

# The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

## Title 10: Conservation And Development

### Chapter 43: Dams

#### § 1079. Purpose

It is the purpose of this chapter to protect public safety and provide for the public good through the inventory, inspection, and evaluation of dams in the State. (Added 2017, No. 161 (Adj. Sess.), § 1.)

#### § 1080. Definitions

As used in this chapter:

(1) "Department" means the Department of Environmental Conservation.

(2) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; any federal agency; or any other legal or commercial entity.

(3) "Interested person" means, in relation to any dam, a person: who has riparian rights affected by that dam; who has a substantial interest in economic or recreational activity affected by the dam; or whose safety would be endangered by a failure of the dam.

(4) "Engineer" means a professional engineer licensed under Title 26 who has experience in the design and investigation of dams.

(5) "Time" shall be reckoned in the manner prescribed by 1 V.S.A. § 138.

(6)(A) "Dam" means any artificial barrier, including its appurtenant works, that is capable of impounding water, other liquids, or accumulated sediments.

(B) "Dam" includes an artificial barrier that meets all of the following:

(i) previously was capable of impounding water, other liquids, or accumulated sediments;

(ii) was partially breached; and

(iii) has not been properly removed or mitigated.

(C) "Dam" shall not mean:

(i) barriers or structures created by beaver or any other wild animal as that term is defined in section 4001 of this title;

(ii) transportation infrastructure that has no normal water storage capacity and that impounds water only during storm events;

(iii) an artificial barrier at a stormwater management structure that is regulated by the Agency of Natural Resources under chapter 47 of this title;

(iv) an underground or elevated tank to store water otherwise regulated by the Agency of Natural Resources;

(v) an agricultural waste storage facility regulated by the Agency of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

(vi) any other structure identified by the Department by rule.

(7) "Federal dam" means:

(A) a dam owned by the United States; or

(B) a dam subject to a Federal Energy Regulatory Commission license or exemption.

(8) "Intake structure" means a dam that is constructed and operated for the primary purposes of minimally impounding water for the measurement and withdrawal of streamflow to ensure use of the withdrawn water for snowmaking, potable water, irrigation, or other purposes approved by the Department.

(9) "Nonfederal dam" means a dam that is not a federal dam. (Added 1981, No. 242 (Adj. Sess.), § 1; amended 1987, No. 76, § 18; 2003, No. 115 (Adj. Sess.), § 22; 2017, No. 161 (Adj. Sess.), § 1.)

## **§ 1081. Jurisdiction of Department and Public Utility Commission**

(a) Powers and duties. Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the Department, except that the Public Utility Commission shall exercise those powers and duties over nonfederal dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system.

(b) Transfer of jurisdiction. Jurisdiction over a nonfederal dam is transferred from the Department to the Public Utility Commission when the Public Utility Commission receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred to the Department when the license or exemption for a federal dam expires or is otherwise lost; when a certificate of public good is revoked or otherwise lost; or when the Public Utility Commission denies an application for a certificate of public good.

(c) Transfer of records. Upon transfer of jurisdiction as set forth in subsection (b) of this section and upon written request, the State agency having former jurisdiction over a dam shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction. (Amended 1959, No. 203; 1959, No. 329 (Adj. Sess.), § 39, eff. March 1, 1961; 1961, No. 100, § 2; 1981, No. 242 (Adj. Sess.), § 2; 2017, No. 161 (Adj. Sess.), § 1.)

## **§ 1082. Authorization**

(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or otherwise alter any nonfederal dam, pond, or impoundment or other structure that is or will be capable of impounding more than 500,000 cubic feet of water or other liquid after construction or alteration, or remove, breach, or otherwise lessen the capacity of an existing nonfederal dam that is or was capable of impounding more than 500,000 cubic feet within or along the borders of this State where land in this State is proposed to be overflowed, or at the outlet of any body of water within this State, unless authorized by the State agency having jurisdiction so to do. However, in the matter of flood control projects where cooperation with the federal government is provided for by the provisions of section 1100 of this title, that section shall control.

(b) For the purposes of this chapter, the volume a dam or other structure is capable of impounding is the volume of water or other liquid, including any accumulated sediments, controlled by the structure with the water or liquid level at the top of the lowest nonoverflow part of the structure.

