

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 6 – Dams and Reservoirs

Article 1 - Supervision of Dams, Reservoirs and Projects

45-1201. Definitions

In this article, unless the context otherwise requires:

1. "Dam" means any artificial barrier, including appurtenant works for the impounding or diversion of water, twenty-five feet or more in height or the storage capacity of which will be more than fifty acre-feet but does not include:

(a) Any barrier that is or will be less than six feet in height, regardless of storage capacity.
(b) Any barrier that has or will have a storage capacity of fifteen acre-feet or less, regardless of height.

(c) Any barrier for the purpose of controlling liquid-borne material.

(d) Any barrier that is a release-contained barrier.

(e) Any barrier that is owned, controlled, operated, maintained or managed by the United States government or its agents or instrumentalities if a safety program that is at least as stringent as the state safety program applies and is enforced against the agent or instrumentality.

2. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation.

3. "Owner" includes any person or entity that owns, controls, operates, maintains, manages or proposes to construct or modify a dam.

4. "Person" means any person, firm, association, organization, partnership, business trust, corporation, company or district.

5. "Release-contained barrier" means any artificial barrier and appurtenant works that comply with both of the following:

(a) Has a storage capacity that in the event of failure would be contained within property that the release-contained barrier owner owns, controls, operates, maintains or manages.

(b) The property on which the release would be contained is not open to the public.

6. "Storage capacity" means the maximum volume of water that can be impounded by the reservoir when there is no discharge of water.

45-1202. Jurisdiction of director of water resources; records; rules; notice of exemption

A. All dams are under the jurisdiction of the director of water resources. Dams of the state, or any political subdivisions thereof, or dams of public utilities, and all dams within the state are included within the jurisdiction conferred by this section. It is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the director.

B. The records pertaining to dam supervision are public documents.

C. The director shall adopt and revise rules and issue general orders to effectuate this article.

D. To qualify for an exemption for a release-contained barrier, the owner of an existing or proposed release-contained barrier shall submit to the director a notice of exemption. The director shall accept or reject a notice of exemption within thirty days after receipt of both of the following:

1. A statement signed by the owner that:

(a) The storage capacity of the release-contained barrier would be contained within property that the release-contained barrier owner owns, operates, controls, maintains or manages and that is not open to the public.

(b) The release-contained barrier owner will maintain downstream containment structures or sites with sufficient containment throughout the useful life of the release-contained barrier.

2. A topographic site plan that shows:

(a) The property lines and ownership status of the land.

(b) Any areas of the property that are open to the public.

(c) The locations and storage capacities of the release-contained barrier and the downstream containment structures or sites.

E. The director may conduct site inspections to verify the release-contained barrier exemption.

45-1203. Approval by director of proposed dams or enlargements of existing dams; application for construction or enlargement

A. Construction of a dam or enlargement of an existing dam shall not be commenced until a written approval of plans and specifications has been obtained from the director.

B. A separate application for each dam shall be filed with the director upon forms provided by him, reciting the name and address of the owner or his agent, the location, type, size and height of the proposed dam and appurtenant works, the storage capacity of the reservoir, and such other information as the director requests. The application shall also set forth the area of the drainage basin, rainfall and stream flow records, flood flow records and estimates and other similar information required by the director. The director may require information concerning subsoil and foundation conditions and may require that the site be drilled or otherwise prospected.

C. When the physical conditions and the size of the dam do not require the information provided in subsection B, such information may be waived by the director.

D. The means, plans and specifications by which the stream or body of water is to be dammed, by-passed or controlled during construction shall be stated in the application, or such means, plans and specifications shall be submitted to the director for approval prior to beginning construction. The director shall have the same authority over the construction and maintenance of such means of damming, by-passing or controlling the stream or body of water during construction of the dam as he has over similar work on the dam itself.

E. The application shall further state the proposed time of beginning and completing construction, the estimated cost of construction, the use to which the impounded or diverted water is to be put, and shall be accompanied by maps, plans and specifications and state such details and dimensions as the director may require. The maps, plans and specifications shall be a part of the application.

