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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

OFFICE OF ENGINEERING AND CONSTRUCTION

Dam Safety Standards

Proposed Amendments: N.J.A.C. 7:20-1.7 and 1.9

Proposed New Rules: N.J.A.C. 7:20-1.12, 1.13, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, and 2.9

Authorized By: Lisa P. Jackson, Commissioner
Department of Environmental Protection

Authority: N.J.S.A. 58:4-1 et seq. and
N.J.S.A. 13:1 D-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 22-07-10/564

Proposal Number: PRN

Submit written comments by (60 days after publication) to:

Oneida Cuevas, Esq.
Attention: Docket Number: 22-07-10/564
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street
PO Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that comments be submitted on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™

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formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed new rules and amendments to existing rules can be viewed or downloaded from the Department's website at <http://www.state.nj.us.dep>.

The agency proposal follows:

Summary

The Dam Safety Standards rules implement the Safe Dam Act, N.J.S.A. 58:4-1 et seq. and govern the design, construction, inspection, operation, maintenance, modifications and repair of dams in New Jersey which raise the water height of a stream by more than five feet. Certain dams in the pinelands area are exempt from these rules so long as they do not pose a security or safety concern (see N.J.S.A. 58:4-1). The primary objective of these rules is to ensure the protection of areas below dams from the consequences of the dams' failure. Dams and their appurtenant structures are required to be inspected and maintained on a regular basis in order to determine if repairs or modifications are necessary to protect life and property.

The Department regulates dams based upon their hazard classification, as identified in N.J.A.C. 7:20-1.8, and size. Hazard potential is divided into three classes: Class I, high hazard; Class II, significant hazard; and Class III, low hazard. The hazards pertain to the potential harm to human beings or the property in areas downstream of the dam. The hazard classifications dictate the design requirements which applicants must meet. The higher the hazard, the more stringent the design criteria. These rules also establish Class IV dams, which are defined as small dams. The construction of Class IV

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dams does not require that a permit be obtained for construction but the dam must be designed in accordance with the rules.

As a result of the severe flooding and numerous dam failures in Burlington County in July 2004, it became evident that the Department lacked the necessary tools to efficiently enforce the provisions of the Safe Dam Act and the rules. Recognizing this need, the New Jersey State Legislature enacted revisions to the Safe Dam Act (P.L. 2005 c. 228) to provide for strengthened enforcement. To address the provisions of this legislation, the Department is proposing amendments to the rules regarding enforcement and penalties in accordance with the amended Act as well as other non-enforcement amendments. For purposes of this regulation, the statutory amendment establishes civil administrative order and penalty assessment in an amount of up to \$25,000 per day for violations of the Act, and for violations of regulations or orders issued pursuant to the Act. The statutory amendment also permits the Department to enter onto a property to alleviate the hazard, remove a dam where dam failure is imminent, or where there is reasonable cause to believe that danger to life or property may be anticipated, and when the dam owner or operator has not complied with the Department's order to repair the dam.

The Department is also proposing non-enforcement amendments that include a change regarding seepage control along conduits to reflect current dam safety technology and is making modifications to the rules regarding the submittal requirements for dam removal projects. The Department is also proposing two new sections to clarify the Department's authority to enter any property, facility, premise, or site to determine compliance with the provisions of the Safe Dam Act and to require that dam owners

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provide information to the Department as necessary to determine compliance with any provision of the Safe Dam Act.

The following is a summary of the proposed new rules and amendments to existing rules.

The Department is proposing to amend N.J.A.C. 7:20-1.7(a) by cross-referencing the correct subsection and by including a reference to permits to remove a dam. This proposed amendment will allow the Department flexibility in waiving documentation requirements for dam removal projects when it is determined that such documentation would serve no useful benefit to the review of the design of the dam removal project.

The Department is proposing to amend N.J.A.C. 7:20-1.9(g)4 to reflect recent design technologies regarding the control of seepage along conduits from use of anti-seep collars to drainage filters. The use of drainage filters will make it possible for dams to be better constructed thereby reducing the potential for failure as a result of poor construction techniques.

The Department is proposing new N.J.A.C. 7:20-1.12 for clarification that dam owners must provide information to the Department as necessary to determine compliance with any provision of the Safe Dam Act. The Department is proposing new N.J.A.C. 7:20-1.13 to clarify that the Department has the authority to enter any property, facility, premises, or site to determine compliance with the provisions of the Safe Dam Act.