(c) An intake structure in existence on July 1, 2018 that continues to operate in accordance with a valid Department permit or approval that contains requirements for inspection and maintenance subject to section 1105 of this title shall have a rebuttable presumption of compliance with the requirements of this chapter and rules adopted under this chapter, provided that no presumption of compliance shall apply if one or both of the following occur on or after July 1, 2018:

(1) the owner or operator of the intake takes an action that requires authorization under this section; or

(2) the Department issues an order under section 1095 of this title directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to improve the safety of the dam. (Amended 1975, No. 179 (Adj. Sess.), § 1; 1981, No. 242 (Adj. Sess.), § 3; 2017, No. 161 (Adj. Sess.), § 1.)

### **§ 1083. Application**

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the State agency having jurisdiction. The application shall set forth:

(1) the location; the height, length, and other dimensions; and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of or any change in the number of cubic feet of water to be impounded;

(3) the plans and specifications to be followed in the construction, remodeling, reconstruction, altering, lowering, raising, removal, breaching, or adding to;

(4) any change in operation and maintenance procedures; and

(5) other information that the State agency having jurisdiction considers necessary to review the application.

(b) The plans and specifications shall be prepared under the supervision of an engineer. (Amended 1959, No. 329 (Adj. Sess.), § 23(d), eff. March 1, 1961; 1975, No. 179 (Adj. Sess.), § 2; 1981, No. 242 (Adj. Sess.), § 4; 2015, No. 150 (Adj. Sess.), § 12, eff. Jan. 1, 2018; 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1083a. Repealed. 2017, No. 161 (Adj. Sess.), § 1.**

**§ 1084. Department of Fish and Wildlife; investigation**

The Commissioner of Fish and Wildlife shall investigate the potential effects on fish and wildlife habitats of any proposal subject to section 1082 of this title and shall certify the results to the State agency having jurisdiction prior to any hearing or meeting relating to the determination of public good and public safety. (Amended 1975, No. 179 (Adj. Sess.), § 3; 1981, No. 242 (Adj. Sess.), § 6; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1085. Notice of application**

Upon receipt of the application required by section 1082 of this title, the State agency having jurisdiction shall give notice to the legislative body of each municipality in which the dam is located and to all interested persons.

(1) The Department shall proceed in accordance with chapter 170 of this title.

(2) For any project subject to its jurisdiction under this chapter, the Public Utility Commission shall hold a hearing on the application. The purpose of the hearing shall be to determine whether the project serves the public good as defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the proposed project and may be consolidated with other hearings, including hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be given at least 10 days before the hearing to interested persons by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper. (Amended 1981, No. 242 (Adj. Sess.), § 7; 2015, No. 150 (Adj. Sess.), § 13, eff. Jan. 1, 2018; 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1086. Determination of public good; certificates**

(a) "Public good" means the greatest benefit of the people of the State. In determining whether the public good is served, the State agency having jurisdiction shall give due consideration to, among other things, the effect the proposed project will have on:

(1) the quantity, kind, and extent of cultivated agricultural land that may be rendered unfit for use by or enhanced by the project, including both the immediate and long-range agricultural land use impacts;

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

(5) [Repealed.]

- (6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;
- (7) the creation of any hazard to navigation, fishing, swimming, or other public uses;
- (8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;
- (9) the creation of any public benefits;
- (10) attainment of the Vermont water quality standards;
- (11) any applicable State, regional, or municipal plans;
- (12) municipal grand lists and revenues;
- (13) public safety; and
- (14) in the case of the proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but that was not subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

(b) If the State agency having jurisdiction finds that the project proposed under section 1082 of this title will serve the public good, and, in case of any waters designated by the Secretary as outstanding resource waters, will preserve or enhance the values and activities sought to be protected by designation, the agency shall issue its order approving the application. The order shall include conditions for attainment of water quality standards, as determined by the Agency of Natural Resources, and such other conditions as the agency having jurisdiction considers necessary to protect any element of the public good listed in subsection (a) of this section. Otherwise it shall issue its order disapproving the application.

(c) The State agency having jurisdiction shall provide the applicant and interested persons with copies of its order.