F. Prior to the approval of plans and specifications, the director may require a surety company bond in an amount sufficient to secure the costs to the state in assuring the safety of any dam left partially constructed. The bond may be required only when the director questions the financial ability of the owner or contractor, or otherwise deems the bond advisable.

45-1204. Estimated cost of dam; application fees

A. The estimated cost of the dam or alterations thereof shall include the cost of all labor and materials entering into the construction of the dam and appurtenant works. The cost of preliminary investigation and surveys, the construction plant and all other items properly included in the cost of the dam shall be chargeable to the cost of the dam.

B. The director shall establish by rule and the department shall collect a reasonable filing fee which shall be based on the estimated cost of the dam but in no event shall the fee exceed two per cent of the estimated cost. The applicant shall pay the filing fee at the time of filing the application. The fee shall be required of all applicants including the state and its departments, institutions or agencies.

C. An application shall not be considered nor shall construction be permitted until the filing fee has been paid.

45-1205. Charges against irrigation projects; disposition of proceeds

A. Upon all projects for which approval is required by the state certification board, or which involve examination, supervision and inspection by the director, whether in connection with the construction of a dam or otherwise, the following shall be paid:

1. For irrigation projects of any kind involving twenty-five thousand acres or less, an annual tax levy of ten cents per acre shall be levied and collected.

2. For such irrigation projects in excess of twenty-five thousand acres, an annual tax levy of five cents per acre shall be levied and collected.

B. The levy shall be made only in the years required for construction of the project, and shall be made and collected in the same manner as provided for the levy and collection of taxes made for other

expenses of the particular district. Such collections shall be deposited, pursuant to sections 35-146 and 35-147, in the water resources fund established by section 45-117.

45-1206. Approval of repair, alteration or removal of dam

A. Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the director, except as otherwise provided by this article. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the director requires. The director may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the director and such information concerning the safety of any change he may require and shall state the proposed time of commencement and completion of the work. The application shall otherwise conform to the requirements of section 45-1203.

B. When repairs are necessary to safeguard life and property, they may be started immediately, but the director shall be notified forthwith of the proposed repairs and of work under way, and they shall be made to conform to his orders.

45-1207. Approval or disapproval of applications; commencing construction

A. Upon receipt of an application, the director shall approve, disapprove or approve subject to conditions necessary to insure safety.

B. A defective application shall not be rejected, but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within thirty days, the original shall be canceled unless further time is allowed.

C. No application shall be approved in less than ten days from its receipt, nor shall an application be retained more than sixty days after it is filed unless the director finds that additional information is necessary. An applicant may request that the director expedite the review of the application through the employment of an expert consultant on a contract basis pursuant to section 45-104, subsection D to assist the director in reviewing the application. If an applicant requests an expedited review of the application pursuant to this subsection and the director employs a consultant, the applicant shall pay to the department the cost of the consultant's services in addition to any other fees that the applicant is required to pay under this chapter.

D. If the director disapproves an application, one copy shall be returned with a statement of his objections. If an application is approved, the approval shall be attached to the application and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the director deems necessary to safeguard life and property.

E. Construction shall be commenced within one year after the date of approval of the application or such approval is void. The director upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given to the director at least ten days before construction is commenced.

45-1208. Inspections and investigations during construction; modifications; notice

A. During the construction, enlargement, repair, alteration or removal of a dam the director shall make such inspections, investigations or examinations as he deems necessary to enforce the provisions of his approval and the plans and specifications as approved. If thereafter as the work progresses the director believes amendments, modifications or changes are necessary to insure safety, he shall revise the approval.

B. If, during construction, reconstruction, repair, alteration or enlargement of any dam, the director finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, he shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The director may order that no further construction work be undertaken until such compliance has been effected and approved by the director. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided by this section.

45-1209. Notice of completion; license of final approval; removal of dam

A. Immediately upon completion or enlargement of a dam, notice of completion shall be given to the director. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the director which shall include:

1. A record of all grout holes and grouting.
2. A record of permanent location points and bench marks.
3. A record of tests of concrete or other material used in the construction of the dam.
4. A record of other items of permanent value bearing on safety and permanence of construction.

