

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 10.1-603.19, 10.1-604.1, 10.1-605, 10.1-605.3, 10.1-606.2, 10.1-606.3, 10.1-607, 10.1-608, 10.1-609, 10.1-612.1, and 10.1-613.6 of the Code of Virginia and to repeal § 10.1-613.2 of the Code of Virginia, relating to Dam Safety, Flood Prevention and Protection Assistance; Dam Safety Act; powers and duties of the Department of Conservation and Recreation; rights and requirements of dam owners; civil penalty.

[H 2000]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.19, 10.1-604.1, 10.1-605, 10.1-605.3, 10.1-606.2, 10.1-606.3, 10.1-607, 10.1-608, 10.1-609, 10.1-612.1, and 10.1-613.6 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-603.19. Purposes for which Fund is to be used; Authority to set terms and conditions of loans.

A. The Director may make grants or loans to any local government for the purpose of assisting the local government in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies.

B. The Director may expend from the Fund up to \$50,000 annually for cost share with federal agencies in flood protection studies of statewide or regional significance.

C. The Director may, in order to protect public safety and welfare, make (i) grants or loans to a local government that owns a dam, to a local government for a dam located within the locality, or to a private entity that owns a dam for the design, repair, and the safety modifications of such a dam if it is identified in a safety report generated pursuant to § 10.1-607 or 10.1-609 and (ii) grants to a local government or private entity for the determination of the hazard classification for impounding structures, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements, such as emergency action plan development *and inspection reports*.

D. The Director may, in order to reduce dam owner expenses associated with hazard classification, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements, such as emergency action plan development *and inspection reports*, expend moneys from the Fund to employ staff or to directly contract for these services. The Director may establish a fee to be paid by the dam owner to offset a portion of these services. Such fee shall not exceed 50 percent of the cost incurred by the Department.

E. The Director may, in order to protect people at risk from a dam failure and to assist dam owners, localities, and emergency responders, expend moneys from the Fund to maintain a statewide dam failure early warning system in cooperation with the Department of Emergency Management and the U.S. National Weather Service.

F. The total amount of expenditures for grants in any fiscal year shall not exceed 50 percent of the total noninterest or income deposits made to the Fund during the previous fiscal year, together with the total amount collected in interest or income from the investment of moneys in the Fund from the previous fiscal year as determined at the beginning of the fiscal year.

G. Any grants made from the Fund *pursuant to clause (i) of subsection C* shall require a ~~50~~ 30 percent project match by the applicant. Any loans made from the Fund *for such activities or for engineering requirements needed to complete such activities included in clause (i) of subsection C* shall require a minimum of a 10 percent project match by the applicant.

H. *Any grants made from the Fund pursuant to clause (ii) of subsection C shall require no more than a 10 percent match by the applicant except that the applicant shall be required to provide a minimum of \$5,000 of the cost of the project, if funded. The match provided by the applicant may be used to pay the application fees for the necessary impounding structure operation and general permit pursuant to § 10.1-605.3 or maintenance certificate.*

I. Except as otherwise provided in this article, moneys in the Fund shall be used solely to make loans or grants to local governments or private entities to finance or refinance the cost of a project. The local government or private entity to which loans or grants are made, the purposes of the loan or grant, the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be from the Fund, at the Director's discretion, to a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of dam or impounding structure deficiencies, as required by the Department, provided that the moneys are to be used

only for the program and that the dams or impounding structures to be repaired or upgraded are owned by private entities.

4. J. Except as otherwise provided in this article, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between different loans and between local governments and private entities to finance or refinance the cost of a project. Each loan shall be evidenced by appropriate bonds or notes of the local government or by the appropriate debt instrument for private entities payable to the Fund. Private entities shall duly authorize an appropriate debt instrument and execute same by their authorized legal representatives. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority may require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, covenants, conditions, and other information as it may deem necessary or convenient to further the purpose of the loan. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or private entity receiving the loan covenant to perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees, or charges;

2. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the borrower, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

4. Create and maintain other special funds as required by the Authority;

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default by the borrower in payment of the loan, including, without limitation, any of the following:

- a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein;

- b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

- c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund borrower made in connection with such combination or any part or parts thereof;

- d. The maintenance, replacement, renewal, and repair of the project; and

- e. The procurement of casualty and liability insurance;

6. Obtain a review of the accounting and internal controls from the Auditor of Public Accounts or his legally authorized representatives, as applicable. The Authority may request additional reviews at any time during the term of the loan. In addition, anyone receiving a report in accordance with § 10.1-603.23 may request an additional review as set forth in this section; and

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default, as applicable.

