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N.J.A.C. 7:20

Dam Safety Standards

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

Date last amended: December 15, 2017

For regulatory history and effective dates see the New Jersey Administrative Code

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DAM SAFETY STANDARDS

N.J.A.C. 7:20

**EFFECTIVE DATE: December 15, 2017,
EXPIRATION DATE: December 15, 2024**

**SUBCHAPTER 1. APPLICATION PROCEDURE; DESIGN CRITERIA
FOR DAM CONSTRUCTION; DAM INSPECTION
PROCEDURE**

N.J.A.C. 7:20-1.1 Scope and applicability

- (a) The rules in this subchapter were adopted pursuant to the authority of N.J.S.A. 58:4-1 et seq., as amended by the Safe Dam Act of 1981, and N.J.S.A. 13:1D-1 et seq.
1. These rules set forth procedures for application to construct, repair or modify a dam, as defined in N.J.A.C. 7:20-1.2, and set standards for design and maintenance of dams. These rules also establish a dam inspection procedure.
 2. Any dam which raises the waters of a stream five feet or less above its usual, mean, low water height falls under the jurisdiction of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.
 3. The requirements in this subchapter shall not affect or relate to a dam or reservoir in the pinelands area, as designated by subsection a. of section 10 of P.L. 1979, c.111 (C. 13:18A-11), which will raise the waters of any river or stream less than eight feet above the surface of the ground where the drainage area above the same is less than one square mile in extent and where the water surface created by the dam or reservoir is less than 100 acres in extent except that the commissioner may investigate and take appropriate action regarding any dam or reservoir about which he has a security or safety concern. With respect to dams and reservoirs located on lands utilized for agricultural or horticultural purposes within the pinelands area, the commissioner's actions shall be undertaken after consultation with the Secretary of Agriculture. See N.J.S.A. 58:4-1, P.L. 1985, c. 33, § 1 and 2.

N.J.A.C. 7:20-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Applicant" means any person making application for a dam permit.

"Auxiliary spillway" means the second used spillway during flood flows which is not the emergency spillway.

"Dam" means any artificial dike, levee or other barrier, together with appurtenant works,

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which is constructed for the purpose of impounding water, on a permanent or temporary basis, that raises the water level five feet or more above the usual, mean, low water height when measured from the downstream toe-of-dam to the emergency spillway crest or, in the absence of an emergency spillway, the top-of-dam.

"Department" means the New Jersey Department of Environmental Protection.

"Design freeboard" means the minimum freeboard which would exist during passage of the design flood.

"Division" means the Division of Dam Safety and Flood Control in the Department of Environmental Protection.

"Emergency spillway" means the spillway capable of passing the spillway design storm with the principal and/or auxiliary spillway blocked.

"Environmental impact statement" means a report which describes the real and potential impacts which will or may result from the construction and operation of a proposed dam project, the adverse environmental impacts which cannot be avoided, the steps to be taken to minimize adverse impacts and the alternatives to the project with reasons for the acceptability or unacceptability.

1. The report shall address real or potential impacts upon ecology, natural resources, historical and archeological resources, recreational resources, aesthetic resources, endangered and non-game species, fisheries and any other identifiable impacts; and
2. The report shall include a listing of qualifications of those preparing the report and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

"Formal inspection" means the inspection by a New Jersey licensed professional engineer to reevaluate the safety and integrity of the dam and appurtenant structures to determine if the structure meets current design criteria, including a field inspection and a review of the records on project design, construction and performance.

"Freeboard" means the vertical dimension between the crest of the embankment of a dam (without camber) and the reservoir water surface at the spillway design flood stage.

"Height-of-dam" means the vertical dimension from the lowest point in the stream bed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

"Independent Review Board" means one or more independent professional engineers who are qualified in the design, construction and rehabilitation of dams to perform a review of the project design and construction.

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"Informal inspection" means the visual inspection of the dam by the dam owner or operator to detect apparent signs of deterioration or other deficiencies of the dam structure or function.

"Levee" or "dike" means any artificial barrier together with appurtenant works that will divert or restrain the flow of a stream or river.

"One-hundred-year storm" means the storm which is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.

"Outlet" means an opening through which water can be freely discharged from a reservoir for a particular purpose.

"Owner and/or operator" means any person who owns, controls, operates, maintains, manages or proposes to construct a dam.

"Permit" or "dam permit" means all approvals required under N.J.S.A. 58:4-1 et seq. for the construction and operation of a dam.

"Person" means any individual, proprietorship, partnership, association, corporation, municipality, county or public agency.

