CHAPTER 11

Dams

ARTICLE 1

General Provisions

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

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

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

CROSS REFERENCES

Obstructing streams, generally, see Section 49‑1‑30.

Permitting logs and the like to obstruct or interfere with navigation of rivers or harbors, see Section 49‑1‑40.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

NOTES OF DECISIONS

In general 1

Actionable injuries 5

Construction 2

Quantity of water permissible to flow over dam 4

Standard of care and nature of duty 3

1. In general

Section 49‑11‑10 was violated where, without the landowner’s consent, a dam operator’s actions resulted in the elevation of the river about 6 feet at the landowner’s lower property line, necessarily flooding an appreciable part of her property and causing her damage. Cooley v. Clifton Power Corp. (C.A.4 (S.C.) 1984) 747 F.2d 258. Water Law 1426

The following principles of law may be taken as well established: (1) that the defendant had the right to erect and maintain its dam at the place where it was constructed and to impound the water therein to the full height of the dam; (2) that it had, in case of a flood or unusual high water, the right to permit floodwaters to pass through or over the dam in such quantities as flowed into it; (3) that they had no right, after having impounded the water, to release it in larger quantities than were then flowing into it from above, thereby adding to the normal flow of waters so released by this act in raising the floodgate; (4) that if, in addition to the normal flow, defendant, by suddenly releasing large quantities of water in addition to the floodwater then coming into its dam, caused damage to the plaintiff, either solely by the water so released, or concurrently with the floodwater which was going down, it is liable for such damage. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

Quoted in Lampley v. Atlantic Coast Line R. Co. (S.C. 1905) 71 S.C. 156, 50 S.E. 773.

Cited in Baltzeger v. Carolina Midland Ry. Co. (S.C. 1899) 54 S.C. 242, 32 S.E. 358, 71 Am.St.Rep. 789.

Stated in Brisbane v. O’Neall (S.C. 1849).

2. Construction

If dam operator stops course of any waters so as to overflow lands of another person, Section 49‑11‑10 is violated; statute receives literal construction, and flooding of another’s land constitutes violation even where flooding does not exceed natural river banks; statute requires explicit inquiry whether dam operator has obtained consent of landowner prior to elevating natural flow of river; purpose of Section 49‑11‑10 is to prevent downstream dam owner from constructively appropriating property of upstream owners. Cooley v. Clifton Power Corp. (C.A.4 (S.C.) 1984) 747 F.2d 258.

The first portion of this section is designed to protect upstream owners from constructive appropriation of property by a dam owner by backing waters upon their lands. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

The latter portion of this section relates to damages of downstream property from the discharge of impounded water. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

3. Standard of care and nature of duty

The proprietor of a dam which has been lawfully constructed and maintained is not an insurer of the safety thereof, but is required to exercise ordinary care in the maintenance and operation thereof to avoid injury to others. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

The owner of a dam is not responsible for injuries occasioned by causes which could not reasonably be anticipated or guarded against. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

The owner of a dam is not bound to anticipate unprecedented storms or rainfalls. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319; Water Law 1428

The owner of a dam is not liable for damages resulting from extraordinary storms and floods. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

In determining whether the owner of a dam has failed to exercise ordinary care to protect the rights of a lower riparian owner, due regard must be had for his correlative duty to protect upper riparian owners against any undue retardation of the floodwater. The owner must pay due regard to the rights of the upper, as well as of the lower, riparian owner. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319

There is no duty imposed upon an owner to utilize his lake as a catch basin to prevent natural stream flow from passing downstream any less quantity than was received. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1322

A power company is required to exercise ordinary care in anticipating flood conditions from an ordinary freshet such as might be reasonably expected or foreseen and to use reasonable care in the manipulation thereof and in guarding against any undue acceleration or retardation of the floodwater. It may be held accountable for any damages for its failure to exercise such care. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

4. Quantity of water permissible to flow over dam

The owner of a dam may permit floodwaters to flow over its dam in such quantities as naturally flow into its reservoir, and such owner is only under a duty not to worsen the conditions of the downstream owner; and he is under no duty to improve that situation by using his dam for flood control. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

