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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



ENROLLED

Committee Substitute for
SENATE BILL NO. 498

(By Senator Brackmich)



PASSED March 7, 1992

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 498

(SENATOR BRACKENRICH, *original sponsor*)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the dam control and safety act; legislative findings; intent and purpose of the act; defining terms; general powers and duties of director; maximum fee established for certificates of approval and annual registration; exempting soil conservation service from assessment of fees; prohibiting persons from placing, constructing, enlarging, altering, repairing, removing or abandoning any dam without filing an application for certificate of approval with the division and excluding certain routine repairs; requiring registered professional engineer to prepare plans and specifications; granting and rejecting applications for certificates of approval; publication of notice of application; hearing upon application; content of certificates of approval; revocation or suspension of certificates; inspections during work progress and certain exemptions; corrections of deficiencies; certificates of completion to director from

soil conservation service for certain dams; procedures for handling emergencies involving dams; remedial actions; payment of costs of remedial actions; requirements for dams completed prior to effective date of section; legal responsibilities of dam owners; criminal penalties; enforcement orders; hearings; civil penalties; injunctive relief; establishing schedule of application and annual registration fees; creating dam safety fund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That article five-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5D. DAM CONTROL ACT.

§20-5D-1. Short title.

1 This article shall be known and cited as the “Dam
2 Control and Safety Act”.

§20-5D-2. Legislative findings; intent and purpose of article.

1 The Legislature finds that dams may constitute a
2 potential hazard to people and property; therefore,
3 dams in this state must be properly regulated and
4 controlled to protect the health, safety and welfare of
5 people and property in this state. It is the intent of the
6 Legislature by this act to provide for the regulation
7 and supervision of dams in this state to the extent
8 necessary to protect the public health, safety and
9 welfare. The Legislature has ordained this act to fulfill
10 its responsibilities to the people of this state and to
11 protect their lives and private and public property
12 from the danger of a potential or actual dam failure.
13 The Legislature finds and declares that in light of the
14 limited state resources available for the purposes of
15 this act, and in view of the high standards to which
16 the United States soil conservation service designs
17 dams, independent state review of the plans and
18 specifications for dams designed by the soil conserva-
19 tion service and construction oversight should not be
20 required. The Legislature further finds and declares
21 that dams designed and constructed by the soil conser-

22 vation service but not owned or operated by it should
23 be subject to the same provisions of inspection, after
24 construction and certification by the soil conservation
25 service, as other dams covered by this act, so long as
26 any dam under the soil conservation service program
27 is designed with standards equal to or exceeding state
28 requirements under this article.

§20-5D-3. Definition of terms used in article.

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

3 (a) "Alterations" or "repairs" means only those
4 changes in the structure or integrity of a dam which
5 may affect its safety, which determination shall be
6 made by the director.

7 (b) "Application for a certificate of approval" means
8 the request in writing by a person to the director
9 requesting that person be issued a certificate of
10 approval.

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

17 (d) "Certificate of approval" means the approval in
18 writing issued by the director to a person who has
19 applied to the director for a certificate of approval
20 which authorizes the person to place, construct,
21 enlarge, alter, repair or remove a dam and specifies
22 the conditions or limitations under which the work is
23 to be performed by that person.

24 (e) "Director" means the director of the division of
25 natural resources or his or her authorized agents.

26 (f) "Division" means the division of natural
27 resources.

28 (g) "Dam" means an artificial barrier or obstruction,
29 including any works appurtenant to it and any reser-
30 voir created by it, which is or will be placed, con-