B. When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

C. The owner of a completed dam shall file an affidavit of the total cost of the dam comprised of items set forth in section 45-1204 and furnish such evidence in support thereof as the director requires. No license of final approval shall issue until the affidavit is filed. The completed dam shall be inspected by the director, and upon finding that the work has been done as required and that the dam is safe, the director shall issue a license of final approval forthwith, subject to such terms as the director deems necessary for the protection of life and property. In the event the total cost exceeds the estimated cost, the fee shall be recomputed in accordance with rules adopted pursuant to section 45-1204, subsection B. The owner shall pay the difference between the fee already paid and the recomputed fee.

D. Pending issuance of the license, the dam shall not be used except on written consent of the director, subject to conditions he may impose.

E. When a dam is removed the owner shall file with the director evidence showing that a sufficient portion has been removed to permit the free passage of floodwaters. Before final approval of the removal of the dam the director shall inspect the work to ascertain its safety.

45-1210. Petition for review

Except as otherwise provided in this article, a petition for review by a board of review of any approval, disapproval or order of the director concerning plans, specifications, construction or maintenance pertaining to any dam may be filed by the owner or applicant, or by three land owners whose property would be endangered by the failure of the dam.

45-1211. Time for filing petition; board of review

A. The petition for review shall be in writing and shall be filed with the director within ten days after issuance of the approval, disapproval or order of which complaint is made. Upon receipt of the petition, the director shall prepare a list of ten qualified experts. Within ten days the petitioner shall select three individuals from the list who shall then serve as the board of review. The board shall serve at the expense of the petitioners. Within thirty days from its designation, or within such further time as the director allows, the board shall report to the director and he shall forthwith affirm, change or modify the report, and his action shall be final and not subject to further review. No board of review shall be appointed to consider any action taken by the director relative to emergency regulation and control of a dam under section 45-1212 or action taken by the director under section 45-1221.

B. Pending examination, change or modification by the director, his approval, disapproval or order issued shall remain operative. Operations shall be suspended if an applicant or owner files a petition for a board of review unless the director orders work to proceed because of emergency conditions.

45-1212. Supervision over maintenance and operation; remedial measures; lien

A. Supervision over the maintenance and operation of dams to safeguard life and property is vested exclusively in the director. The director shall make complete inspections, require reports from owners or operators and issue rules and orders necessary to secure maintenance and operation of dams which will safeguard life and property.

B. If the director determines that the dam under consideration is dangerous to the safety of life and property, and that there is not sufficient time to issue and enforce an order relative to its maintenance or operation, or if the director believes that imminent floods threaten the safety of the dam under consideration, the director shall immediately employ remedial measures necessary to protect life and property. The director may spend monies from the dam repair fund established by section 45-1212.01 in employing remedial measures.

C. In applying remedial measures the director may lower the water level of a reservoir by releasing water impounded, may completely empty the reservoir, may destroy the dam or reservoir, or such portions as appear necessary, or may construct, reconstruct, repair or enlarge the dam and may exercise any other control of the dam, reservoir and appurtenances essential to safeguard life and property. The director shall remain in full charge and control of the dam, reservoir and appurtenances until they have been rendered safe or the emergency has terminated.

D. The costs and expenses of the control, regulation and abatement provided by this section, including costs of construction work done to render the dam, reservoir or appurtenances safe, shall constitute a lien against all property of the owner, and the lien shall be prior and superior to all other mortgages, liens or encumbrances of record. The lien shall have the force and effect of a mechanic's and materialman's lien and may be foreclosed at any time within two years.