"Pipe conduit" means any hollow tube which conveys water through a dam from a reservoir, either as a spillway or as a drain.

"Principal spillway" means the primary or first used spillway during normal inflow and flood flows.

"Probable maximum precipitation" or "(PMP)" means the theoretically greatest depth of precipitation for a given duration that is physically possible, over a given size storm area, at a particular geographic location, at a certain time of year.

"Regular inspection" means the visual inspection of a dam by a New Jersey licensed professional engineer to detect any signs of deterioration in material, developing weaknesses or unsafe hydraulic or structural behavior.

"Reservoir" means any impoundment or any potential impoundment that will be created by a dam, dike or levee.

"Spillway" means a structure other than low flow outlets, over or through which flood flows are discharged.

"Spillway design storm" means the storm upon which the hydraulic capacity of the spillway structure is designed.

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"Toe-of-dam" means the junction of the downstream face of a dam with the ground surface or the invert of the outlet pipe, whichever is the lowest point.

N.J.A.C. 7:20-1.3 Permit-by-rule

- (a) All dams must be designed, constructed, operated, maintained, or removed in compliance with the rules in this subchapter except as set forth below:
1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:
 - i. Design must be based upon a spillway design storm that results in rainfall of 50 percent greater than a 24-hour, 100-year, Type III storm (Later technology adopted by the United States Department of Agriculture, Natural Resources Conservation Service may be substituted for the use of the Type III storm.); and
 - ii. All necessary local approvals must be obtained;
 - iii. A New Jersey licensed professional engineer must design the Class IV Dam to meet all technical requirements of this subchapter; and
 - iv. If the Class IV dam is designed or constructed for stormwater management purposes, the dam shall comply with the Stormwater Management Rules at N.J.A.C. 7:8.
 2. Owners and operators of Class III agricultural impoundments, meaning any impoundment used for fish and wildlife, fire control or livestock or crop production and maintenance, where the drainage area is less than one-half square mile in extent, must meet only the following requirements:
 - i. All necessary local approvals must be obtained; and
 - ii. Design and construction must be supervised by the United States Department of Agriculture, Natural Resources Conservation Service.
- (b) The Department may, in its discretion, require the owner or operator of any dam subject to (a) above to obtain a permit and/or to submit any information relating to dam design, construction, operation or maintenance.
- (c) The Department may, in its discretion, require the owner or operator of any dam

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to make modification of the design, construction or operation of the dam in order to comply with the intent of this chapter and the Safe Dam Act, N.J.S.A. 58:4-1 et seq.

N.J.A.C. 7:20-1.4 General requirements and prohibitions

- (a) No person may construct or operate a new dam or modify or repair an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with (i) below.
- (b) No dam may be approved by the Department where, in the opinion of the Department, there is an unacceptable potential for harm to human health or to human safety.
- (c) Backwater created by a dam during a 100-year storm shall be the minimum which is contained within the applicant's property unless written consent is obtained from all potentially affected property owners. Effects on both surface and ground water shall be considered, during normal pool conditions.
- (d) No person may construct a dam in any waterway of this State which is a runway for migratory fish, without installing a fish ladder or other approved structure to permit the fish to pass the dam in either direction (see N.J.S.A. 23:5-29.1).
 - 1. This provision is applicable to dams of any size.
 - 2. The Department will determine whether a stream is currently a runway for migratory fish, during the review of the dam permit application. Applicants should consult the Division of Fish and Wildlife in this matter prior to finalizing the application.
- (e) Unless otherwise approved by the Department, dam construction shall commence within one year from the date of the permit and be completed within two years from the said date or the permit will become null and void. For good cause shown, the Department may extend the two year construction deadline for a total of no more than five years, one year at a time. Applicants must make written request for an extension, prior to the expiration date of the permit or prior extension.
- (f) No action shall be brought against the State or the Department or its agents or employees for the recovery of damages caused by the partial or total failure of any dam or reservoir or through the operation of any dam or reservoir upon the ground that the Department is liable by virtue of any of the following:
 - 1. The approval of the dam or reservoir, or approval of flood handling plans

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during construction.