The Department is proposing a new subchapter at N.J.A.C. 7:20-2 for the purpose of assessing civil administrative penalties; requests for adjudicatory hearings; and actions

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by the Department to repair and mitigate dangerous dams. Proposed new N.J.A.C. 7:20-2.1 provides the authority and purpose of the new subchapter.

Proposed new N.J.A.C. 7:20-2.2 describes the procedures for the Department's issuance of an administrative order and the time constraints for requesting an adjudicatory hearing.

Proposed new N.J.A.C. 7:20-2.3 establishes the procedures for the assessment, settlement and payment of civil administrative penalties for violations. Proposed new N.J.A.C. 7:20-2.3 (a) requires that the Department serve any notice of an assessment of a civil administrative penalty either by certified mail or by personal service and establishes the information the Department must cite in the notice. Proposed new N.J.A.C. 7:20-2.3 (b) defines when a civil administrative penalty becomes a final order and when the violator must pay the penalty.

Proposed new N.J.A.C. 7:20-2.4 describes the procedure for the owner or operator of a dam served with an administrative order and/or a notice of an assessment of civil administrative penalty to request an adjudicatory hearing to contest the order or notice.

Proposed new N.J.A.C. 7:20-2.4(a) requires that the original request for an adjudicatory hearing must be submitted to the Department's Office of Legal Affairs at 401 E. State Street, P.O. Box 402, Trenton, New Jersey 08625-0402, Attention: Adjudicatory Hearing Requests.

Proposed new N.J.A.C. 7:20-2.4(b) requires that a complete copy of the adjudicatory hearing request be submitted to the Bureau of Dam Safety and Flood Control at P.O. Box 419, Trenton, New Jersey 08625-0419.

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Proposed new N.J.A.C. 7:20A-2.4(c) defines the information that must be submitted by the owner or operator of a dam as part of the request for an adjudicatory hearing, including the basis for the request, all issues of fact or law and the violator's defenses or admission to each of the Department's findings.

Proposed new N.J.A.C. 7:20A-2.4(d) provides that if the Department does not receive the written request for an adjudicatory hearing within 20 days after receipt of the administrative order and/or notice of civil administrative penalty assessment, the Department will deny the request.

Proposed new 7:20A-2.4(e) provides that the Department will notify the requester whether a hearing is granted or denied, and, if granted, will refer the matter to the Office of Administrative Law for a hearing.

Proposed new N.J.A.C. 7:20A-2.4(f) provides that if the information required at N.J.A.C. 7:20A-2.4(a) is not included in the request for an adjudicatory hearing, the Department may deny the request. Proposed new N.J.A.C. 7:20A-2.4(g) provides that all adjudicatory hearings will be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure rules, N.J.A.C. 1:1.

The Department is proposing new N.J.A.C. 7:20-2.5 for the purposes of describing the penalties which may be assessed for failure to comply with the rules. Proposed new N.J.A.C. 7:20-2.5(a) provides that the Department may assess a civil administrative penalty of up to \$25,000 for each violation of any provision of the Safe Dam Act, or for any failure to comply with any rule or regulation adopted pursuant to the Safe Dam Act, or failure to comply with any permit, order or directive issued pursuant to the Safe Dam Act, or for failure to comply with a request for information or request to

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enter upon the property for access. Proposed new N.J.A.C. 7:20-2.5(b) provides that each violation constitutes a separate and distinct offense. Proposed new N.J.A.C. 7:20-2.5(c) provides that each day during which a violation continues constitutes an additional, separate, and distinct offense. Proposed new N.J.A.C. 7:20-2.5(d) provides that the Department may consider the violator's economic gain from not complying or delaying compliance when determining penalty amounts.

Proposed new N.J.A.C. 7:20-2.6 establishes the civil administrative penalty amount for violation of the Safe Dam Act. Proposed new N.J.A.C. 7:20A-2.6(a) establishes the range of civil administrative penalty for specific violations. Eight categories of violations are identified. The penalty range assigned to each violation is based upon the nature of the violation and the hazard classification of the dam. For instance, failure to comply with an order to drain an impoundment warrants a higher penalty than failure to submit a required report, as orders to drain impoundments are generally issued in circumstances where a dam is deemed unsafe and non-compliance would present an unacceptable public safety threat. The range of penalties for certain violations enables the Department discretion in determining the appropriate penalty. Proposed new N.J.A.C. 7:20-2.6(b) identifies factors that may be considered by the Department in determining to assess a penalty above or below the mid-point of the range established at proposed new N.J.A.C. 7:20-2.6(a). Proposed new N.J.A.C. 7:20-2.6(c) establishes the factors the Department may consider in settling a civil administrative penalty assessment.

