

CHAPTER 11

Dams

ARTICLE 1

General Provisions

SECTION 49-11-10. Prohibition on dams or banks erected or water let off to injury of others.

No person shall be permitted or allowed to make or keep up any dam or bank to stop the course of any waters so as to overflow the lands of another person without the consent of such person first had and obtained nor shall any person be permitted or allowed to let off any reserved water to injure the crops upon the grounds of other persons.

HISTORY: 1962 Code Section 18-5; 1952 Code Section 18-5; 1942 Code Section 6087; 1932 Code Section 6087; Civ. C. '22 Section 3141; Civ. C. '12 Section 2187; Civ. C. '02 Section 1456; G. S. 1169; R. S. 1264; 1744 (3) 609; 1783 (4) 540; 1993 Act No. 181, Section 1248.

SECTION 49-11-20. Persons may not keep water on other's lands.

Nothing contained herein shall be construed to authorize any person to keep water at any time on any lands other than his own.

HISTORY: 1962 Code Section 18-6; 1952 Code Section 18-6; 1942 Code Section 6095; 1932 Code Section 6095; Civ. C. '22 Section 3149; Civ. C. '12 Section 2195; Civ. C. '02 Section 1464; G. S. 1177; R. S. 1272; 1799 (5) 356; 1993 Act No. 181, Section 1248.

ARTICLE 3

Dams and Reservoirs Safety Act

Editor's Note

2018 Joint Resolution 231 (S.1190), Sections 1 and 2, provide as follows:

“SECTION 1. The General Assembly hereby directs the Department of Health and Environmental Control to focus the resources of the department's Dams and Reservoirs Safety Program on regulating the state's high and significant hazard dams only and reclassifying dams when the failure or improper operation of a dam will likely result in loss of human life.

“SECTION 2. This joint resolution takes effect upon approval by the Governor [May 17, 2018].”

SECTION 49-11-110. Short title.

This article shall be cited as the “Dams and Reservoirs Safety Act.”

HISTORY: 1980 Act No. 447 Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-120. Definitions.

Unless the context otherwise requires, as used in this article:

(1) “Alterations” and “repairs” mean only the alterations or repairs which may affect the safety of a dam or reservoir.

(2) “Appurtenant works” include, but are not limited to, structures such as spillways, either in the dam or separate from it, low-level outlet works, and water conduits.

(3) “Department” means the South Carolina Department of Health and Environmental Control or its staff or agents.

(4) “Dam” means an artificial barrier with appurtenant works, including, but not limited to, dams, levees, dikes, or floodwalls for the impoundment or diversion of waters or other fluids where failure may cause danger to life or property. However, this does not include a dam:

(a) less than twenty-five feet in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam, or less than twenty-five feet from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum water storage elevation and has an impounding capacity at maximum water storage elevation of less than fifty-acre feet unless a situation exists where the hazard potential as determined by the department is such that dam failure or improper reservoir operation may cause loss of human life;

(b) owned or operated by a department or an agency of the federal government;

(c) owned or licensed by the Federal Energy Regulatory Commission, the South Carolina Public Service Authority, the Nuclear Regulatory Commission, the United States Corps of Engineers, or other responsible federal licensing agencies considered appropriate by the department;

(d) upon which the Department of Transportation or county or municipal governments have accepted maintenance responsibility for a road or highway where that road or highway is the only danger to life or property with respect to failure of the dam.

(5) "Districts" means the soil and water conservation districts of this State. For the purposes of this article the districts may serve as agents and advisors to the department.

(6) "Danger to life or property" means a situation exists where the hazard potential as determined by the department is such that dam failure or improper reservoir operation may cause injury to persons, loss of human life, or damage to property.

(7) "Detailed inspection" means all studies, investigations, and analyses necessary to evaluate conclusively the structural safety and hydraulic capacity of a dam or reservoir and appurtenant works. This inspection includes, but is not limited to, soil analyses, concrete or earth stability analyses, materials testing, foundation explorations, and hydrologic analyses, including basin studies and flood potential. This inspection must be performed by a qualified registered professional engineer.

(8) "Enlargement" means a change in or an addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

(9) "Owner" means those who own, control, operate, maintain, manage, or propose to construct a dam or reservoir.

(10) "Removal" means destruction or breaching of an existing dam or drainage of water impoundment or reservoir.

(11) "Reservoir" means a reservoir which contains the impoundment of water by a dam or reservoir.

(12) "Order" means a written document prepared and issued by the department which mandates specific actions to be accomplished by a dam owner within a specified time frame. Failure to comply makes the owner subject to penalties outlined in Section 49-11-260.