2. The issuance or enforcement of orders relative to maintenance or operation of the dam or reservoir.
 3. Control, regulation and inspection of the dam or reservoir.
 4. Measures taken to protect against failure during an emergency.
- (g) The Department may deny any application for a dam permit, based upon its conclusion that the construction or operation of dam will cause an unacceptable threat to or impact on natural or cultural resources or the environment.
- (h) The Department shall be notified immediately by the owner or operator upon the detection of any condition which may jeopardize the safety of the structure.
- (i) Situations which threaten the public health, safety and welfare and require emergency dam repair will be considered by the Department under the following procedure:
1. The owner or operator shall inform the Department by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.
 2. The owner or operator shall perform the emergency work upon verbal approval of the Department, which approval shall be verified by the Department in writing within three working days. The Department shall offer guidance and instructions in performing the work.
 3. After the work has been completed in accordance with the Department's instructions, the owner or operator shall submit a dam permit application and "as built" drawings to the Department for review. A letter shall be issued by Department in lieu of a dam permit.
- (j) The Department shall be notified in writing on or before the transfer of dam ownership.
- (k) Unless otherwise approved by the Department in writing, no person shall dredge within 200 feet of a dam.
- (l) Utilities crossing within dam embankments are prohibited unless demonstrated to the satisfaction of the Department that such utilities will not jeopardize the safety of the dam.

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- (m) No person shall remove or breach an existing dam without first having obtained a permit from the Department unless subject to the permit-by-rule provisions in N.J.A.C. 7:20-1.3.
- (n) Unless otherwise approved by the Department, no trees shall be permitted to grow on the dam embankment.

N.J.A.C. 7:20-1.5 General application procedures

- (a) The procedures for applying for a dam construction, modification or repair permit and for submitting the supporting engineering documents, include the preapplication stage and the application stage, as described below. For Class III dams (see N.J.A.C. 7:20-1.8) all required information may be submitted at one time, with such detail as is appropriate to the safe design of the type of structure proposed.
- (b) The applicant for a dam permit must use a New Jersey licensed professional engineer to prepare the plans and specifications and to supervise inspection of the construction.
- (c) The Department may require any owner or operator of an existing dam to obtain a permit for repair or modification of the dam and appurtenances where:
 - 1. Repair or modification is necessary to insure protection of human health or safety; or
 - 2. Modification is required to comply with the provisions of this chapter, unless the following circumstances exist:
 - i. Compliance is impracticable; and
 - ii. Noncompliance poses no unacceptable threat to human health or safety.
- (d) Appeal procedures; permit denials
 - 1. An applicant for a dam permit may request in writing an administrative hearing from the Department within 15 days of receipt of the decision by the Department to deny the application. The request for a hearing shall be sent to the New Jersey Department of Environmental Protection, Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, 401 East State Street, Floor 7, Mail Code 401-04L, P.O. Box 402, Trenton, New Jersey 08625-0402.

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2. The request for a hearing shall specify in detail the basis for the request, including all issues of fact or law. The Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate. Should the efforts to settle the dispute fail and if the Department determines that the matter is a contested case, the Department shall forward the request for a hearing to the Office of Administrative Law, pursuant to the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).
- (e) Applicants for a dam permit for a Class III dam, as defined pursuant to N.J.A.C. 7:20-1.8, may submit a preliminary application, which should include that information needed to establish a Class III hazard classification. Thereafter, in its discretion, the Department may waive certain documentation and inspection requirements set forth in these rules.

N.J.A.C. 7:20-1.6 Preapplication Stage

- (a) The applicant must submit a written Preliminary Report which must include the following:
1. A general description of the dam and all appurtenances thereto, and the proposed dam classification, pursuant to N.J.A.C. 7:20-1.8. The description shall include the following:
 - i. A statement of the purpose for which the dam and appurtenances are to be used; and
 - ii. A description of the potential effects of project construction and operation upon the environment.
 2. Maps of the area within one-half mile of the dam and impoundment boundary, showing the following:
 - i. The location of the proposed dam and all appurtenances, thereto;
 - ii. The location of all structures;
 - iii. The county and township;
 - iv. The boundary of the reservoir;
 - v. The location of all streets and roads;

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- vi. The location of all major utilities, i.e. pipe lines and transmission, telegraph, and telephone lines; all minor utilities shall be identified in the immediate vicinity of the dam and impoundment area;
 - vii. The topography and scale; and
 - viii. All other structures or facilities affected by the proposed dam, including the area downstream from the dam (State, county, and U.S.G.S. maps and aerial photographs may be used for this purpose).
3. A written report of the surficial conditions (i.e. geology, topography, and culture), based upon a field reconnaissance by the applicant's engineer;
 4. Typical cross-sections of the dam, and any dike(s) and levee(s), showing proposed elevations, pool levels and top and bottom widths;
 5. Preliminary design data, tentative conclusions and references. The design data shall address hydrologic features such as drainage area and rainfall data, the basis for proposed dam location, the basis for the type of structure and spillway proposed, the soils and geologic engineering criteria and the basis for design and construction;
 6. The hydrologic design procedure and the storm durations which are used in the design;
 7. All documentation and information related to determining hazard classification; and
 8. Other information required by the Department.
- (b) Upon review of the pre-application, the Department will notify the applicant of what design criteria will apply.
 - (c) Applicants for a permit to repair an existing dam are not required to submit a preliminary report unless the Department determines it to be necessary.