31 structed, enlarged, altered or repaired so that it does
32 or will impound or divert water and: (1) Is or will be
33 twenty-five feet or more in height from the natural
34 bed of the stream or watercourse measured at the
35 downstream toe of the barrier and which does or can
36 impound fifteen acre-feet or more of water; or (2) is or
37 will be six feet or more in height from the natural bed
38 of the stream or watercourse measured at the down-
39 stream toe of the barrier and which does or can
40 impound fifty acre-feet or more of water: *Provided*,
41 That the term "dam" shall not include: (A) Any dam
42 owned by the federal government; (B) any dam for
43 which the operation and maintenance thereof is the
44 responsibility of the federal government; (C) slack-
45 water dams constructed and maintained in connection
46 with public highways, streets, bridges, culverts or
47 viaducts, which shall continue to be regulated and
48 controlled as provided in article five of this chapter;
49 (D) farm ponds constructed and used primarily for
50 agricultural purposes, including, but not limited to,
51 livestock watering, irrigation, retention of animal
52 wastes and fish culture, and which have no potential
53 to cause loss of human life in the event of embank-
54 ment failure; or (E) structures which do not or will not
55 impound water under normal conditions and which
56 have a designed culvert or similar conveyance or such
57 capacity as would be used under a highway at the
58 same location: *Provided, however*, That the director
59 may apply the provisions of section ten of this article
60 for hazardous, non-impounding structures which are
61 brought to his or her attention.

62 (h) "Enlargement" means any change in or addition
63 to an existing dam which: (1) Raises the height of the
64 dam; (2) raises or may raise the water storage eleva-
65 tion of the water impounded by the dam; (3) increases
66 or may increase the amount of water impounded by
67 the dam; or (4) increases or may increase the water-
68 shed area from which water is impounded by the dam.

69 (i) "Person" means any public or private corpora-
70 tion, institution, association, society, firm, organization
71 or company organized or existing under the laws of

72 this or any other state or country; the state of West
73 Virginia; any state governmental agency; any political
74 subdivision of the state or of its counties or municipal-
75 ities; sanitary district; public service district; drainage
76 district; soil conservation district; watershed improve-
77 ment district; partnership; trust; estate; person or
78 individual; group of persons or individuals acting
79 individually or as a group; or any other legal entity
80 whatever. The term "person", when used in this
81 article includes and refers to any authorized agent,
82 lessee or trustee of any of the foregoing or receiver or
83 trustee appointed by any court for any of the foregoing.

84 (j) "Reservoir" means any basin which contains or
85 will contain impounded water.

86 (k) "Soil conservation service" means the soil
87 conservation service of the United States department
88 of agriculture or any successor agency.

89 (l) "Water" means any liquid, including any solids or
90 other matter which may be contained therein, which
91 is or may be impounded by a dam.

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

**§20-5D-4. General powers and duties of director; maximum
fee established for certificates of approval
and annual registration.**

1 The director shall have the following powers and
2 duties:

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

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

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

12 (d) To adopt, modify, repeal and enforce rules and
13 issue orders, in such manner as the director may
14 otherwise do, to implement and make effective the
15 powers and duties vested in it by the provisions of this
16 article;

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

20 (f) To establish and charge reasonable fees not to
21 exceed three hundred dollars for the review of appli-
22 cations for certificates of approval and the issuance
23 thereof and for assessment of an annual registration
24 fee not to exceed one hundred dollars for persons
25 holding a certificate of approval for existing dams. The
26 director shall promulgate rules to establish a schedule
27 of application fees and to establish annual registration
28 fees: *Provided*, That no fee shall be assessed for dams
29 designed and constructed by the soil conservation
30 service for soil conservation districts.

31 (g) To employ qualified consultants or additional
32 persons as necessary to review applications for certif-
33 icates of approval and to recommend whether they
34 should be approved, to inspect dams and to enforce the
35 provisions of this article;

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

41 (i) To investigate and inspect dams as is necessary to
42 implement or enforce the provisions of this article and
43 when necessary to enter the public or private property
44 of any dam owner. The director may investigate,
45 inspect or enter private or public property after
46 notifying the dam owner or other person in charge of
47 the dam of an intent to investigate, inspect or enter:
48 *Provided*, That where the owner or person in charge
49 of the dam is not available, the director may investi-
50 gate, inspect and enter without notice; and

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

**§20-5D-5. Unlawful to place, construct, enlarge, alter, repair,
remove or abandon dam without certificate
of approval; application required to obtain
certificate.**