All local governments or private entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this article. Such contracts need not be identical among all local governments or private entities but may be structured as determined by the Authority according to the needs of the contracting local governments or private entities and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

§ 10.1-604.1. Determination of hazard potential classification.

A. The hazard potential classification for an impounding structure shall be determined by one of the following procedures:

1. The owner of an impounding structure that does not currently hold a regular or conditional certificate from the Board or general permit in accordance with § 10.1-605.3, or the owner of an impounding structure

that is already under certificate *or general permit in accordance with § 10.1-605.3* but the owner believes that a condition has changed downstream of the impounding structure that may reduce its hazard potential classification, may request that the Department conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification. The owner shall pay 50 percent of the cost of the analysis. If the Department finds that the impounding structure has a low hazard potential classification, the owner shall be eligible for general permit coverage in accordance with § 10.1-605.3. If the Department finds that the impounding structure appears to be a high or significant hazard potential structure, the owner's engineer shall provide further analysis in accordance with § 10.1-606.2 and the criteria set out in the Impounding Structure Regulations (4VAC50-20). The owner may be eligible for grant assistance in accordance with § 10.1-603.19.

2. The owner may propose a hazard potential classification that shall be subject to approval by the Board. To support the proposed hazard classification, an analysis shall be conducted by the owner's engineer and shall comply with the criteria set out in the Impounding Structure Regulations (4VAC50-20). If the engineer finds that the impounding structure has a low hazard potential classification, the owner shall be eligible for general permit coverage in accordance with § 10.1-605.3.

An impounding structure's hazard potential classification's determination shall include an analysis of those hazards created by flood and nonflood dam failures. In conducting the hazard potential classification, the Department or the owner's engineer may utilize an incremental damage analysis. When considering the failure of the impounding structure under a flood condition, such engineers shall only consider those hazards that exceed those created by the flood event.

B. Any owner aggrieved by a decision of the Department regarding his impounding structure shall have the right to judicial review of the final decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board may adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis.

§ 10.1-605. Promulgation of regulations by the Board; guidance document.

A. The Board shall adopt regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated. Dam safety regulations promulgated by the State Water Control Board shall remain in full force until amended in accordance with applicable procedures.

B. The Board's Impounding Structure Regulations shall not require any impounding structure in existence or under a construction permit prior to July 1, 2010, that is currently classified as high hazard, or is subsequently found to be high hazard through reclassification, to upgrade its spillway to pass a rainfall event greater than the maximum recorded within the Commonwealth, which shall be deemed to be 90 percent of the probable maximum precipitation.

1. Such an impounding structure shall be determined to be in compliance with the spillway requirements of the regulations provided that (i) the impounding structure will pass two-thirds of the reduced probable maximum precipitation requirement described in this subsection and (ii) the dam owner certifies annually and by January 15 that such impounding structure meets each of the following conditions:

a. The owner has a current emergency action plan that is approved by the Board and that is developed and updated in accordance with the regulations;

b. The owner has exercised the emergency action plan in accordance with the regulations and conducts a table-top exercise at least once every two years;

c. The Department has verification that both the local ~~organization~~ *coordinator* for emergency management and the Virginia Department of Emergency Management have on file current emergency action plans and updates for the impounding structure;

d. That conditions at the impounding structure are monitored on a daily basis and as dictated by the emergency action plan;

e. The impounding structure is inspected at least annually by a professional engineer and all observed deficiencies are addressed within 120 days of such inspection;

f. The owner has a dam break inundation zone map developed in accordance with the regulations that is acceptable to the Department;

g. The owner is insured in an amount that will substantially cover the costs of downstream property losses to others that may result from a dam failure; and

h. The owner shall post the dam's emergency action plan on his website, or upon the request of the owner, the Department or another state agency responsible for providing emergency management services to citizens agrees to post the plan on its website. If the Department or another state agency agrees to post the plan on its website, the owner shall provide the plan in a format suitable for posting.