Proposed new N.J.A.C. 7:20-2.7 provides that in addition to penalties as assessed in accordance with the provisions at proposed new N.J.A.C. 7:20-2.6, a notice of

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violation will be recorded on the deed of the property where the violation occurred, on order of the Commissioner.

Proposed new N.J.A.C. 7:20-2.8 defines the disposition of the penalties collected pursuant to this new subchapter.

Proposed new N.J.A.C. 7:20-2.9 sets forth the provisions for the Department to take action to repair or mitigate a dam in imminent danger of failure or believed to be a danger to life and property.

Proposed new N.J.A.C. 7:20-2.9(a) defines the Departments rights to enter onto a property and utilize available resources to remove or cause to be removed a dam and/or appurtenant structures.

Proposed new 7:20-2.9(b) requires the Department to provide notice to the owner or person having control of the reservoir or dam within 60 days after receipt of the notice to achieve compliance, prior to the Department taking action in accordance with the provisions at proposed new N.J.A.C. 7:20A-2.9(a).

Proposed new N.J.A.C. 7:20-2.9(c) allows the owner or person having control of the reservoir or dam to take actions to satisfactorily address the dangers that the dam presents.

Proposed new N.J.A.C. 7:20-2.9(d) identifies that expenditures made by the Department to undertake corrective actions constitute a debt to the State and that liens will be placed on property owned by the dam owner or person having control of the reservoir or dam. Such liens will be attached to all revenues and all real and personal property of the owner or person having control of the reservoir or dam.

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Proposed new N.J.A.C. 7:20-2.9(e) defines the priority of the lien over other liens.

Proposed new N.J.A.C. 7:20-2.9(f) defines the imposition of liens when the dam is owned or person having control of the reservoir or dam is a private lake association or other body representing owners.

Proposed new N.J.A.C. 7:20-2.9(g) provides that the provisions of this subsection do not preclude the use of other remedies available to the Department by law to remedy dam safety concerns.

Social Impact

The proposed new rules and amendments to the existing rules will have a positive social impact on the people of the State by enabling the Department to implement the provisions of the Safe Dam Act in an efficient manner in order to protect the public from the consequences of dam failures. The failure of a dam can have a detrimental social impact on the community including the loss of jobs, temporary displacement of residents and in some cases permanent relocation of citizens of the State. The dam safety standards enhanced with these enforcement provisions will serve to prevent property damage and risks to lives by requiring dam owners or operators to meet specific design criteria and perform periodic dam inspections and by establishing enforcement standards for failure to do so.

Economic Impact

Dam failures which result in the loss of water supply, wildlife habitat, and recreational facilities and which can cause considerable flood damage have a major negative economic impact on the economy of New Jersey. The resultant costs associated

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with failure of a single large dam, based on documented past occurrences, can exceed one billion dollars. This figure does not include public costs related to rescue, relief and emergency preparedness nor does it include the value of the loss of human life or the costs associated with lost wages, sales and production.

The Dam Safety Standards have had a positive economic impact on the economy of the State by providing a safe environment downstream of water dependent dam structures essential for the needs and economic well being of the State's residents. The proposed amendments to the existing rules will continue to provide the safety needed for a sound social and business environment and will thus have a positive economic impact on the State. The proposed amendment to N.J.A.C. 7:20-1.7 may have a positive economic impact on the dam owner proposing to remove a dam in that submittal of unnecessary documentation may be waived.

The proposed amendment to N.J.A.C. 7:20-1.12 will have no economic impact on a dam owner who has complied with the requirements to provide information (such as studies, inspections and investigations) to the Department. A dam owner who has not complied will be responsible for undertaking any necessary engineering studies, inspections and investigations, and will experience a negative economic impact.

The proposed new rules regarding enforcement and penalties will have no economic impact on dam owners who comply with the Dam Safety Standards. The dam owner will only suffer a negative economic impact if the owner fails to address a Department order to comply with the Safe Dam Act, N.J.S.A. 58:4-1 et seq. The impact on a violator will vary according to the severity of the violation.