1 It is unlawful for any person to place, construct,
2 enlarge, alter, repair, remove or abandon any dam
3 under the jurisdiction of the director until he or she
4 has first: (a) Filed an application for a certificate of
5 approval with the division; and (b) obtained from the
6 division a certificate of approval: *Provided*, That
7 routine repairs which do not affect the safety of a dam
8 are not subject to the application and approval
9 requirements. A separate application for a certificate
10 of approval must be submitted by a person for each
11 dam he or she desires to place, construct, enlarge,
12 alter, repair, remove or abandon. One application may
13 be valid for more than one dam involved in a single
14 project or in the formation of a reservoir.

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

21 In the case of dams designed by the soil conservation
22 service for transfer to any political subdivision, the
23 director shall, within sixty days after receipt of a
24 completed application therefor, issue a certificate of
25 approval without review of the plans and specifications.

**§20-5D-6. Plans and specifications for dams to be in charge
of registered professional engineer.**

1 Plans and specifications for the placement, construc-
2 tion, enlargement, alteration, repair or removal of

3 dams shall be in the charge of a registered professional
4 engineer licensed to practice in West Virginia. Any
5 plans or specifications submitted to the division shall
6 bear the seal of a registered professional engineer.

**§20-5D-7. Granting or rejecting applications for certificate
of approval by division; publication of notice
of application; hearing upon application.**

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

7 If an application is defective, it shall be returned to
8 the applicant by certified or registered mail, return
9 receipt requested, in order that the applicant may
10 correct any defect: *Provided*, That a defective applica-
11 tion must be returned to the division by the applicant
12 within thirty days after it has been returned to the
13 applicant or it shall be treated as a new application:
14 *Provided, however*, That for good cause shown, the
15 director may extend the thirty-day period.

16 Upon approval by the director of the sufficiency of
17 the application, the applicant shall immediately pub-
18 lish the application as a Class I legal advertisement in
19 compliance with the provisions of article three, chap-
20 ter fifty-nine of this code, and the publication area for
21 the publication shall be the county in which the
22 proposed dam is to be located or in which the existing
23 dam is located. The notice shall include, but not be
24 limited to, the name and address of the owner of the
25 dam and the location of the dam for which the
26 application was filed.

27 Any person who may be adversely affected by the
28 issuance of a certificate of approval has a right to a
29 hearing before the director if the person demands the
30 hearing in writing within fifteen days of publication of
31 the certificate of approval. The written request for
32 hearing shall include specific objections to the certifi-
33 cate of approval.

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

45 Unless otherwise extended by the director, a certifi-
46 cate of approval is valid for a period of not more than
47 one year.

**§20-5D-8. Content of certificates of approval for dams;
revocation or suspension of certificates.**

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

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

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

16 Any person adversely affected by an order entered
17 following the hearing has the right of judicial review
18 of the order in accordance with the provisions of
19 section four, article five, chapter twenty-nine-a of this
20 code.

§20-5D-9. Inspections during progress of work on dam.

1 During the placement, construction, enlargement,

2 repair, alteration or removal of any dam, the director
3 shall, either with the division's own engineers or by
4 consulting engineers or engineering organizations,
5 make periodic inspections for the purpose of ascertain-
6 ing compliance with the certificate of approval. The
7 director shall require the owner at his or her expense
8 to perform work or tests as necessary and to provide
9 adequate supervision during the placement, construc-
10 tion, enlargement, repair, alteration or removal of a
11 dam: *Provided*, That with respect to dams designed by
12 and constructed under the supervision of the soil
13 conservation service, as to such dams no state inspec-
14 tions shall be required.

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

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

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

37 Immediately upon completion of a new dam or
38 enlargement, repair or alteration of a dam, the owner
39 shall notify the director: *Provided*, That immediately
40 upon completion of a dam constructed under the
41 supervision of the soil conservation service, a certifica-

42 tion of completion shall be sent to the director by the
43 soil conservation service, and a complete set of design
44 documents "as built" plans, and specifications and
45 safety plan of evacuation shall be provided to the
46 director within ninety days after completion of the
47 dam.