E. The lien referred to in subsection D of this section may be perfected and foreclosed in advance of construction or repair or after completion of the repairs. If in advance, the lien shall be perfected by the filing of an affidavit of the director setting forth the estimate of the costs of construction or repair with the county recorder in the county in which the dam is located in the same manner as prescribed for mechanics' liens in title 33, chapter 7, article 6 and may be foreclosed in the same manner as a mechanic's and materialman's lien. When the affidavit is filed, the amount set forth in the affidavit shall be a lien in such amount against all property of the owner. If the actual cost of construction or repair exceeds the estimated cost, the director may amend the affidavit setting forth the additional estimated cost. If the estimated cost exceeds the actual costs of construction or repair at completion, the director shall file an amended affidavit at completion. If a lien is perfected in advance and the construction or repair is not commenced within two years from the date of perfection, the lien shall be void. The director shall file a satisfaction of lien upon payment of the costs of construction or repair by the owner.

F. Monies collected in full or partial satisfaction of a lien created pursuant to subsection D of this section shall be deposited in the dam repair fund established by section 45-1212.01.

45-1212.01. Dam repair fund

A. The dam repair fund is established consisting of monies appropriated by the legislature, and monies collected by the director in full or partial satisfaction of a lien created by section 45-1212, subsection D and monies collected pursuant to section 45-1220.

B. Monies in the fund shall be used to carry out the purposes of this chapter.

C. The director shall annually report to the legislature on the status of the fund and the purposes for which monies were expended during the preceding calendar year. The report shall be submitted pursuant to section 41-1178 no later than fifteen days after the commencement of each regular session.

D. The director shall administer the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the dam repair fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

45-1213. Inspection upon complaint

Upon receipt of a written complaint that the person or property of the complainant is endangered by any dam, the director shall inspect such dam unless his records disclose that the complaint is without merit. If the complainant insists upon an inspection and deposits with the director an amount sufficient to cover costs of inspection, the inspection shall be made. If an unsafe condition is found, the director shall cause it to be corrected, and the deposit shall be returned. If the complaint was without merit the deposit shall be paid into the general fund.

45-1214. Investigations for review of design and construction

The director shall make investigations and assemble data for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and shall make watershed investigations to facilitate decisions on public safety. The director or his representatives may enter upon private property for such purposes.

45-1215. Liabilities of state and owners of dam in action for damages

A. No action shall be brought or maintained against the state, or any of its departments, agencies or officials thereof, or any of their employees or agents, for damages sustained through the partial or total failure of any dam or its maintenance by reason of control and regulation thereof by any of them pursuant to duties imposed upon them under the provisions of this chapter.

B. Nothing in this article shall relieve any owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation.

45-1216. Violations; classification

A. It is unlawful for an owner, director, officer, agent, employee, contractor or his agents to construct, reconstruct, repair, enlarge, alter or remove a dam without an approval as provided in this chapter, or contrary to an approval issued. It is unlawful for the agents or employees of the director to permit such work to be done without immediately notifying the director.

B. A person who violates this article, except as otherwise provided, is guilty of a class 2 misdemeanor, and each day such violation continues constitutes a separate offense.

45-1217. Action and procedures to restrain violations

A. The director may take any legal action proper and necessary for the enforcement of this chapter.

B. An action or proceeding under this section may be commenced whenever any owner or any person acting as a director, officer, agent or employee of any owner, or any contractor or agent or employee of such contractor is:

1. Failing or omitting or about to fail or omit to do anything required of him by this chapter or by any approval, order, rule, regulation or requirement of the director under the authority of this chapter; or

2. Doing or permitting anything or about to do or permit anything to be done in violation of or contrary to this chapter or any approval, order, rule, regulation or requirement of the director under this chapter; or

3. In the opinion of the director, in any manner in violation of this chapter.

C. Any action or proceeding under this section shall be commenced in a court of appropriate jurisdiction in which:

1. The cause or some part thereof arose; or

2. The owner or person complained of has his principal place of business; or

3. The person complained of resides.

45-1218. Dam repair loans

A. The director may grant loans from the dam repair fund to dam owners to defray the costs of repairing dams which the director determines to be dangerous to the safety of life and property but which are not in an emergency condition. Loans shall be granted on such terms and conditions as may be imposed by the director.