2. A dam owner who meets the conditions of subdivisions 1 a through 1 h, but has not provided record drawings to the Department for his impounding structure, shall submit a complete record report developed in accordance with the construction permit requirements of the Impounding Structure Regulations, excluding the required submittal of the record drawings.

3. A dam owner who fails to submit certifications required by subdivisions 1 a through 1 h in a timely

fashion shall not enjoy the presumption that such impounding structure is deemed to be in compliance with the spillway requirements of the Board's Impounding Structure Regulations (4VAC50-20).

4. Any dam owner who has submitted the certifications required by subdivisions 1 a through 1 h shall make (i) such certifications, (ii) the emergency action plan required by subdivision 1 a, and (iii) the certificate of insurance required by subdivision 1 g available, upon request and within five business days, to any person. A dam owner may comply with the requirements of this subdivision by providing the same information on a website and directing the requestor to such website. A dam owner who fails to comply with this subdivision shall be subject to a civil penalty pursuant to § ~~10.1-613.2~~ 10.1-609.

C. The Board's regulations shall establish an incremental damage analysis procedure that permits the spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure shall not significantly increase downstream hazard to life or property, provided that the spillway design flood requirement shall not be reduced to below the 100-year flood event for high or significant hazard impounding structures, or to below the 50-year flood event for low hazard potential impounding structures.

D. The Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure.

§ 10.1-605.3. General permit for certain impounding structures.

A. The Board shall develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605.

B. The regulations shall include the following:

1. A registration statement requiring:

- a. The name and address of the owner;
- b. The location of the impounding structure;
- c. The height of the impounding structure;
- d. The volume of water impounded; ~~and~~

e. The results of a safety inspection conducted by a licensed professional engineer consistent with § 10.1-607 upon initial application for a permit or, for a newly constructed impounding structure, a complete records report as required in the Impounding Structure Regulations (4VAC50-20-70) for a construction permit; and

f. A certification from the owner that the impounding structure (i) is classified as low hazard pursuant to a determination by the Department or the owner's professional engineer in accordance with § 10.1-604.1; (ii) is, to the best of his knowledge, properly and safely constructed ~~and~~; (iii) currently has no observable deficiencies or, if deficiencies exist, such deficiencies shall be corrected in a timeframe and manner acceptable by the Department; and ~~(iii)~~ (iv) shall be maintained and operated in accordance with the provisions of the general permit.

2. A spillway design flood requirement of the 100-year flood. When ~~appropriate~~ no critical infrastructure, as defined in § 44-146.28:2, public highway, or any access to a public utility, as defined in § 56-232, is determined to be within the dam break inundation zone, the spillway design flood requirement may be reduced to the 50-year flood in accordance with an incremental damage analysis if approved by the Department.

3. A simplified emergency preparedness plan that provides:

- a. Name and location information for the impounding structure;
- b. Name of owner and operator and associated contact information;
- c. Contact information for relevant emergency responders;
- d. Procedures for notifying downstream property owners or occupants; and
- e. Identification of any downstream roadways that would be impacted by a failure.

4. An annual inspection of the impounding structure by the owner. No inspection of the impounding structure by a licensed professional engineer shall be required if the owner certifies at the time of general permit coverage renewal that conditions at the impounding structure and downstream are unchanged.

5. Procedures for seeking and issuing coverage under the general permit.

6. A six-year term of coverage under the general permit after which time the owner shall reapply for coverage by filing a new registration statement. The Board may, by regulation, establish a fee for the processing of registration statements.

C. The owner shall notify the Department immediately of any change in circumstances that would cause the impounding structure to no longer qualify for coverage under the general permit. In the event of a failure or an imminent failure at the impounding structure, the owner shall immediately notify the local emergency services management coordinator, the Department of Emergency Management, and the Department. The Department shall take actions in accordance with § 10.1-608 or 10.1-609, depending on the degree of hazard and the imminence of failure caused by the unsafe condition.

D. Failure to comply with the provisions of the general permit may result in penalties assessed in accordance with §§ ~~10.1-609 and 10.1-613.1 and 10.1-613.2~~.