**§20-5D-10. Procedures for handling emergencies involving
dams; remedial actions to alleviate emer-
gency; payment of costs of remedial actions
to be paid by dam owner.**

1 The owner of a dam has the primary responsibility
2 for determining when an emergency involving a dam
3 exists. When the owner of a dam determines an
4 emergency does exist, the owner shall take necessary
5 remedial action and shall notify the director and the
6 owner shall also notify any persons who may be
7 endangered if the dam should fail.

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

18 (1) Taking full charge and control of the dam.

19 (2) Lowering the level of water impounded by the
20 dam by releasing such impounded water.

21 (3) Completely releasing all water impounded by the
22 dam.

23 (4) Performing any necessary remedial or protective
24 work at the site of the dam.

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

27 Once the director has taken full charge of the dam,
28 the director shall remain in charge and control until in

29 the director's opinion it has been rendered safe or the
30 emergency occasioning the action has ceased and the
31 director concludes that the owner is competent to
32 reassume control of the dam and its operation. The
33 assumption of control of the dam will not relieve the
34 owner of a dam of liability for any negligent act or acts
35 of the owner or the owner's agent or employee.

36 When the director declares that making repairs to
37 the dam or breaching the dam is necessary to safe-
38 guard life and property, repairs or breaching shall be
39 started immediately by the owner, or by the director
40 at the owner's expense, if the owner fails to do so. The
41 owner shall notify the director at once of any emer-
42 gency repairs or breaching the owner proposes to
43 undertake and of work he or she has under way to
44 alleviate the emergency. The proposed repairs, breach-
45 ing and work shall be made to conform with orders of
46 the director. The director may obtain equipment and
47 personnel for emergency work from any person as is
48 necessary and expedient to accomplish the required
49 work. Any person undertaking work at the request of
50 the division shall be paid by the division and shall be
51 immune from civil liability under the provisions of
52 section fifteen, article seven, chapter fifty-five of this
53 code.

54 The costs reasonably incurred in any remedial
55 action taken by the director shall be paid out of funds
56 appropriated to the division. All costs incurred by the
57 division shall be promptly repaid by the owner upon
58 request or, if not repaid, the division may recover
59 costs and damages from the owner by appropriate civil
60 action.

**§20-5D-11. Requirements for dams completed prior to
effective date of this section.**

1 The director shall give notice to file an application
2 for a certificate of approval to every owner of a dam
3 which was completed prior to the effective date of this
4 section: *Provided*, That no such notice need be given
5 to a person who has applied for and obtained a
6 certificate of approval on or after the first day of July,

7 one thousand nine hundred seventy-three, in accor-
8 dance with the provisions of the prior enactment of
9 section five of this article. Such notice shall be given
10 by certified or registered mail, return receipt
11 requested, to the owner at his last address of record in
12 the office of the county assessor of the county in which
13 the dam is located and such mailing shall constitute
14 service. A separate application for each dam a person
15 owns shall be filed with the director in writing upon
16 forms supplied by him and shall include or be accom-
17 panied by appropriate information concerning the dam
18 as the director requires.

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

**§20-5D-12. Dam owner not relieved of legal responsibilities
by any provision of article.**

1 Nothing in this article shall be construed to relieve
2 the owner of a dam of the legal duties, obligations or
3 liabilities incident to the ownership or operation of a
4 dam.

§20-5D-13. Offenses and penalties.

1 (a) Any person who violates any of the provisions of
2 this article or any certificate of approval, order, rule or
3 requirement of the director or division is guilty of a
4 misdemeanor, and, upon conviction thereof, shall be
5 fined not less than one hundred dollars nor more than
6 one thousand dollars, or imprisoned in the county jail

7 not more than six months, or both fined and
8 imprisoned.