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

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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 (h) below for a permit to modify, repair or remove an existing dam.

- (b) The application shall include a Final Design Report, which must contain the following:
1. A report of the field and laboratory investigation(s) of the foundation soils and/or bedrock, a location map to identify borings and the materials that will comprise the dam and any dikes or levees. Stability and settlement analyses and seepage and underseepage studies are required, unless the applicant can demonstrate to the satisfaction of the Department that these analyses are not necessary.
 2. The bases, references, calculations and conclusions relative to hydrologic studies and design of spillway.
 3. Structural and hydraulic design studies and calculations. Structural, hydraulic and hydrologic design procedures should be used, as established by one of the following: the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, the U.S. Natural Resources Conservation Service and other procedures universally accepted as sound engineering practice.
- (c) The application must include all drawings necessary to fully describe the proposal. Drawings must be prepared in accordance with the following:
1. All drawings must be prepared by a New Jersey licensed professional engineer or land surveyor, as appropriate. Each drawing shall have a title block which meets the requirements of the State Board of Professional Engineers and Land Surveyors.
 2. Drawings must clearly show the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (N.G.V.D.), formerly known as the U.S. Coast & Geodetic Survey Datum, should be used wherever possible. If the N.G.V.D. datum is not used, an appropriate conversion equation must be indicated on the drawings.
 3. The applicant must submit drawings showing the following information:
 - i. A general plan of the dam, drawn to an appropriate scale, which must show accurately the position of all essential details, such as the spillway and its point of discharge into the stream, pipes through the dam, inlets, outlets, screen chambers, gate or valve houses, head-races, the canal mill or power plant, tailraces and downstream bridges which might cause backwater on the dam;

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- ii. A longitudinal section of the dam and cross-section of the valley at the site of the dam, showing the elevation of the crest of the dam, the elevation of the normal and design storm flow line of the lake or reservoir, the original surface of the ground, the nature and depth of the underlying strata, the probable depth of the excavation for the foundation of the dam and for the cutoff, foundation treatment, elevation of the restored surface of the ground, the location and elevation of all pipes or conduits passing through the dam, the core wall, if any, and the spillway structure;
- iii. Typical cross sections, including a maximum section of the dam and of a spillway section which shall meet the following requirements:
 - (1) Cross sections must show the original surface of the ground, subsurface conditions as disclosed by test pits or borings, the probable depth of excavations for the foundation and for cutoff, the elevations of the top of the dam, the crest of the spillway and the normal flow line or water surface in the reservoir;
 - (2) For earth dams, the depth of stripping must be shown, as well as the position, material and dimensions of the cutoff or core wall, the width of the crest, the slopes and the nature and dimensions of the slope protection, the position and dimensions of the outlet pipes or conduits and the cutoff to prevent seepage along such structures, the disposition of different classes of embankment material if of varying composition, toe drains and clay blankets;
 - (3) For concrete or other composite dams, the cross sections shall show all dimensions and shall indicate the position and kinds of material to be included in the structure.
- iv. If not clearly indicated on one or more of the drawings listed above, the following details shall be shown on additional detail sheets:
 - (1) Detail of spillway or overflow, showing the length and depth of opening, together with the width and shape of the crest, grade and shape of the approach and discharge channels, if any, methods of protecting the toe of the dam or end of the discharge channel from erosion and the dimensions of all walls, floors and paving;