(13) "Unsafe" means the condition of the dam is such that repairs or alterations are necessary to reduce the risk of dam failure.

HISTORY: 1980 Act No. 447, Section 1; 1982 Act No. 309, Sections 1, 2; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-130. Declaration of purpose.

It is the purpose of this article to provide for the certification and inspection of certain dams in South Carolina in the interest of public health, safety, and welfare in order to reduce the risk of failure of the dams, prevent injuries to persons and damage to property, and confer upon the department the regulatory authority to accomplish the purposes.

HISTORY: 1980 Act No. 447 Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-140. General duties of department.

The authority for the safe maintenance of the dams and reservoirs of this State and the powers of inspection and certification provided in this article are the responsibility of the department. The department

may employ engineers and technicians it considers necessary to implement this article for which appropriations are available.

HISTORY: 1980 Act No. 447 Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-150. Owner responsible for safe maintenance of dam or reservoir; notice of change of ownership; emergency action plan requirement.

The owner of a dam or reservoir constructed in this State solely is responsible for maintaining the dam or reservoir in a safe condition throughout the life of the structure. The owner of a dam or reservoir shall inform the department in writing within thirty days after title to the dam or reservoir legally has been transferred from his ownership. The notice must include the name and address of the new owner. The owner of a dam or reservoir whose failure likely would cause loss of life or substantial property damage, a dam or reservoir classified as a high or significant hazard under existing regulations, shall provide the department a current emergency action plan in the format the department by regulation requires.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-160. Order to maintain, alter, repair, or remove dam or reservoir; findings supporting order.

The department may issue an order directing the owner of a dam or reservoir to make at his expense the necessary maintenance, alteration, repair, or removal upon a finding that the dam or reservoir:

- (a) is or has become unsafe and is dangerous to life or property;
- (b) is not maintained in good repair or operating condition; or
- (c) is not maintained or operated in accordance with the terms and conditions of the certificate of completion and operation issued by the department.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-170. Bringing unsafe dams to attention of department; preliminary inspections; detailed inspection at owner's expense; notice to owner; hearings.

(A) The existence of a dam which is not maintained in good repair or operating condition or may be unsafe and a danger to life or property may be brought to the attention of the department by complaint, staff, or authorized investigation or by other means.

(B) Upon staff or other authorized investigations or upon receipt of a written private complaint alleging that the person or property of the complainant is endangered by the construction, maintenance, operation, or condition of a dam or reservoir, the department shall cause a preliminary inspection of the structure and downstream development to be made by field observations to determine if the complaint is meritorious. The department may require the owner of the dam or reservoir to provide data, records, and design plans of the structure specified by regulations.

(C) If upon the preliminary inspection it is determined that the dam or reservoir is unsafe and is dangerous to life or property, the department may order the owner at his expense to make a detailed inspection of the dam and reservoir and surrounding area and to provide to the department within a time frame specified by the department plans prepared by a qualified registered professional engineer for correction of all deficiencies of the dam or to provide to the department plans and specifications for removal of the dam. In either instance the plans must be approved by the department before implementation and implemented within a time frame specified by the department. If upon inspection it is determined that the dam or reservoir has not been maintained in good repair or operating condition, the department may order the owner at his expense to accomplish the necessary maintenance or to obtain a permit for removal and to remove the dam within a time frame specified by the department.

(D) The department shall give the owner notice of its action when:

(1) a complaint has been filed alleging that the owners' dam or reservoir is unsafe and a danger to life or property stating the nature of the complaint;

(2) a preliminary inspection has been made with findings.

(E) The owner of a dam or reservoir determined through a preliminary inspection not to be maintained in good repair or operating condition or to be unsafe and a danger to life or property may request a hearing before the board of the department within thirty days after notice of the findings are delivered. The owner may submit written or present oral evidence which must be considered by the board of the department in the issuance of the order.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-180. Voluntary compliance; time extensions.

(A) The department may solicit voluntary compliance by the owner of a dam or reservoir found to be unsafe and a danger to life or property to take remedial steps necessary to render the dam safe.

(B) Extension of time to complete work specified in an order may be granted by the department. No extension may be granted when there appears substantial and immediate danger of dam failure.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-190. Emergency orders; owner to notify department of emergency; action when owner is unknown or fails to comply with order.

(A) The department immediately shall order remedial measures necessary to protect life or property if the condition of a dam or reservoir is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of a repair order or passing or imminent floods threaten overtopping erosion or destruction of a dam or reservoir capable of danger to life or property.

(B) In applying emergency measures the department has the following limited powers to order the owner to:

(1) lower the water level by releasing water from the reservoir;

(2) empty the reservoir completely;

(3) take other steps essential to safeguard life and property.