E. In order to qualify for the ~~provisions~~ protections of § 10.1-606.3, a dam owner eligible for a general

permit shall file a dam break inundation zone map with *or provide the limits of the inundation study in an acceptable electronic format to the Department and. The dam owner shall also file such dam break inundation zone map or such limits of the inundation zone in an acceptable electronic format with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality and the local emergency management coordinator as designated by the locality for each locality in which the dam break inundation zone resides in accordance with § 10.1-606.2.*

~~F. If the failure of a low hazard potential impounding structure~~ *The Board may establish reduced minimum performance and maintenance standards in a general permit for a low hazard potential impounding structure that is not expected to cause loss of human life or economic damage to any property except property owned by the owner; the owner may follow the special criteria established for certain low hazard impounding structures in the Impounding Structure Regulations (4VAC50-20) in lieu of coverage under the general permit if such impounding structure fails.*

§ 10.1-606.2. Mapping of dam break inundation zones.

A. An owner of an impounding structure shall prepare a map of the dam break inundation zone *or provide the limits of the dam break inundation zone in an acceptable electronic format for the impounding structure in accordance with criteria set out in the Virginia Impounding Structure Regulations (4VAC50-20). Existing maps prepared by the locality in accordance with these regulations may be used for this purpose.*

B. All maps *or limits of the inundation zone* prepared in accordance with subsection A shall be filed with the Department of Conservation and Recreation *and with, the local emergency management coordinator as designated by the locality, and the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides.*

C. Owners of impounding structures may be eligible for matching grants ~~of up to 50 percent~~ from the Dam Safety, Flood Prevention and Protection Assistance Fund and other sources of funding available to the Director to assist in the development of dam break inundation zone maps and for conducting incremental damage assessments in accordance with the Virginia Impounding Structure Regulations.

D. All properties identified within the dam break inundation zone shall be incorporated by the owner into the dam safety emergency action plan of that impounding structure so as to ensure the proper notification of persons downstream and other affected persons or property owners in the event of an emergency condition at the impounding structure.

§ 10.1-606.3. Requirement for development in dam break inundation zones.

A. For any development proposed within the boundaries of a dam break inundation zone that has been mapped in accordance with § 10.1-606.2, the locality shall, as part of a preliminary plan review pursuant to § 15.2-2260, or as part of a plan review pursuant to § 15.2-2259 if no preliminary review has been conducted, (i) review the dam break inundation zone map *or the limits of the dam break inundation zone* on file with the locality for the affected impounding structure, (ii) notify the dam owner, and (iii) within 10 days forward a request to the Department of Conservation and Recreation to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam. The Department shall notify the dam owner and the locality of its determination within 45 days of the receipt of the request. Upon receipt of the Department's determination, the locality shall complete the review in accordance with § 15.2-2259 or 15.2-2260. If a locality has not received a determination within 45 days of the Department's receipt of the request, the Department shall be deemed to have no comments, and the locality shall complete its review. Such inaction by the Department shall not affect the Board's authority to regulate the impounding structure in accordance with this article.

If the Department determines that the plan of development would change the spillway design flood standards of the impounding structure, the locality shall not permit development as defined in § 15.2-2201 or redevelopment in the dam break inundation zone unless the developer or subdivider agrees to alter the plan of development so that it does not alter the spillway design flood standard required of the impounding structure or he contributes payment to the necessary upgrades to the affected impounding structure pursuant to § 15.2-2243.1.

The developer or subdivider shall provide the dam owner and all affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.

The requirements of this subsection shall not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with *or the limits of the dam break inundation zone have not been provided to the locality as of the time of the official submission of a development plan to the locality.*

B. The locality is authorized to map the dam break inundation zone in accordance with criteria set out in the Virginia Impounding Structure Regulations (4VAC50-20) and recover the costs of such mapping from the owner of an impounding structure for which a dam break inundation zone map is not on file with *or the limits of the dam break inundation zone have not been provided to the locality and a map has not been prepared by the impounding structure owner.*

C. This section shall not be construed to supersede or conflict with the authority granted to the

Department of Energy for the regulation of mineral extraction activities in the Commonwealth as set out in Title 45.2. Nothing in this section shall be interpreted to permit the impairment of a vested right in accordance with § 15.2-2307.

§ 10.1-607. Safety inspections.