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- (2) Details of the intake and outlet works, showing the location and dimensions of all valves or sluice gates, intakes, screen chambers, racks, outlet towers and gate houses and appurtenances;
 - (3) For reinforced concrete dams, detailed drawings must also be submitted, showing the size, spacing and arrangement of all reinforcing steel and expansion joints; and
 - (4) Special drawings shall be submitted showing any special construction features not otherwise shown, such as piling, fishways, aprons, materials used in the core wall, movable dams, tainter gates and mechanical devices, drains and instrumentation.
- (d) The application must include specifications, containing the following:
1. General provisions, specifying the rights, duties and responsibilities of the owner, applicant, applicant's engineer and the builder;
 2. The estimated project schedule and sequence of work; and
 3. Technical provisions, describing carefully and in detail the approved work methods and procedures, standards for equipment and testing, materials to be used and the results to be obtained.
- (e) The application shall complete all investigations, including the following, prior to submission of the final design report which shall meet the following requirements:
1. The scope and the degree of precision of investigations required for a specific project shall be based on the complexities of the site, the importance of the proposed structure and the hazard created by the proposed structure.
 2. The foundation investigation shall consist of borings, test pits, seismic investigations or other subsurface explorations and must be performed so as to accurately define the soil and rock stratigraphy and the ground water conditions to the satisfaction of the Department.
 3. Laboratory testing of undisturbed and remolded soil specimens and rock samples may be required by the Department.

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4. The applicant must determine the nature and extent of materials which are proposed for use in the structure (e.g. borrow material, concrete aggregate, riprap stone, filter materials) and their structural properties when incorporated into the proposed structure.
 5. Stability analysis and calculations for the proposed structure to ensure safety against failure due to overturning, sliding or overstressing must be submitted and approved by the Department.
 6. Topographic surveys must be performed with sufficient accuracy to locate the proposed construction and to define the volume of the storage in the reservoir and the flowage limits. The upstream and downstream area must be investigated in order to delineate the area of potential damage in case of failure or flooding. Locations of baselines, centerlines and other horizontal and vertical control points must be shown on the topographic map of the site.
 7. The drainage area must be accurately determined. Both present and projected future land use must be considered in determining the runoff characteristics of the drainage area. The most severe of these two conditions must be used in the design. The hydrologic assumptions and design calculations used in spillway designs shall be specified and shall include:
 - i. Drainage area size;
 - ii. Rainfall and runoff data;
 - iii. Reservoir inflow hydrographs;
 - iv. Reservoir area-capacity-elevation data;
 - v. Spillway elevation-discharge data; and
 - vi. Reservoir flood routings, except as otherwise provided in this subchapter.
- (f) All applicants must submit an Operation and Maintenance Manual in accordance with N.J.A.C. 7:20-1.11 and applicants for Class I and II dams (see N.J.A.C. 7:20-1.8) shall prepare and submit an Emergency Action Plan which shall at least include a Dam Breach Analysis, Inundation Maps and Emergency Notification and Evacuation Plans.
- (g) The Department may require the submission of an Environmental Impact Statement, as defined in N.J.A.C. 7:20-1.2, by any applicant for a dam permit.

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- (h) The application to remove or breach a dam shall include the following:
1. Design report, and plans and computations to effect the breach including size of breach, shape of breach, disposal of spoil material;
 2. Plans and computations for stabilization of the lake bed including the channel upstream of the breach, and for the control of sediment within the lake downstream of the breach during and after the breach has been effected;
 3. Computations for design of the method and timing for dewatering the lake;
 4. Computations detailing the effects of the breach on the downstream channel and demonstrating that the project will not adversely affect flooding conditions downstream during the 10, 50 and 100 year storms;
 5. Specifications containing the technical provisions which describe in detail the proposed work methods and equipment and, in addition, a work schedule for the entire project;
 6. A plan of the existing dam and lake along with surrounding property lines;
 7. Evidence that all adjoining property owners of the impoundment and the municipality where the reservoir or dam is located have received notification that an application has been submitted to the Department to remove or breach a dam and proof of publication of notice of the proposed removal application in at least one newspaper of general circulation in the municipality where the reservoir or dam is located;
 8. A description of the potential effects of the dam removal or breach upon the environment; and
 9. A description of the potential effects of the dam removal or breach upon life and property downstream of the dam.
- (i) When a petition has been filed in accordance with the Safe Dam Act, N.J.S.A. 58:4-9, protesting against the removal of any reservoir, water or dam or against the decommissioning of any reservoir or dam, the Commissioner shall, pursuant to the requirements of N.J.S.A. 58:4-10, hold a public hearing, upon 30 days notice to all parties interested, and following prior notice published 30 days before the hearing in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located.