9 (b) Any person who willfully obstructs, hinders or
10 prevents the director or division or its agents or
11 employees from performing the duties imposed on
12 them by the provisions of this article or who willfully
13 resists the exercise of the control and supervision
14 conferred by the provisions of this article upon the
15 director or division or its agents or employees or any
16 owner or any person acting as a director, officer, agent
17 or employee of an owner, or any contractor or agent
18 or employee of a contractor who engages in the
19 placement, construction, enlargement, repair, alter-
20 ation, maintenance or removal of any dam who
21 knowingly does work or permits work to be executed
22 on the dam without a certificate of approval or in
23 violation of or contrary to any approval as provided for
24 by the provisions of this article; and any inspector,
25 agent or employee of the division who has knowledge
26 of and who fails to notify the director of unapproved
27 modifications to a dam is guilty of a misdemeanor,
28 and, upon conviction thereof, shall be fined not less
29 than one thousand dollars nor more than five thou-
30 sand dollars, or imprisoned in the county jail not more
31 than one year, or both fined and imprisoned.

§20-5D-14. Enforcement orders; hearings.

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any certifi-
4 cate of approval, notice, order or rules or regulations
5 issued or promulgated hereunder, he or she may:

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

14 (2) Seek an injunction in accordance with subsection

15 (d), ~~of this section~~, *fifteen of this article; D.P.N.*

16 (3) Institute a civil action in accordance with subsec-
17 tion (c), ~~of this section~~ *or fifteen of this article; D.P.N.*

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

22 (b) Any person issued a cease and desist order may
23 file a notice of request for reconsideration with the
24 director not more than seven days from the issuance
25 of the order and shall have a hearing before the
26 director contesting the terms and conditions of the
27 order within ten days of the filing of the notice of a
28 request for reconsideration. The filing of a notice of
29 request for reconsideration shall not stay or suspend
30 the execution or enforcement of the cease and desist
31 order.

§20-5D-15. Civil penalties and injunctive relief.

1 (a) Any person who violates any provision of this
2 article, any certificate of approval or any rule, regula-
3 tion, notice or order issued pursuant to this article is
4 subject to a civil administrative penalty, to be levied
5 by the director, of not more than two hundred dollars
6 for each day of the violation, not to exceed a maxi-
7 mum of four hundred dollars. In assessing any pen-
8 alty, the director shall take into account the serious-
9 ness of the violation and any good faith efforts to
10 comply with applicable requirements as well as any
11 other appropriate factors as may be established by
12 rules and regulations promulgated by the director. No
13 assessment shall be levied pursuant to this subsection
14 until after the alleged violator has been notified by
15 certified mail or personal service. The notice shall
16 include a reference to the section of the statute, rule,
17 regulation, notice, order or statement of the certificate
18 of approval's terms that was allegedly violated, a
19 concise statement of the facts alleged to constitute the
20 violation, a statement of the amount of the administra-
21 tive penalty to be imposed and a statement of the
22 alleged violator's right to an informal hearing. The

23 alleged violator has twenty calendar days from receipt
24 of the notice within which to deliver to the director a
25 written request for an informal hearing. If no hearing
26 is requested, the notice becomes a final order after the
27 expiration date of the twenty day period. If a hearing
28 is requested, the director shall inform the alleged
29 violator of the time and place of the hearing. Within
30 thirty days following the informal hearing, the direc-
31 tor shall issue and furnish to the violator a written
32 decision, and the reasons therefor, concerning the
33 assessment of a civil administrative penalty. The
34 authority to levy an administrative penalty is in
35 addition to all other enforcement provisions of this
36 article and the payment of any assessment does not
37 affect the availability of any other enforcement
38 provision in connection with the violation for which
39 the assessment is levied: *Provided*, That no combina-
40 tion of assessments against a violator shall exceed four
41 hundred dollars per day of each violation: *Provided*,
42 *however*, That any violation for which the violator has
43 paid a civil administrative penalty assessed under this
44 subsection is not subject to a separate civil penalty
45 action under this article to the extent of the amount
46 of the civil administrative penalty paid. Civil adminis-
47 trative penalties shall be levied in accordance with the
48 rules and regulations promulgated under the authority
49 of section four of this article. The net proceeds of
50 assessments collected pursuant to this subsection shall
51 be deposited in the dam safety fund established
52 pursuant to section seventeen of this article. Any
53 person adversely affected by the assessment of a civil
54 administrative penalty has the right of judicial review
55 of the assessment in accordance with the provisions of
56 section four, article five, chapter twenty-nine-a of this
57 code.