The proposed new rules at N.J.A.C. 7:20-2.9 will only have a negative economic

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impact on the dam owner who fails to comply with the Department's order. If the Department undertakes any action to reduce the amount of water impounded by the dam or to breach the dam, then the dam owner will not only incur the cost of this action but will also incur any administrative cost associated with the Department's action. As a result, the cost could be more than what it would have cost the dam owner had the owner completed the project in the first place.

Environmental Impact

The proposed amendments will continue to prohibit a dam owner or operator from allowing dam deterioration which could lead to dam failure. Past failures have shown the destructive powers of dam failure flood flows and the adverse impact that such failures can have on the environment through erosion and sediment deposition and loss of water impoundments. The proposed new rules regarding enforcement and penalties will provide the Department with the necessary tools to ensure that dams are properly constructed and maintained.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. N.J.A.C. 7:20 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or

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Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Jobs Impact

The proposed new rules may have a positive impact on jobs. The Dam Safety Standards govern the construction, operation and maintenance of dams. In accordance with the rules, dam owners are required to inspect, maintain and occasionally make repairs to dams. In order to avoid the enforcement actions under the proposed new rules, dam owners will most likely need to hire engineers and construction workers. This activity will result in a number of jobs in the engineering and construction industries.

Agriculture Industry Impact

In accordance with P.L. 1998, c. 48, amending the Right to Farm Act, the Department must set forth the nature and extent of the impact of the proposed new rules on the agricultural industry. The Department has reviewed the proposed new rules regarding enforcement and penalties and has determined that the proposed new rules will have minimal impact on the owner of an agricultural impoundment formed by a dam so long as the dam owner is in compliance with the Safe Dam Act. Also, the proposed new rules will not impose any new requirements on these dam owners, as compliance with the Act is already required. The proposed new rules will ensure the continued maintenance and proper operation of dams to protect the lives and property downstream from the dams and to ensure the continued existence of the dams and water supply sources.

The proposed amendments to the existing rules will benefit the agricultural industry by providing the Department flexibility in waiving documentation requirements for dam removal projects when it is determined that such documentation would serve no

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useful benefit to the review of the design of the dam removal project. This may simplify the process of removing a dam when a dam owner desires to do so. The proposed amendments regarding the seepage control along conduits will benefit the agricultural industry by providing the latest technology in design and construction of dams to provide for safe and long lasting structures.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the proposed new rules would impose on small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.”

These rules apply to owners and operators of dams. It is estimated that of the total number of approximately 1,600 dam owners and operators affected by these rules, approximately 50 are a "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.A.C. 52:4B-16 et seq. In order to comply with the Dam Safety Standards, the small businesses will have to comply with the requirements for a dam permit; submit a design report, construction drawings and specifications; comply with construction quality control requirements; and conduct periodic dam safety inspections, operation and maintenance and emergency action planning. In order to avoid incurring penalties under the proposed new enforcement provisions, the small businesses will likely need to engage the services of professional engineers. It is expected that the costs for

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performing inspections for small business owners or operators could range from \$500 to \$5,000.

In developing the proposed new rules, the Department has balanced the need to protect the environment, property and life against the economic impact of the proposed new rules on owners and operators that do not comply with the rules and has determined that to minimize the impact of the rules on "small business" owners and operators would endanger the public health and safety and, therefore, no exemption from coverage is provided. The proposed new rules will not have any impact on the small business owner provided that the owner complies with the Dam Safety Standards.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The proposed new rules and amendments to the existing rules do not involve land use policies. The Dam Safety Standards can play a role in infrastructure development with respect to construction of stormwater management facilities and water supply reservoirs. However, any new facilities are regulated by land use agencies (freshwater wetlands and stream encroachment). The Standards do not dictate policy on construction of these facilities and only regulate safety standards of the facilities once they are approved structures by the land use program. Therefore, the proposed new rules and amendments to the existing rules will not have any direct impact on the achievement of smart growth. The proposed new rules and amendments to existing rules are intended to protect lives and property downstream of dams (both existing and proposed) and to

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preserve the habitat in the impoundments created by the dams. As such, the proposed new rules and amendments to existing rules do support the implementation of the State Plan and the achievement of smart growth.