(d) In the case of a proposed removal of a dam that is under the jurisdiction of the Department and that formerly related to or was incident to the generation of electric energy but that was not subject to a memorandum of understanding dated before January 1, 2006 relating to its removal, the Department shall consult with the Department of Public Service regarding the potential for and value of future power production at the site. (Amended 1969, No. 281 (Adj. Sess.), § 10; 1975, No. 179 (Adj. Sess.), § 4; 1981, No. 242 (Adj. Sess.), § 8; 1987, No. 67, § 13; 1987, No. 76, § 18; 2005, No. 208 (Adj. Sess.), § 4; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012; 2017, No. 161 (Adj. Sess.), § 1.)

### **§ 1087. Review of plans and specifications**

For any proposal subject to authorization under section 1082 of this title, the State agency having jurisdiction shall employ an engineer to investigate the property, review the plans and specifications, and make additional investigations as the State agency having

jurisdiction considers necessary to ensure that the project adequately provides for the public safety. The engineer shall report his or her findings to the State agency having jurisdiction. (Amended 1981, No. 242 (Adj. Sess.), § 9; 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1088. Repealed. 1975, No. 179 (Adj. Sess.), § 6.**

**§ 1089. Employment of engineer**

With the approval of the Governor, the State agency having jurisdiction may employ an engineer to investigate the property, review the plans and specifications, and make such additional investigation as the State agency shall deem necessary, and such engineer shall report to the State agency his or her findings in respect thereto. (Amended 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1090. Construction supervision**

The construction, alteration, or other action authorized in section 1086 of this title shall be supervised by an engineer employed by the applicant. Upon completion of the authorized project, the engineer shall certify to the agency having jurisdiction that the project has been completed in conformance with the approved plans and specifications. (Amended 1981, No. 242 (Adj. Sess.), § 10; 2017, No. 161 (Adj. Sess.), § 1.)

**§§ 1091-1094. Repealed. 1981, No. 242 (Adj. Sess.), § 18.**

**§ 1095. Unsafe dam; petition; hearing; emergency**

(a) On receipt of a petition signed by no fewer than ten interested persons or the legislative body of a municipality, the State agency having jurisdiction shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing nonfederal dam or portion of the dam of any size. The agency may fix a time and place for hearing and shall give notice in the manner it directs to all interested persons. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the agency finds that the nonfederal dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to improve the safety of the dam sufficiently to protect life and property as required by the State agency having jurisdiction.

(b) If, upon the expiration of such date as may be ordered, the person owning legal title to such dam or the owner of the land on which the dam is located has not complied with the order directing the reconstruction, repair, breaching, removal, draining, or other action of such unsafe dam, the State agency having jurisdiction may petition the Superior Court in the county in which the dam is located to enforce its order or exercise the right of eminent domain to acquire the rights that may be necessary to effectuate a remedy as the public safety or public good may require. If the order has been appealed, the court may prohibit the exercise of eminent domain by the State agency having jurisdiction pending disposition of the appeal.

(c) If, upon completion of the investigation described in subsection (a) of this section, the State agency having jurisdiction considers the dam to present an imminent threat to human life or property, it shall take whatever action it considers necessary to protect life and property and subsequently shall conduct the hearing described in subsection (a) of this section. (Amended 1959, No. 329 (Adj. Sess.), § 39, eff. March 1, 1961; 1961, No. 100, § 2; 1969, No. 281 (Adj. Sess.), § 12; 1981, No. 242 (Adj. Sess.), § 11; 2017, No. 161 (Adj. Sess.), § 1.)

**§ 1096. Repealed. 1981, No. 242 (Adj. Sess.), § 18.**

**§§ 1097, 1098. Repealed. 2017, No. 161 (Adj. Sess.), § 1.**

**§ 1099. Appeals**

(a) Appeals of any act or decision of the Department under this chapter shall be made in accordance with chapter 220 of this title.

(b) Appeals from actions or orders of the Public Utility Commission may be taken in the Supreme Court in accord with 30 V.S.A. § 12. (Amended 1981, No. 242 (Adj. Sess.), § 15; 2001, No. 94 (Adj. Sess.), § 3; 2003, No. 115 (Adj. Sess.), § 23, eff. Jan. 31, 2005.)

**§ 1100. Federal cooperation**

As a basis for cooperation with the federal government and its duly established agencies in the matter of flood control, the State defines its policy with reference to flood control developments as follows:

(1) A flood control project, which shall contemplate as an incident thereof, the generation of electric energy, shall not be built on any waters within the State without the certificate of the Public Utility Commission provided for in this chapter having first been obtained in the manner herein provided by the proper federal agency or authority, having in charge the building of such flood control project. Any modifications of flood control dams erected by authority of the federal government in this State shall not be made with a view to their utilization for the generation of electric energy, except by like authority first being obtained.