B. The loans granted by the director shall be for a term of not more than twenty years.

C. The loans shall bear interest at the following rates:

1. If the loan is for a term of not more than five years, the rate is three per cent per year.

2. If the loan is for a term of more than five years but not more than ten years, the rate is five per cent per year.

3. If the loan is for a term of more than ten years, the rate is six per cent per year.

D. Each loan shall be evidenced by a contract between the dam owner and the director, acting on behalf of this state. The contract shall provide for the loan by this state of a stated amount to defray some or all of the costs of repairing the dam. The contract shall provide for equal annual payments of principal and interest for the term of the loan.

E. The attorney general may commence whatever actions are necessary to enforce the contract and achieve repayment of loans provided by the director pursuant to this section.

45-1219. Dam repair grants

The director may provide grants from the dam repair fund to dam owners to defray the costs of repairing dams which the director determines to be dangerous to the safety of life and property but which are

not in an emergency condition. Grants shall be provided on such terms and conditions as may be imposed by the director and may be in addition to loans granted under section 45-1218.

45-1220. Deposit of monies; dam repair fund

A. Monies appropriated by the legislature for nonemergency dam repair, dam safety inspection fees collected pursuant to section 45-113, filing fees collected pursuant to section 45-1204 and payments of principal and interest collected by the director pursuant to section 45-1218 shall be deposited in the dam repair fund established by section 45-1212.01.

B. Monies in the dam repair fund deposited pursuant to subsection A of this section shall be used for loans and grants as provided in sections 45-1218 and 45-1219 to carry out the purposes of this chapter.

45-1221. Cease and desist order; temporary cease and desist order; hearing; injunctive relief

A. Except as provided by subsection B of this section, if the director has reason to believe that a person is violating or has violated a provision of this article or a license, rule or order issued or adopted pursuant to this article, the director may give the person written notice that the person may appear and show cause at an administrative hearing not less than thirty days from the date of service of the notice why the person should not be ordered to cease and desist from the violation. The notice shall inform the person of the date, time and place of the hearing and the consequences of failure to appear.

B. If the director finds that a person is constructing, reconstructing, enlarging, repairing, altering, removing or using a dam without having first obtained the necessary approval of the director, the director may issue a temporary order for the person to cease and desist the construction, reconstruction, enlargement, repair, alteration, removal or use pending final action by the director pursuant to subsection C of this section. The order shall include written notice to the person of the date and time when and place where the person may appear at an administrative hearing to show cause why the temporary order should be vacated. The hearing shall be held within fifteen days of the date of the order unless the person consents to a longer period.

C. The decision and order of the director under subsections A and B of this section may take such form as the director determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The person affected may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the violation is alleged to have occurred.

D. If the person continues the violation after the director has issued a final decision and order pursuant to subsection C of this section or a temporary order pursuant to subsection B of this section, the director may apply for a temporary restraining order or preliminary or permanent injunction from the superior court according to the Arizona rules of civil procedure. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

E. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

45-1222. Violation; civil penalties

A. A person who is determined pursuant to section 45-1221 to be in violation of this article or a license, rule or order issued or adopted pursuant to this article may be assessed a civil penalty in an amount not exceeding one thousand dollars per day of violation.

B. The director shall bring an action to recover penalties under this section in the superior court in the county in which the violation occurred.

C. In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or wilful, the past conduct of the defendant, whether the defendant should have been on notice of the violation, whether the defendant has taken steps to cease, remove or mitigate the violation and any other relevant information.

D. All penalties collected pursuant to this section shall be deposited in the state general fund.

45-1223. Stay of director's decision; precedence of actions for judicial review

A. A decision of the director shall not be stayed pending an action for judicial review, except that the judge to whom the action for judicial review has been assigned may stay the decision of the director with or without bond on a showing of good cause. In determining if good cause exists under the circumstances, the court may consider whether:

1. The public interest will be adversely affected by a stay.
2. The stay will harm others.
3. There is a high probability that the appellant will succeed on the merits.
4. The appellant will suffer irreparable harm before a decision on the merits can be rendered.

B. For the benefit of the people of this state, actions for judicial review under this article have precedence, in every court, over all other civil proceedings.

C. The final decision of the superior court is appealable in the same manner as in civil actions generally and shall be governed by the rules of appellate procedure.