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

62 (c) The director may seek an injunction, or may
63 institute a civil action against any person in violation

64 of any provisions of this article or any certificate of
 65 approval, rule, regulation, notice or order issued
 66 pursuant to this article. In seeking an injunction, it is
 67 not necessary for the director to post bond on or to
 68 allege or prove at any stage of the proceeding that
 69 irreparable damage will occur if the injunction is not
 70 issued or that the remedy at law is inadequate. An
 71 application for injunctive relief or a civil penalty
 72 action under this section may be filed and relief
 73 granted notwithstanding the fact that all administra-
 74 tive remedies provided for in this article have not
 75 been exhausted or invoked against the person or
 76 persons against whom the relief is sought.

77 (d) Upon request of the director, the attorney
 78 general or the prosecuting attorney of the county in
 79 which the violation occurs, shall assist the director in
 80 any civil action under this section.

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

§20-5D-16. Schedule of application fees established.

1 The director shall promulgate rules in accordance
 2 with the provisions of section four of this article, to
 3 establish a schedule of application fees for which the
 4 appropriate fee shall be submitted by the applicant to
 5 the division together with the application for a certif-
 6 icate of approval filed pursuant to this article. The
 7 schedule of application fees shall be designed to
 8 establish reasonable categories of certificate applica-
 9 tion fees based upon the complexity of the permit
 10 application review process required by the director
 11 pursuant to the provisions of this article and the rules
 12 promulgated under this article. The director shall not
 13 process any certificate application pursuant to this
 14 article until the certificate application fee has been
 15 received.

§20-5D-17. Schedule of annual registration fees established.

1 The director shall promulgate rules in accordance

2 with the provisions of section four of this article, to
3 establish a schedule of annual registration fees which
4 shall be assessed annually upon each person holding a
5 certificate of approval issued pursuant to this article.
6 Each person holding a certificate of approval shall pay
7 the prescribed annual registration fee to the division
8 pursuant to the rules and regulations promulgated
9 under this article. The schedule of annual registration
10 fees shall be designed to establish reasonable catego-
11 ries of annual registration fees, including, but not
12 limited to, the size of the dam and its classification.
13 Any certificate of approval issued pursuant to this
14 article shall become void without notification to the
15 person holding a certificate of approval when the
16 annual registration fee is more than one hundred
17 eighty days past due pursuant to the rules promul-
18 gated under this section.

§20-5D-18. Creation of dam safety fund; components of fund.

1 (a) A special fund designated "The Dam Safety
2 Fund" hereinafter referred to as "the fund" shall be
3 established in the state treasury on the thirtieth day of
4 September, one thousand nine hundred ninety-two.

5 (b) All certificate application fees and annual regis-
6 tration fee assessments, any interest or surcharge
7 assessed and collected by the division, interest accru-
8 ing on investments and deposits of the fund, and any
9 other moneys designated by the division shall be paid
10 into the fund. Accrual of funds shall not exceed three
11 hundred thousand dollars per year, exclusive of
12 application fees. The division shall expend the pro-
13 ceeds of the fund for the review of applications,
14 inspection of dams, payment of costs of remedial
15 emergency actions and enforcement of the provisions
16 of this article.

§20-5D-19. Effective date.

1 The provisions of this article take effect on the
2 thirtieth day of September, one thousand nine hun-
3 dred ninety-two.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Leek
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell B. Lewis
.....
Clerk of the Senate

Donald H. Kopp
.....
Clerk of the House of Delegates

Paul Gaudette
.....
President of the Senate

R. B. C. C.
.....
Speaker House of Delegates

The within *is approved* this the *30th*.....
day of *March*....., 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:55 pm