The owner of a dam may permit water to flow from the dam if the waters coming to the dam are neither accelerated in speed or increased in quantity, so long as ordinary care is exercised in the discharging of the water ponded behind the dam. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319; Water Law 1740

A dam owner may rightfully permit floodwaters to pass over the dam in such quantities as flow into it. But a limitation on this right is that the water accumulated behind the dam must be discharged with ordinary care, or the owner will be liable for the resulting injuries. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319

There was no liability on the part of the dam operator where no more water was passed downstream than came into its pond. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

A dam owner is not liable where he has not augmented the flow beyond that which would have occurred in the absence of the dam. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319

Under the applicable common‑law principles, the only obligation imposed upon a dam operator in the operation of his dam is not to worsen conditions downstream beyond what would have occurred in the absence of the dam. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1319

5. Actionable injuries

It may be that when a dam is first built that it will not injuriously affect land some distance from it, and for a long time there will be no cause for parties to complain, but when the pond made by the dam fills with mud, sand, trash, and other things, causes overflows and injury to lands, then the parties injured have a cause of action if the building and maintenance of the dam is the direct and proximate cause of their injury. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

Where the negligence of the defendant in the operation of its plant during unprecedented and unforeseeable storm or rainfall is a contributing factor in producing injury—that is when the injury resulted from a combination of the defendant’s negligence acting in concert with some natural force, such as an unprecedented storm—the defendant is not relieved from liability, since an act of God which exculpates the owner of a dam must be such an act as constitutes the sole cause of the injury. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389.

An actionable injury arises when the consequence of the detention of water by a dam is the flooding of the lands of owners either upstream or downstream. Key Sales Co. v. South Carolina Elec. & Gas Co. (D.C.S.C. 1968) 290 F.Supp. 8, affirmed 422 F.2d 389. Water Law 1327; Water Law 1756

**SECTION 49‑11‑20.** Persons may not keep water on other’s lands.

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

ARTICLE 3

Dams and Reservoirs Safety Act

**SECTION 49‑11‑110.** Short title.

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

**SECTION 49‑11‑120.** Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 49‑11‑130.** Declaration of purpose.

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

**SECTION 49‑11‑140.** General duties of department.

The authority for the safe maintenance of the dams and reservoirs of this State and the powers of inspection and certification provided in this article are the responsibility of the department. The department may employ engineers and technicians it considers necessary to implement this article for which appropriations are available.

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

(a) is or has become unsafe and is dangerous to life or property;

(b) is not maintained in good repair or operating condition; or

(c) is not maintained or operated in accordance with the terms and conditions of the certificate of completion and operation issued by the department.

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

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

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

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

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

**SECTION 49‑11‑180.** Voluntary compliance; time extensions.

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

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

(2) empty the reservoir completely;

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

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

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

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

CROSS REFERENCES

Exception from right of appeal for orders or decisions in cases of emergency, see Section 49‑11‑260.

Liability of dam owner or operator for failure to act generally, see Section 49‑11‑250.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

CROSS REFERENCES

Tax credits for construction and installation or restoration of water impoundments and water control structures, see Section 12‑6‑3370.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

CROSS REFERENCES

Tax credits for construction and installation or restoration of water impoundments and water control structures, see Section 12‑6‑3370.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

CROSS REFERENCES

Licensing of engineers, see Section 40‑22‑10 et seq.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

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

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

CROSS REFERENCES

Dams and Reservoirs Safety Act regulations, see S.C. Code of Regulations R. 72‑1 et seq.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

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

CROSS REFERENCES

Liability of dam owner when Commission takes emergency action to protect life or property, see Section 49‑11‑190.

Library References

Waters and Water Courses 167.

Westlaw Topic No. 405.

C.J.S. Waters Section 314.

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

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

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

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

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

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

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

CROSS REFERENCES

State Administrative Procedures Act, see Sections 1‑23‑310 et seq.

Library References

Waters and Water Courses 167, 211.

Westlaw Topic No. 405.

C.J.S. Waters Sections 314, 483, 739.