(C) For an emergency where the owner finds repairs are necessary to safeguard life or property, he may start the repairs immediately but shall notify the department at once of the proposed repair and work underway.

(D) When the owner fails to comply with the emergency order or cannot be ascertained or found, the department or its authorized agents may enter and immediately take actions necessary to provide protection to life or property, including removal of the dam. The department may recover from the owner, in the name of the State, the expenses incurred in taking the action in the same manner debts are recoverable by law.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-200. Department approval required for construction or alteration; exceptions.

(A) The construction of a new dam or reservoir or enlargement, removal, or repair may not begin until the owner has applied for and obtained from the department written approval of plans and specifications.

(B) Where the location and size of the dam or reservoir renders the requirements of subsection (A) and Section 49-11-210 unnecessary, the department may grant approval and waive certain nonessential requirements in instances, including, but not limited to, small dams and reservoirs for agricultural, fish or wildlife, or recreational uses on private lands and of no danger to other life or property downstream.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-210. Separate application required for each alteration; information to accompany application.

A separate application for each dam or reservoir and all enlargements, removals, or repairs to existing dams or reservoirs must be filed with the department upon forms to be provided by it, except only one application need be filed for a dam and the reservoir which will contain the water impounded by the dam. The application must be accompanied by maps and plans and specifications of a character and size and setting forth pertinent details and dimensions required by regulation. The application for construction of a new dam or reservoir whose failure likely would cause loss of life or substantial property damage, a dam or reservoir classified as high or significant hazard under existing regulations, must include a fully-developed emergency action plan in a format the department by regulation requires. After the dam or reservoir is constructed, this emergency action plan must be updated by the owner of the dam or reservoir each time it becomes noncurrent.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-220. Filing of certification of approved design; designs by federal agencies excepted.

An applicant for approval of a dam or reservoir subject to Section 49-11-200 also shall file with the department a design approved by a registered professional engineer legally qualified in the State. Dams designed by the USDA-Soil Conservation Service or other federal agencies do not require certification by a registered professional engineer.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-230. Inspections during construction; maximum rate of discharge for water released during construction.

(A) The department may make necessary inspections during construction of new dams and reservoirs, enlargements, removal, and repairs of dams and reservoirs and during work done pursuant to repair orders to assure compliance with the approved plans and specifications or provisions of the order.

(B) If water is to be released during the construction, repair, or removal, the department shall specify the maximum discharge rate allowable to avoid endangering or causing injury to downstream owners.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-240. Authority of department to inspect and enter on lands and waterways; regulations.

(A) The department or its authorized agents may inspect the dam or reservoir and surrounding area to determine the safety of the structure.

(B) An authorized member, agency, or representative of the department may enter state or private lands and natural or artificial waterways in the State to discharge the duties set forth in this article.

(C) The department shall formulate reasonable regulations, including, but not limited to, minimum safety design standards for impoundments, safety inspection standards, water discharge, or drawdown rates and levels in unsafe impoundments and for other purposes necessary to administer this article.

(D) The department shall issue all orders, permits, or licenses set forth in this article.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-250. Liability for actions or failure to act.

Nothing in this article and no action or failure to act under this article:

(1) imposes liability on the State, the department, districts, or an agency or its officers or employees for the recovery of damages caused by the action or failure to act; or

(2) relieves the owner or operator of a dam or reservoir of the duties, obligations, responsibilities, or liabilities arising from or incident to the ownership or operation of a dam or reservoir.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.

SECTION 49-11-260. Penalties; injunction; appeals; disposition of fines.

(A) A person violating this article is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than five hundred dollars. Each day the violation continues after notice to take corrective action is a separate offense.

(B) The department may assess an administrative fine of not less than one hundred nor more than one thousand dollars against a person who violates this article or an order issued or regulation promulgated pursuant to it. In determining the amount of the fine the department shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Fines assessed under this subsection may be appealed to the department who may reduce them based on information presented at the appeal hearing.

(C) Upon a violation of this article or related regulations the department may institute legal action to obtain injunctive relief in the name of the department.

(D) A person against whom a final order or decision has been made, except for emergencies specified in Section 49-11-190, may appeal to the board under the Administrative Procedures Act. The burden of proof is on the party attacking an order or a decision of the department to show that the order is unlawful or unreasonable.

(E) Civil fines collected under this article must be deposited in a special account of the department to fund educational activities relating to dams and reservoirs safety, including, but not limited to, workshops, seminars, manuals, and brochures.

HISTORY: 1980 Act No. 447, Section 1; 1992 Act No. 406, Section 1; 1993 Act No. 181, Section 1248.