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N.J.A.C. 7:20-1.8 Dam Classification

- (a) The Department will use the following guidelines to classify dams according to hazard. Probable future development of the area downstream from the dam which might be affected by its failure will be considered in determining the hazard classification. The Department may, in its discretion, change the hazard class of any proposed or existing dam.
1. Class I - High Hazard Potential: This classification includes those dams, the failure of which may cause the probable loss of life or extensive property damage.
 - i. The existence of normally occupied homes in the area that are susceptible to significant damage in the event of a dam failure will be assumed to mean "probable loss of life".
 - ii. Extensive property damage means the destructive loss of industrial or commercial facilities, essential public utilities, main highways, railroads or bridges. A dam may be classified as having a high hazard potential based solely on high projected economic loss.
 - iii. Recreational facilities below a dam, such as a campground or recreation area, may be sufficient reason to classify a dam as having a high hazard potential.
 2. Class II - Significant Hazard Potential: This classification includes those dams, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned. This classification applies to predominantly rural, agricultural areas, where dam failure may damage isolated homes, major highways or railroads or cause interruption of service of relatively important public utilities.
 3. Class III - Low Hazard Potential: This classification includes those dams, the failure of which would cause loss of the dam itself but little or no additional damage to other property. This classification applies to rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands or non-major roads.
 4. Class IV - Small Dams: This classification includes any project which impounds less than 15 acres/feet of water to the top of the dam, has less than 15 feet height-of-dam and which has a drainage area above the dam of 150 acres or less in extent. No dam may be included in Class IV if it meets the criteria for Class I or II. Any applicant may request consideration as a Class III dam upon submission of a positive report and demonstration proving low hazard.

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

- (a) The minimum design storm used to calculate required spillway capacity must be determined according to the following table:

<u>Hazard</u>	<u>Spillway Design Storm (SDS)</u>
Class I	PMP
Class II	One-half PMP
Class III	24 hour 100 year frequency, Type III storm*
Class IV	24 hour 100 year frequency, Type III storm plus 50%

*Any later technology adopted by the U.S. Department of Agriculture, Natural Resources Conservation Service may be substituted for the use of the Type III storm.

- (b) For existing dams, it is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, and other hydrologic factors have a critical bearing on determining the safe spillway design flood. When appropriate, based on the design of the dam, rational selection of a safe, reduced spillway design for specific site conditions based on quantitative and relative impact analysis is acceptable. The spillway should be sized so that the increased downstream damage resulting from overtopping failure of a dam would not be significant as compared with the damage caused by the flood in the absence of a dam overtopping failure. The minimum design storm for the dam shall be the 100 year storm.
- (c) All Class II and III dams shall, where practicable, incorporate in the proposed design, the ability to make modifications necessary to increase the spillway capacity of the facility or other alternative measures if the downstream hazard potential increases.
- (d) All dams shall have adequate storage for the design storm or have a spillway system which will safely pass the design storm without endangering the safety of the dam.
- (e) Each spillway shall include a satisfactory means of dissipating the energy of flow at its outlet without endangering the safety of the dam.
- (f) The capacity of the spillway system shall be equal to the peak inflow of the design flood unless the applicant demonstrates by flood routing procedures that the spillway system has the capacity to safely pass the resulting water flow.

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- (g) Pipe conduits may be used for the primary (principal) spillway. When so used, the following requirements shall be met:
1. Pipe conduits shall be of such design as to safely support the total external loads in addition to the total internal hydraulic pressure without leakage. The type of construction material used shall be consistent with the anticipated life of the structure. Corrugated metal pipe shall not be used in the construction of new dams.
 - i. For Class I and II dams, the minimum allowable inside dimension of the pipe conduit is 30 inches.
 - ii. For Class III dams, the minimum allowable inside diameter of the pipe conduit is 18 inches.
 - iii. For Class IV dams, the minimum allowable inside diameter of the pipe conduit is 12 inches.
 2. All pipe conduits shall convey water at the maximum design velocity without damage to the interior surface;
 3. The pipe conduits shall be designed so that negative pressure will not occur at any point along the primary (principal) spillway system;
 4. Drainage filters or other methods approved in writing by the Department must be installed to control seepage along the conduit;
 5. Adequate allowances shall be incorporated in the design to compensate for differential settlement and possible elongation of the pipe conduit;
 6. An anti-vortex device shall be included in the design unless the applicant has demonstrated to satisfaction of the Department that one is not necessary;
 7. A trash rack, approved by the Department, shall be installed at the intake to prevent clogging of the pipe conduit;
 8. An emergency spillway shall be provided; and
 9. Cathodic protection is required for all metal pipes.
- (h) Should a vegetated or unlined auxiliary spillway, approved by the Department, be installed, it must be able to pass the design storm without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