Full text of the proposed amendments and proposed new rules follow (additions indicated in boldface **thus**; deletions indicated by brackets [thus]):

Subchapter 1. Application Procedure; Design Criteria for Dam Construction; Dam Inspection Procedure

N.J.A.C. 7:20-1.7 Application Stage

(a) The application shall be on forms specified and supplied by the Department and must be accompanied by two copies of the final design report, construction specifications and all plans, drawings, and designs. Upon the written request of the applicant, the Department may waive certain requirements for documentation in the application stage set forth at (b) to ([g] **h**) below for a permit to modify, [or] repair **or remove** an existing dam.

(b) - (i) No change.

N.J.A.C. 7:20-1.9 Design criteria

(a) - (f) No change.

(g) Pipe conduits may be used for the primary (principal) spillway. When so used, the following requirements shall be met:

1. - 3. No change.

4. [Anti-seep collars] **Drainage filters** or other methods approved by the Department must be installed to control seepage along the conduit;

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5. - 9. No change.

(h) - (o) No change.

N.J.A.C. 7:20-1.12 Duty to Provide Information

The Department may require an owner or person having control of a reservoir or dam to provide any information the Department requires to determine compliance with any provision of the Safe Dam Act, or any rule, regulation or order issued pursuant to the Safe Dam Act.

N.J.A.C. 7:20-1.13 Inspection Authority

The Department shall have the authority to enter any property, facility, premises, or site for the purpose of conducting inspections to determine the condition of any dam, or to conduct inspections of ordered repairs or to otherwise determine compliance with the provisions of the Safe Dam Act.

Subchapter 2. Civil Administrative Penalties; Requests for Adjudicatory Hearings; Actions by the Department to Repair and Mitigate

N.J.A.C. 7:20-2.1 Authority and purpose

(a) This subchapter governs the assessment of uniform civil administrative penalties pursuant to the Safe Dam Act, N.J.S.A. 58:4-1 et seq. and the issuance of orders for the violation of any provision of the Safe Dam Act or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto. This subchapter also establishes the procedure for requesting an adjudicatory hearing or

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appeal from a notice of civil administrative penalty assessment or administrative order.

(b) Neither the issuance of an administrative order nor the assessment of a civil administrative penalty shall affect the availability to the Department of any other enforcement provision in N.J.S.A. 58:4-5 and 4-6 or any other action or remedy available by law.

N.J.A.C. 7:20-2.2 Procedures for Issuing an Administrative Order Pursuant to the Safe Dam Act

(a) Whenever the Department finds that a person has violated any provision of the Safe Dam Act, or any regulation, rule or order adopted or issued by the Department pursuant thereto, the Department may issue an administrative order specifying the provision or provisions of the law, rule, regulation, or order, of which the person is in violation citing the action which constituted the violation requiring compliance with the provision or provisions violated; requiring specific actions by the violator to achieve compliance with provisions violated; and providing notice to the person of the right to an adjudicatory hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:20-2.4.

N.J.A.C. 7:20-2.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations

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(a) To assess a civil administrative penalty, the Department shall notify the violator by certified mail (return receipt requested) or personal service. This notice of civil administrative penalty assessment shall:

- 1. Identify the section of the Safe Dam Act, or the rule, regulation and/or administrative order violated;**
- 2. State the facts which constitute the violation;**
- 3. State the amount of the civil administrative penalty to be imposed and the amount of any other costs and economic benefit to be imposed; and**
- 4. Advise the violator of the right to request an adjudicatory hearing under N.J.A.C. 7:20-2.4.**

(b) The violator shall pay a civil administrative penalty immediately upon receipt of the Department's final order in a contested case, or as soon as a notice of civil administrative penalty assessment becomes a final order as follows:

- 1. If no hearing is requested pursuant to N.J.A.C. 7:20-2.4, a notice of civil administrative penalty assessment becomes a final order on the 21st day after the violator receives the notice;**
- 2. If the Department denies a hearing request under N.J.A.C. 7:20-2.4, a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of the denial; or**
- 3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon issuance of a final order by the Department.**

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N.J.A.C. 7:20-2.4 Procedures to Request an Adjudicatory Hearing to Contest an Administrative Order and/or a Notice of Civil Administrative Penalty Assessment; Procedures for Conducting Adjudicatory Hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Safe Dam Act, the person to whom the administrative order and/or notice of civil administrative penalty assessment was issued, shall within 20 days of receipt of the order and/or notice submit an original written request for an adjudicatory hearing to:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 East State Street
P.O. Box 402
Trenton, New Jersey 08625-0402