No one shall maintain a dam which unreasonably threatens the life or property of another. The Board shall cause safety inspections to be made of impounding structures on such schedule as it deems appropriate. The time of the initial inspection and the frequency of reinspection shall depend on such factors as the condition of the structure and its size, type, location and downstream hazard potential. The owners of dams found to have deficiencies which could threaten life or property if not corrected shall take the corrective actions needed to remove such deficiencies within a reasonable time. All safety inspections shall be conducted by or under the supervision of a licensed professional engineer. Each report shall bear the seal and signature of the licensed professional engineer responsible for the inspection. *If required by the Board in response to actions taken pursuant to § 10.1-608 or 10.1-609, each safety inspection report shall include any identified corrective actions, include a plan to implement such actions, and bear the seal and signature of the licensed professional engineer responsible for the inspection.*

The Board shall be responsible for the inspection and reinspection of flood control dams where the maintenance and operation of the dam is the responsibility of a soil and water conservation district and where the permit for operation of the impounding structure is held by such a district.

In response to any action taken pursuant to this section and § 10.1-608, the dam owner shall be responsible for ensuring that (i) the safety inspection of the impounding structure is conducted consistent with this section within 30 days of action being taken and (ii) the safety inspection report is provided to the Department within 30 days after the safety inspection is completed.

§ 10.1-608. Unsafe dams presenting imminent danger.

When the Director ~~finds~~ *determines that* an unsafe dam ~~constituting~~ *constitutes* an imminent danger to life or property, he shall immediately notify the Department of Emergency Management *and the local emergency management coordinator for the locality where the dam is located* and confer with the owner. The owner of a dam found to constitute an imminent danger to life or property shall take immediate corrective action. If the owner does not take appropriate and timely action to correct the danger found, the Governor shall have the authority to take immediate appropriate action, without the necessity for a hearing, to remove the imminent danger. *Upon receiving authority from the Governor to take such immediate appropriate action, the Department shall notify the locality in which the dam is located. If such locality is able and agrees to take appropriate and timely action to minimize the imminent danger on behalf of the Department, the Director may issue an administrative order to the locality defining the actions the locality is authorized to undertake on behalf of the Department and the terms and conditions applicable to the delegated actions.* The Attorney General may bring an action against the owner of the impounding structure for the Commonwealth's expenses in removing the imminent danger. There shall be a lien upon the owner's real estate for the Commonwealth's expenses in removing the imminent danger. The owner may avoid the Commonwealth's costs, and recover any damages, upon proving that the dam was known to be safe at the time such action was taken, and that the owner had provided or offered to immediately provide such proof to the Director before the action complained of was taken. Nothing herein shall in any way limit any authority existing under the Emergency Services and Disaster Law (§ 44-146.13 et seq.).

§ 10.1-609. Unsafe dams presenting nonimminent danger; civil penalty.

A. Within a ~~reasonable time~~ *30 days* after completion of a safety inspection of an impounding structure ~~authorized by the dam owner's licensed professional engineer in accordance with § 10.1-607, the Board shall issue a report to the owner of the impounding structure containing its findings and recommendations for correction of any deficiencies which could threaten life or property if not corrected. Owners who have been issued a report containing recommendations for correction of deficiencies shall undertake to implement the recommendations contained in the report according to the schedule of implementation contained in the report~~ *the owner shall submit to the Board a plan, consistent with regulations adopted pursuant to § 10.1-605, to address the recommendations for correcting any deficiencies found at the impounding structure and shall include a schedule for implementing such recommendations. The Board shall determine if the submitted plan and schedule are sufficient to address the deficiencies. If an owner fails or refuses to commence or diligently implement the recommendations for correction of deficiencies according to the schedule contained in an issued report the plan, the Director shall have the authority to issue an administrative order directing the owner to commence implementation and completion of such recommendations according to the schedule contained in the report plan with modifications as appropriate. Such order may include a civil penalty of up to \$500 per day, with the maximum amount not to exceed \$25,000. The civil penalty may be in addition to, or in lieu of, any other forfeitures, remedies, or penalties authorized by law. When setting the civil penalty amount, the Director shall consider (i) the nature, duration, and number of previous instances of failure by the dam owner to comply with requirements of law relating to dam safety and the Board's regulations and orders; (ii) the efforts of the dam owner to correct deficiencies or other instances of failure to comply with the requirements of law relating to dam safety and the Board's regulations and orders that are the subject of the*

proposed penalty; (iii) the cost of carrying out actions required to meet the requirements of this article and the Board's regulations and orders; (iv) the hazard classification of the dam; and (v) any other factors that the Department deems appropriate. The Director shall suspend the civil penalties if the dam owner complies with the administrative order and any conditions in the schedule of compliance contained in such order.