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1. Once in 100 years for Class I dams;
 2. Once in 50 years for Class II dams; or
 3. Once in 25 years for Class III and IV dams.
- (i) Drawdown requirements are as follows:
1. Except for excavated impoundments, all dams shall include a device to permit draining the reservoir, as approved in writing by the Department. Computations for the minimum time required to drain the reservoir shall be required for new and existing dams.
 2. Unless the applicant demonstrates to the satisfaction of the Department that there is a need to locate a valve downstream from the dam and that the areas downstream of the dam will remain protected, all valves or sluice gates in pipe conduit drains must be installed upstream of the dam.
 3. All pipe conduits used as drawdown drains for all dam classifications shall meet the requirements of (g) above, except that the minimum allowable inside dimension may be less than 30 inches.
 4. Dams which impound water on a permanent basis shall include a means to allow the reduction of the reservoir water surface elevation five feet in 10 days at a rate not to exceed one foot per day. This requirement shall not apply to dams whose intended purpose requires and whose design allows faster drawdown times. For existing dams which satisfactorily meet Department safety and operating criteria, the applicant may, with prior approval of the Department, present alternative reservoir drawdown plans.
- (j) Design references used shall be cited in the information submitted to the Department.
- (k) Monitoring devices to permit inspection and assessment of the dam's condition may be required by the Department for use in the inspections during and after completion of construction.
- (l) The applicant shall demonstrate to the Department that the riparian rights of downstream property owners will be protected during construction, during the period when the reservoir is being filled and during the life of the dam and reservoir.
- (m) Unless the applicant can demonstrate that an alternative slope is acceptable, upstream slopes of an earth dam may be no steeper than three horizontal to one vertical ratio, and downstream slopes may be no steeper than two horizontal to

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one vertical ratio. Measures are required for protection of upstream slopes against wave action or rapid draw-down and for protection of the downstream slope against scour or erosion due to high tailwater.

- (n) Freeboard requirements are as follows:
1. Sufficient freeboard shall be provided to prevent overtopping of the dam or any dike or levee due to passage of the design flood or due to frost damage, ice damage or wave action.
 2. For all dams the minimum elevation of the top of the dam must be that necessary to pass the design storm with at least one foot of freeboard to the top of the dam.
 3. Where special conditions of severe frost damage, ice damage or wave action may occur, higher elevations than required in (n)2 above may be required and should be considered by the applicant.
- (o) The Department may require the design and installation of any additional or modified measures by any applicant for a dam permit where appropriate to insure the protection of human health or safety.

N.J.A.C. 7:20-1.10 Construction

- (a) Requirements relating to supervision of dam construction are as follows:
1. All applicants shall submit a written description and schedule of the proposed construction, including:
 - i. The estimated time to complete the construction activities, see N.J.A.C. 7:20-1.4(e);
 - ii. Where applicable, a description of the means by which stream flow will be diverted around or through the dam site, or otherwise kept from interfering with the work;
 - iii. The number of inspectors designated for inspection for construction quality control; and
 - iv. Steps to be taken to minimize erosion and sediment production during construction.
 2. The extent and method of inspection for construction quality control must be described and approved by the Department, including an inspection schedule.

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3. The diversion facility, as outlined under 1i above, must remain open and no water may be permanently stored in the reservoir until the permittee demonstrates to the Department that storage of water will neither interfere with construction activities nor create a hazard to life, health or property.
 4. The professional engineer responsible for inspecting the construction must submit progress reports to the Department at least once each month during the construction period.
 5. The permittee shall promptly advise the Department of all proposed changes in the approved design, plans or specifications. There may be no change in the approved design, plans or specifications without prior approval of the Department. Written prior approval from the Department is required for major modifications, which shall include significant changes in scale, use, design, impact, etc. of the project, as initially approved. The Department may require written prior approval of any proposed modification. All approved changes must be recorded on the complete set of as-built plans, required in (a)6 below. The Department may require the submission of revised designs at any time.
 6. A complete set of as-built designs, plans and specifications must be submitted to the Department upon completion of the project.
 7. The professional engineer who has inspected the construction shall submit written certification that the structure has been built in conformance with the designs, plans and specifications, and with any changes approved by the Department.
- (b) The Department may, in its discretion, require the owner to obtain the services of an Independent Review Board to oversee the design and construction of any proposed or existing dam.
- (c) Construction inspection program requirements are as follows:
1. The Department may inspect the dam during construction to insure that it is being built in compliance with the designs, plans and specifications submitted to the Department. Departmental inspections in no way relieve either the permittee or the professional engineer in charge from the responsibility of providing adequate inspection of the work.
 2. If, at any time during the progress of the work, the Department finds that the work is not being performed in accordance with the approved designs, plans and specifications and any approved changes, the Department will serve a written notice to that effect on the permittee or his representative. Such notice will state the particulars with which the work has not complied. Additionally, the Department may order the immediate

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compliance with such designs, plans, specifications, and changes and suspension of all other work until compliance has been effected. If the owner or his representative fails to comply with this order, the permit under which construction is authorized may be revoked or suspended by the Department.