(b) A complete copy of the request shall be submitted to the Bureau of Dam Safety and Flood Control at :

New Jersey Department of Environmental Protection
Bureau of Dam Safety and Flood Control
501 E. State Street
P.O. Box 419
Trenton, New Jersey 08625-0419

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(c) The written request shall include all information required by the “Adjudicatory Hearing Request Checklist and Tracking Form” available from the Bureau of Dam Safety and Flood Control, 501 E. State Street, P.O. Box 419, Trenton, NJ 08625-0419 and on the Department’s website at www.state.nj.us/dep/damsafety, including the following:

- 1. The name, address, and telephone number of the violator and its authorized representative;**
- 2. The date the violator received the enforcement document being contested;**
- 3. A copy of the administrative order and/or notice of civil administrative penalty assessment and a list of all issues being appealed;**
- 4. The violator’s defenses to each of the findings of fact stated in short and plain terms;**
- 5. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;**

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6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days/and or hours); and

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(d) If the Department does not receive the written request for a hearing within 20 days after receipt by the person of the administrative order and/or notice of civil administrative penalty assessment being contested, the Department shall deny the hearing request.

(e) The Department shall notify the requester if the request for a hearing is granted and, if denied, the reason why. If a hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for an adjudicatory hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure rules, N.J.A.C. 1:1.

(f) If the person fails to include all the information required by (a) above, the Department may deny the hearing request.

N.J.A.C.7:20-2.5 Civil Administrative Penalty Assessment for Violation of the Safe Dam Act

(a) The Department may assess a civil administrative penalty of up to \$25,000 for each violation of any provision of the Safe Dam Act, N.J.S.A. 58:4-1 et seq., or for any failure to comply with any rule or regulation adopted pursuant to

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the Act, or for any failure to comply with any permit, order or directive issued pursuant to the Act, or for failure to comply with a request for information or request to enter upon the property.

(b) Each violation of any provision of the Safe Dam Act, or any rule or regulation adopted pursuant to the Act, or for any failure to comply with any permit, order or directive issued pursuant to the Act, or for failure to comply with a request for information or request to enter upon the property shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate and distinct offense.

(d) When the Department determines that the violator has gained economic benefit from a violation, the Department may, in addition to any other civil administrative penalty assessed, include as a part of a civil administrative penalty the economic benefit that the violator has realized as a result of not complying or delaying compliance. Economic benefit shall include the amount of savings realized from avoided costs; the return earned or that may be earned on the amount of the avoided costs; and any other benefits resulting from the violation.

N.J.A.C.7:20-2.6 Civil Administrative Penalty Amount for Violation of the Safe Dam Act

(a) The Department may assess the following civil administrative penalty for each day that the respective identified violations continue:

1. Failure to draw off (drain or lower) an impoundment:

i. Class I Dams \$10,000-\$25,000;

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ii. Class II Dams \$5,000-\$10,000;

iii. Class III and IV Dams \$1,000-\$5,000;

2. Failure to submit a permit application, compliance schedule, inspection report, Emergency Action Plan or Operation and Maintenance plan or other document required by the Safe Dam Act or these rules, or failure to respond to a request for information:

i. Class I Dams \$5,000;

ii. Class II Dams \$2,500;

iii. Class III and IV Dams \$1,000;

3. Failure to conduct or complete dam repairs, maintenance, modification or removal:

i. Class I Dams \$10,000-\$25,000;

ii. Class II Dams \$5,000-\$10,000;

iii. Class III and IV Dams \$1,000-\$5,000;

4. Failure to obtain Department approval prior to the construction or modification of a dam or appurtenant structure:

i. Class I Dams \$10,000-\$25,000;

ii. Class II Dams \$5,000-\$10,000;

iii. Class III and IV Dams \$1,000-\$5,000;

5. Failure to allow access to a dam site, including appurtenant structures, to representatives of the Department presenting proper credentials:

i. All dams \$1,000-\$5,000;

6. Failure to implement a security plan:

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i. Class I Dams \$10,000-\$25,000;

ii. Class II Dams \$5,000-\$10,000;

iii. Class III and IV Dams \$1,000-\$5,000;

7. Failure to comply with any permit requirement:

i. Class I Dams \$10,000-25,000;

ii. Class II Dams \$5,000-\$10,000;

iii. Class III and IV Dams \$1,000-\$5,000;

8. Knowingly, recklessly, or negligently making a false statement, representation, or certification in any application, record or other document filed or required to be maintained by the Safe Dam Act:

i. All Dams \$1,000-\$5,000.