B. Within ~~thirty~~ 30 days after being served by personal service or by mail with a copy of an order issued pursuant to this section, any owner shall have the right to petition the Board for a hearing. ~~As part of his petition, a dam owner may submit to the Board his own plan, consistent with regulations adopted pursuant to § 10.1-605, to address the recommendations for correction of deficiencies and the schedule of implementation contained in the report. The Board shall determine if the submitted plan and schedule are sufficient to address deficiencies.~~ A timely filed petition shall stay the effect of the administrative order.

The hearing shall be conducted before the Board or a designated member thereof pursuant to § 2.2-4019. The Board shall have the authority to affirm, modify, amend or cancel the administrative order. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial review of the final Board decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

~~B.~~ C. The provisions of subsection A of this section notwithstanding, if the Director determines, after the ~~report~~ plan is issued submitted, that changed circumstances justify reclassifying the deficiencies of an impounding structure as an imminent danger to life or property, the Director may proceed directly under § 10.1-613 for enforcement of his order, and the owner shall have the opportunity to contest the fact based upon which the administrative order was issued.

~~C.~~ D. The Director, upon a determination that there is an unsafe condition at an impounding structure, is authorized to cause the lowering or complete draining of such impoundment until the unsafe condition has been corrected at the owner's expense and prior to any authorization to refill.

An owner who fails to comply with the provisions contained in an administrative order of the Department shall be subject to procedures set out in § 10.1-613 and the penalties authorized under ~~§§ § 10.1-613.1 and 10.1-613.2.~~

E. If any civil penalty has not been paid within 60 days after the Board's final decision or a court order has been served on the owner, the Board shall request the Attorney General to bring a civil action against such owner in an appropriate court for appropriate relief.

F. Civil penalties assessed under this section shall be paid into the Dam Safety, Flood Prevention and Protection Assistance Fund established in § 10.1-603.17 and be used for the administration of the dam safety program, including for the repair and maintenance of impounding structures.

~~D.~~ G. No persons, other than those authorized to maintain an impounding structure, shall interfere with the operation of an impounding structure.

§ 10.1-612.1. Temporary stop work order; hearing; injunctive relief.

A. The Director may issue a temporary stop work order on a construction or alteration project if he finds that an owner is constructing or altering a dam without having first obtained the necessary certificate of approval, or if the activities are not in accordance with approved plans and specifications. The order shall include written notice to the owner of the date, time, and location where the owner may appear at a hearing before the Board or a designated member thereof pursuant to § 2.2-4019 to show cause why the temporary order should be vacated. The hearing shall be held within ~~15~~ 30 calendar days of the date of the order, unless the owner consents to a longer period.

B. Following the hearing, the Board may affirm or cancel the temporary order and may issue a final order directing that immediate steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner may seek judicial review of the final decision of the Board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. If the violation continues after the Board has issued a final decision and order pursuant to subsection B or a temporary order issued by the Director pursuant to subsection A, the Board may apply for an injunction from the appropriate court. A decision to seek injunctive relief does not preclude other forms of relief, enforcement, or penalties against the owner.

§ 10.1-613.6. Negotiated settlement agreements.

With the consent of any owner of an impounding structure who has allegedly violated or failed, neglected, or refused to obey any regulation or order of the Board, any condition of a permit, or any provision of this chapter, the Board may enter into a negotiated settlement agreement with such owner, so long as the impounding structure or dam is not subject to the provisions of § 10.1-609, to correct deficiencies at the structure according to the schedule of implementation appended to the negotiated settlement agreement and for the payment of civil charges for past alleged violations in specific sums not to exceed the limit specified in ~~§ 10.1-613.2~~ 10.1-609. Such civil charges shall be suspended upon compliance with the terms and conditions of the negotiated settlement agreement as determined by the Director. Such civil charges shall be ~~instead of any appropriate civil penalty that could be imposed under § 10.1-613.2 and shall be paid into the Dam Safety, Flood Prevention and Protection Assistance Fund established by Article 1-2 (§ 10.1-603.16 et seq.) in § 10.1-603.17.~~

2. That § 10.1-613.2 of the Code of Virginia is repealed.