WEST VIRGINIA CODE: §22-6A-9

§22-6A-9. Certificate of approval required for large pits or impoundment construction; certificate of approval and annual registration fees; application required to obtain certificate; term of certificate; revocation or suspension of certificates; appeals; farm ponds.

(a) The Legislature finds that large impoundments and pits (i.e. impoundments or pits with a capacity of two hundred ten thousand gallons or more) not associated with a specific well work permit must be properly regulated and controlled. It is the intent of the Legislature by this section to provide for the regulation and supervision of large impoundments or pits not associated with a well work permit. This section does not apply to large pits or impoundments authorized under a well work permit.

(b) It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any freshwater impoundment or pit with capacity of two hundred ten thousand gallons or more used in association with any horizontal well operation until he or she has first secured from the secretary a certificate of approval for the same: Provided, That routine repairs that do not affect the safety of the impoundment are not subject to the application and approval requirements. A separate application for a certificate of approval shall be submitted by a person for each impoundment he or she desires to place, construct, enlarge, alter, repair, remove or abandon, but one application may be valid for more than one impoundment that supports one or more well pads.

(c) The application fee for placement, construction, enlargement, alteration, repair or removal of an impoundment pursuant to this section is $300, and the fee shall accompany the application for certificate of approval. Operators holding certificates of approval shall be assessed an annual registration fee of $100, which is valid for more than one impoundment that supports one or more well pads.

(d) Any certificate of approval required by this section shall be issued or denied no later than sixty days from the submission of an application containing the information required by this section. However, if the application for a certificate of approval is submitted with the application for a horizontal well permit, the certificate shall be issued or denied no later than thirty days from the submission of the permit application.

(e) The initial term of a certificate of approval issued pursuant to this section is one year. Existing certificates of approval shall be extended for one year upon receipt of the annual registration fee, an inspection report, a monitoring and emergency action plan, and a maintenance plan: Provided, That where an approved, up-to-date inspection report, monitoring and emergency action plan, and maintenance plan are on file with the department, and where no outstanding violation of the requirements of the certificate of approval or any plan submitted pursuant to this article related to the impoundment exist, then the certificate of approval shall be extended without resubmission of the foregoing

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documents upon receipt of the annual registration fee.

(f) Every 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 include a monitoring and emergency action plan and a maintenance plan, the required contents of which shall be established by the secretary by legislative rule. The application shall contain and provide information that may reasonably be required by the secretary to administer the provisions of this article.

(g) Plans and specifications for the placement, construction, erosion and sediment control, enlargement, alteration, repair or removal and reclamation of impoundments shall be 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.

(h) Each certificate of approval issued by the secretary pursuant to the provisions of this article may contain other terms and conditions the secretary prescribes.

(i) The secretary may revoke or suspend any certificate of approval whenever the secretary determines that the impoundment for which the certificate was issued constitutes an imminent danger to human life or property. If necessary to safeguard human life or property, the secretary may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

(1) Before any certificate of approval is amended, suspended or revoked by the secretary without the consent of the operator holding the certificate, the secretary shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(2) Any person adversely affected by an order entered following this 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.

(j) Upon expiration of the certificate of approval, the operator shall within six months, or upon its revocation by the secretary, the operator shall within sixty days, fill all impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner allowing the impoundment to remain open for the use and benefit of the surface owner and reclaim the site in accordance with the approved erosion and sediment control plan.

(k) This section does not apply to:

(1) Farm ponds constructed by the operator with the written consent of the surface owner, which will be used after completion of the drilling activity primarily for agricultural purposes, including without limitation livestock watering, irrigation, retention of animal wastes and fish culture. Any impoundment that is intended to be left permanent as a farm

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pond under this subdivision shall meet the requirements set forth by the United States Department of Agriculture's Natural Resources Conservation Service "Conservation Practice Standard - Ponds" (Code 378).

(2) Farm ponds subject to certificates of approval under article fourteen of this chapter.

(l) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary to effectuate the provisions of this section.

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