(2) Where such flood control project is strictly for flood control purposes, no village or city in this State shall be inundated, flooded, or destroyed thereby.

(3) Adequate compensation shall be made to any town whose grand list shall be substantially adversely affected by such strictly flood control project for the loss of its tax revenue.

(4) Where cultivated agricultural lands in excess of 100 acres are to be taken for the purposes of a flood control project, or the recreational development of the State or the economy of the river basin involved may be affected thereby, the Department shall provide notice, an opportunity to submit comments, and an opportunity to request a public meeting in accordance with section 7713 (Type 2 Procedures) of this title. The Department shall determine the effect the flood control project will have upon agricultural land uses or recreational values in this State, or upon the economy of the river basin involved, and report its findings and recommendations to the proper federal agency or authority having

the flood control project in charge for its consideration and recognition. The Department shall post its findings and recommendations as a final decision in accordance with chapter 170 of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39, eff. March 1, 1961; 1961, No. 100, § 2; 1981, No. 242 (Adj. Sess.), § 16; 2015, No. 150 (Adj. Sess.), § 14, eff. Jan. 1, 2018.)

**§ 1101. Repealed. 1959, No. 35, § 2, eff. March 12, 1959.**

**§ 1102. Federal receipts, distribution**

All sums of money that the State receives from the United States under the provisions of section 701c-3 of Title 33 of the United States Code, as the same may be amended, being a portion of the rentals of property acquired and owned by the United States for purposes of flood control dams and reservoirs, shall be distributed to the municipality or political subdivision in which the dams and reservoirs are located. The Department shall administer payment of money so received and the Commissioner of Finance and Management shall issue his or her warrants on orders of the Department. (Added 1959, No. 35, § 1, eff. March 12, 1959; amended 1959, No. 328 (Adj. Sess.), § 8; 1961, No. 100, § 2; 1981, No. 242 (Adj. Sess.), § 17; 1983, No. 195 (Adj. Sess.), § 5(b).)

**§ 1103. Approval for flood control dams**

(a) No department or agency of the federal government shall construct any flood control dam that is within the State of Vermont, either in whole or in part, or cause any land within the State of Vermont to be overflowed through the operation of a flood control dam located outside the State, except with the approval of the Governor and the General Assembly.

(b) For purposes of this section "flood control dam" means any dam that has among its principal purposes the prevention or control of floods either within or without the State, or that is financed in whole or in part with funds appropriated, allocated, or made available under a federal flood control program, excepting programs under Public Law 83-566, known as the Watershed Protection and Flood Prevention Act. (Added 1971, No. 167 (Adj. Sess.), § 3.)

**§ 1104. Repealed. 1989, No. 98, § 4(b).**

**§ 1105. Inspection of dams**

(a) Inspection; schedule. All nonfederal dams in the State shall be inspected according to a schedule adopted by rule by the State agency having jurisdiction over the dam.

(b) Dam inspection. A nonfederal dam in the State shall be inspected under one or both of the following methods:

(1) The State agency having jurisdiction over a dam may employ an engineer to make periodic inspections of nonfederal dams in the State to determine their condition and the extent, if any, to which they pose a possible or probable threat to life and property.

(2) The State agency having jurisdiction shall adopt rules pursuant to 3 V.S.A. chapter 25 to require an adequate level of inspection by an independent engineer.



(c) Dam safety reports. If a dam inspection report is completed by the State agency having jurisdiction, the agency shall provide the person owning legal title to the dam or the owner of the land on which the dam is located with a copy of the inspection report. (Added 1981, No. 242 (Adj. Sess.), § 13; amended 1985, No. 60; 2015, No. 23, § 98; 2017, No. 161 (Adj. Sess.), § 1.)

#### **§ 1106. Unsafe Dam Revolving Loan Fund**

(a) There is hereby established a special fund to be known as the Vermont Unsafe Dam Revolving Loan Fund that shall be used to provide grants and loans to municipalities, nonprofit entities, and private individuals, pursuant to rules adopted by the Agency of Natural Resources, for the reconstruction, repair, removal, breaching, draining, or other action necessary to reduce the threat of a dam or portion of a dam determined to be unsafe pursuant to section 1095 of this chapter.