(b) The civil administrative penalty shall be established at the mid-point of the ranges set forth at (a) above unless adjusted by the Department in its discretion within the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violations;

3. The measures taken by the violator to mitigate the effect of the current violation or to prevent future violations;

4. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring the violation does not reoccur;

5. The deterrent effect of the penalty;

6. Any costs or impacts directly or indirectly

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imposed on the public or the environment as a result of the violation; and

7. Other specific circumstances of the violator or violation.

(c) In settling a civil administrative penalty, the Department may in its discretion consider the following:

1. Mitigating and extenuating circumstances;

2. Measures taken to mitigate impact of the violation; and

3. Other terms and conditions acceptable to the Department.

N.J.A.C. 7:20-2.7 Notice of Violation Recorded on Property Deed

In addition to penalties prescribed in this subchapter, a notice of violation issued pursuant to the Safe Dam Act, or any rule, regulation or order issued pursuant thereto, shall, on order of the Commissioner, be recorded on the deed of the property wherein the violation occurred, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and with the clerk of the Superior Court and shall remain attached thereto until such time as the violation is remedied and the Commissioner orders the notice of violation removed.

N.J.A.C. 7:20-2.8 Penalty Collection

All penalties collected pursuant to this subchapter or sums collected pursuant to N.J.S.A. 58:4-5 shall be deposited in the “Environmental Services Fund,” established pursuant to N.J.S.A. 13:1D-33, and kept separate from other receipts deposited therein, and appropriated to the Department for the removal of dams in the State.

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N.J.A.C. 7:20-2.9 Action by the Department to Repair and Mitigate

(a) Whenever the Commissioner determines that a dam is in imminent danger of failure and has reasonable cause to believe that danger to life or property may be anticipated from the reservoir, dam or appurtenant structures located therein, and the owner of the dam or person having control of the reservoir or dam has failed to comply with an order to repair the dam or to take such interim measures as the Department determines are appropriate, including reducing the amount of water impounded by the dam or breaching the dam, the Department may, in addition to other actions authorized by the Safe Dam Act, these regulations and other law, enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located, and using resources and personnel available to the Department, remove or cause to be removed the dam and/or appurtenant structures located therein, allowing the water to flow freely.

(b) The Department shall provide notice to the owner or person having control of the reservoir or dam prior to the removal action provided for in (a) above. The owner shall, no later than 60 days after receipt of notice, submit to the Department in writing, an implementation plan addressing the proposed actions the owner or person having control of the reservoir or dam intends to take to repair or remove the failed or failing reservoir or dam, along with a schedule for implementation of the proposed actions. Any permits required for the proposed actions shall be applied for within the 60 day time period.

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(c) If the proposed actions, schedule and permit applications are timely submitted and the Department in its discretion determines that the proposed actions and schedule will satisfactorily address the danger specified in (a) above, and that the permits applied for can properly be issued, the Department shall allow the owner or person having control of the reservoir or dam to take the actions identified. If the owner or person having control of the reservoir or dam fails to comply with the proposed schedule, the Department may take removal action in (a) above.

(d) Any expenditures made by the Department pursuant to (a) shall constitute a debt to the State and a lien on all property owned by the owner or person having control of the reservoir or dam. When a certificate of debt incorporating a description of the property subject to the removal action and the costs is filed with the clerk of the Superior Court, the lien shall attach to all revenues and all real and personal property of the owner or person having control of the reservoir or dam.

(e) The lien described in (d) above shall have priority over all other liens, interests or claims on the dam or reservoir property subject to the Department's removal action. However, if that property is six dwelling units or less and used exclusively for residential purposes, the certificate of debt shall not affect any valid lien, claim or interest which was filed prior to the certificate of debt. When the lien described in (d) above affects property other than the property subject to the removal action, it shall have priority from the date of filing but shall not affect any valid lien, interest or claim filed prior to filing of the certificate of debt.

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(f) Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners or property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the Department in the amount of the sums expended by the Department pursuant to this section, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

(g) The provisions of this section shall not limit the use of other remedies available to the Department pursuant to law.