding a certificate of approval shall pay the prescribed annual registration fee to the department pursuant to the rules promulgated under this article. The schedule of annual registration fees shall be designed to establish reasonable categories of annual registration fees, including, but not limited to, the size of the dam and its classification. Any certificate of approval issued pursuant to this article becomes void without notification to the person holding a certificate of approval when the annual registration fee is more than ninety days past due pursuant to the rules promulgated under this section.

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§22-14-18. Continuation of dam safety fund; components of fund.

(a) The special fund designated the Dam Safety Fund hereinafter referred to as "the fund" shall be continued.

(b) All certificate application fees and annual registration fee assessments, any interest or surcharge assessed and collected by the department, interest accruing on investments and deposits of the fund, and any other moneys designated by the department shall be paid into the fund. Accrual of funds shall not exceed three hundred thousand dollars per year, exclusive of application fees. The department shall expend the proceeds of the fund for the review of applications, inspection of dams, payment of costs of remedial emergency actions and enforcement of the provisions of this article.

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§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

(a) There is created in the state Treasury a special revenue fund known as the Dam Safety Rehabilitation Revolving Fund. The fund shall be comprised of money allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state Dam Safety Rehabilitation Revolving Fund. The fund shall also include all receipts from loans made by the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund and all other moneys designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund, but shall remain in the account and be available for expenditure in succeeding fiscal years.

(b) The fund, to the extent that money is available, shall be used solely to make loans to persons who own an interest in a deficient dam on the list of deficient dams created pursuant to section twenty of this article to finance the engineering, design, alteration, improvement, repair, breaching or removal of the deficient dam necessary to correct or remove the deficiencies and other activities as authorized by a federal grant, a legislative appropriation or by the secretary pursuant to section twenty-two of this article. The fund may also be used to defray costs incurred by the department or the authority in administering the provisions of this subsection.

(c) The secretary, in consultation with the authority, shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the disbursement of moneys from the fund, establish a state deficient dams rehabilitation assistance program to direct the distribution of loans from the fund, establish criteria for eligibility to receive loans from the fund and establish the terms and conditions of the loans, including interest rates and repayment terms. The secretary may initially promulgate rules or amendments to rules as emergency rules pursuant to the provisions of said article.

(d) The secretary and the authority may employ qualified officers, agents, advisors and consultants and other persons necessary to carry out the administration and management of the fund.

(e) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(f) Disbursements from the fund shall be authorized for payment in writing by the director of the authority or the director's designee. Moneys in the fund shall not be commingled with other money of the authority.

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§22-14-20. Dam Safety Rehabilitation Revolving Fund program.

(a) The secretary shall develop a state list of deficient dams using a priority ranking system based on factors designed by the secretary. Only dams on the list of deficient dams are eligible for a loan from the Dam Safety Rehabilitation Revolving Fund.

(b) The secretary shall develop an application, including eligibility requirements for persons applying for loans to correct or remove deficient dams. The eligibility requirements shall include, at a minimum, that the:

(1) Dam is on the list of deficient dams;

(2) Person is in a state of readiness to proceed to planning, design or construction and expend loan payments in a timely manner;

(3) Person has demonstrated the ability to repay the loan; and

(4) Person is in compliance with section five of this article.

(c) A person who owns an interest in a deficient dam on the list of deficient dams may apply to the department for a loan from the fund on forms designed and approved by the secretary.

(d) Following approval by the secretary of the application for a loan and a determination by the secretary and the authority that moneys are available for a loan, the secretary may direct the authority to enter a loan agreement with the person submitting the approved application.

(e) At the direction of the department pursuant to subsection (d) of this section, the authority shall enter into a loan agreement with a person approved for a loan. The loan agreement is binding under the laws of West Virginia and shall contain provisions as required by the secretary, including:

(1) The cost of the project, the amount of the loan and the terms of repayment of the loan and the security for the loan which may include a deed of trust or other appropriate security instrument creating a lien on the project or any other collateral the secretary may require;

(2) The specific purposes for which the proceeds of the loan are required to be expended, the procedures as to the disbursement of loan proceeds including an estimated monthly draw schedule and the duties and obligations imposed upon the applicant in regard to the acquisition or construction of the project;

(3) The agreement of the applicant to repay the obligations of the applicant under the loan agreement, including provisions that revenue may be pledged for the repayment of the loan together with all interest, fees and charges on the loan and all other financial obligations of the applicant under the loan agreement;

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(4) If notes or other interim obligations are being issued by the applicant, the agreement of the applicant to take other repayment actions that are required of the applicant under the loan agreement;

(5) The agreement of the applicant to accept the authority's enforcement remedies pursuant to section twenty-one of this article in the event of any default under the loan; and

(6) The agreement of the applicant to comply with all applicable federal and state statutes and rules and regulations and all applicable local ordinances pertinent to the financing, acquisition, design, construction, operation, maintenance and use of the project.

(f)(1) If the secretary assumes full charge and responsibility over a dam pursuant to section twenty-two of this article, and seeks to expend money from the fund for the purpose of repairing or removing a dam or taking other remedial action, the secretary shall, prior to seeking a requisition from the fund, provide the authority with the following information:

(A) The location of the dam;

(B) The owners of the dam; and

(C) The maximum amount estimated for repairing or removing the dam or taking other remedial action.

(2) The authority shall then determine whether sufficient moneys are available to satisfy the maximum amount estimated for the dam and still meet all loan obligations of the fund.

(g) The obligation of the authority to enter into loan agreements is conditioned on the availability of moneys in the fund in amounts and on terms and conditions as, at the direction of the secretary, will enable the authority to make loans.

(h) The ability of the secretary to use moneys in the fund pursuant to section twenty-two of this article is conditioned upon the availability of moneys in the fund.

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§22-14-21. Collection of money due to the fund.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a person, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed pursuant to this article and may proceed directly to enforce and collect service charges, together with all necessary costs of the enforcement and collection;

(2) The authority may exercise, in its own name or in the name of and as the agent for a person, all of the rights, powers and remedies of the person with respect to the project or which may be conferred upon the person by statute, rule, or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that person pursuant to this article; and

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a person of all of the terms and conditions of the loan agreement, including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(C) The enforcement of all rights and remedies conferred by statute, rule, regulation or judicial decision, including, but not limited to, all rights associated with a security or other interest in real or personal property with the right to foreclose upon a default under a loan agreement.

(b) The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

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§22-14-22. Authority of Department of Environmental Protection for deficient dams that are privately owned by a noncompliant dam owner.

(a) The secretary may assume full charge and responsibility over a dam and may expend money from the Dam Safety Rehabilitation Revolving Fund for the purpose of repair or removal of the dam or other remedial action, if:

(1) The dam is a deficient dam;

(2) The dam is privately owned; and

(3) The owner is a noncompliant dam owner.

(b) All costs incurred by the secretary to repair or remove the dam or take other remedial action shall be promptly repaid by the owner upon request or, if not repaid, the secretary may recover costs and damages from the owner by appropriate civil action. Moneys obtained from the civil action shall be promptly deposited in the fund.

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