(b) The Fund created by this section shall be established and held separate and apart from any other funds or monies of the State and shall be used and administered exclusively for the purposes set forth in this section. The funds shall be invested in the same manner as permitted for investment of funds belonging to the State or held in the Treasury. The Fund shall consist of the following:

(1) Such sums as may be appropriated or transferred thereto from time to time by the General Assembly, the Emergency Board, or the Joint Fiscal Committee during such times as the General Assembly is not in session.

(2) Principal and interest received from the repayment of loans made from the Fund.

(3) Capitalization grants and awards made to the State by the United States of America for the purposes for which the Fund has been established.

(4) Interest earned from the investment of Fund balances.

(5) Private gifts, bequests, and donations made to the State for the purposes for which the Fund has been established.

(6) Other funds from any public or private source intended for use for any of the purposes for which the Fund has been established.

(c) The Secretary may bring an action under this subsection or other available State and federal laws against the owner of the dam to seek reimbursement to the Fund for all loans made from the Fund pursuant to this section. (Added 2003, No. 121 (Adj. Sess.), § 66, eff. June 8, 2004; amended 2013, No. 34, § 6a.)

#### **§ 1107. Hazard potential classifications**

(a) The State agency having jurisdiction over a nonfederal dam listed in the Vermont Dam Inventory shall assess the hazard potential classification of the dam based on the potential loss of human life, property damage, and economic loss that would occur in the event of the failure of the dam. There shall be four hazard potential classifications: high, significant, low, and minimal.

(b) The State agency having jurisdiction over a nonfederal dam on the Vermont Dam Inventory may assess or reassess the hazard potential classification of the dam at any time. (Added 2017, No. 161 (Adj. Sess.), § 1.)

### **§ 1108. Dam inventory; registration**

(a) Dam inventory. The Department of Environmental Conservation shall maintain a current inventory of all known dams in the State of Vermont. The Department of Environmental Conservation shall update and publish the Vermont Dam Inventory annually and shall include information collected in the Inventory as part of the Agency of Natural Resources' Natural Resources Atlas.

(b) Dam registration. If a dam is listed on the Vermont Dam Inventory and is under the jurisdiction of the Department, the person owning legal title to a dam or the person owning the land on which the dam is located shall, upon request of the Department, submit information to the Department regarding the dam, including the condition of the dam, whether and when the dam has been inspected, and any other information that the Department may require to ensure public safety. A person who fails to comply with the request of the Department under this section shall be subject to a civil penalty under chapter 201 of this title. (Added 2017, No. 161 (Adj. Sess.), § 1.)

### **§ 1109. Marketability of title**

The failure of the person owning legal title to a dam or the owner of the land on which the dam is located to record a dam registration or a dam inspection report when required under this chapter or rules adopted under this chapter shall not create an encumbrance on record title or an effect on marketability of title for the real estate property or properties on which the dam is located. (Added 2017, No. 161 (Adj. Sess.), § 1.)

### **§ 1110. Rulemaking**

The Commissioner of Environmental Conservation shall adopt rules to implement the requirements of this chapter for dams under the jurisdiction of the Department. The rules shall include:

(1) a standard or regulatory threshold under which a dam is exempt from the registration or inspection requirements of this chapter;

(2) standards for:

(A) the siting, design, construction, reconstruction, enlargement, modification, or alteration of a dam;

(B) operation and maintenance of a dam;

(C) inspection, monitoring, record keeping, and reporting;

(D) repair, breach, or removal of a dam;

(E) application for authorization under section 1082 of this title; and

(F) the development of an emergency action plan for a dam, including guidance on how to develop an emergency action plan, the content of a plan, and when and how an emergency action plan should be updated;

(3) criteria for the hazard potential classification of dams in the State;

(4) a process by which a person owning legal title to a dam or a person owning the land on which the dam is located shall register a dam and record the existence of the dam in the lands records; and

(5) requirements for the person owning legal title to a dam or the person owning the land on which the dam is located to conduct inspections of the dam. (Added 2017, No. 161 (Adj. Sess.), § 1.)

#### **§ 1111. Natural resources atlas; dam status**

Annually on or before January 1, the Public Utility Commission shall submit to the Department updated inventory information from the previous calendar year for dams under the jurisdiction of the Public Utility Commission. (Added 2017, No. 161 (Adj. Sess.), § 1.)