3. Upon receipt of the as-built plans required in (a)6 above and the engineer's certification required in (a)7 above, the Department will inspect the completed construction within 45 days. If the Department finds that construction was completed in accordance with the approved designs, plans, specifications and approved changes, the construction will be approved in writing within 30 days. The approval date shall be the date such approval is sent by the Department.
4. In the 12th month following approval of construction by the Department pursuant to (b)3 above, the Department may make a final inspection of the construction. If the Department makes a final inspection of the construction, a final approval will be given by the Department if the final inspection shows that the terms of the permit, designs, plans, specifications and approved changes thereof have been met.

N.J.A.C. 7:20-1.11 Dam operating requirements and inspections: new and existing dams

- (a) The owners and operators of all dams shall develop and use an Operation and Maintenance Manual which provides guidance and instruction to project personnel for the proper operation and maintenance of the reservoir and dam, and meets the following requirements:
 1. The manual shall be composed of two parts.
 - i. Part one shall include an introduction, project description, project authorizations, project history and list of project contracts.
 - ii. Part two shall contain the operation and maintenance instructions for major project facilities and equipment and a schedule for maintenance.
- (b) The owners or operators of all dams which raise the waters of any stream more than 70 feet above its usual mean low-water height or which impounds more than 10,000 acre-feet of water shall have a regular inspection performed annually and formal inspections performed every three years by a New Jersey licensed professional engineer. These inspections must be attended by a professional engineer assigned from the Department. In the year of the formal inspection, regular or informal inspections need not be performed.

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- (c) Owners or operators of Class I dams not meeting the size characteristics described in (b) above shall have a regular inspection performed once every two years and a formal inspection performed every six years.
- (d) Owners or operators of Class II dams shall have a regular inspection performed once every two years and a formal inspection performed every 10 years.
- (e) Owners or operators of Class III and IV dams shall have a regular inspection performed every four years. The Department may at its discretion require the owner or operators to perform a formal inspection of a Class III or IV dam.
- (f) All dam inspections shall be performed from March through December.
- (g) All inspections shall be performed in compliance with the following requirements:
 - 1. A written guide provided by the Department for the preparation of a Report on Condition of the dam shall be used for all inspections.
 - 2. Formal and regular dam inspections shall be performed by a licensed New Jersey professional engineer. Except for Class IV dams, the required report shall be submitted to the Department by the engineer within 30 days of completion of the inspection. The report shall indicate the results of the inspection, documenting the conclusions and recommendations. Reports for Class IV dams shall be submitted to the county and/or municipal engineer having jurisdiction over the dam structure.
 - 3. Informal inspections may be performed by the dam owner or operator and the Report on Condition shall be part of the owner's or operator's permanent file and, unless requested by the Department, Reports shall not be submitted to the Department.
 - 4. The Department may extend the time for submission of the required material for up to 30 days, if the owner or operator justifies the need for such extension.
 - 5. Failure by the permittee to inspect within the required time periods or failure to submit the Report on Condition may result in an order to drain the impoundment under the provisions of the Safe Dam Act (N.J.S.A. 58:4-1 et seq.), and/or any other remedy allowed by law.
- (h) For good cause, the Department may require the owner or operator of any dam to perform an inspection of any type at any time.

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- (i) The owner or operator of all Class I and II dams shall prepare and use an Emergency Action Plan as described in N.J.A.C. 7:20-1.7(f).

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 OR 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 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 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

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

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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

- (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.

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

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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, Floor 7
Mail Code 401-04L
P.O. Box 402
Trenton, New Jersey 08625-0402

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

New Jersey Department of Environmental Protection
Division of Dam Safety and Flood Control
501 E. State Street
Mail Code 501-01A
P.O. Box 420
Trenton, New Jersey 08625-0420

- (c) The written request shall include all information required by the "Adjudicatory Hearing Request Checklist and Tracking Form" available from the Division of Dam Safety and Flood Control, 501 E. State Street, Mail Code 501-01A, P.O. Box 420, Trenton, NJ 08625-0420 and on the Department's website at www.state.nj.us/dep/damsafety, as follows:

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

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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;

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 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.

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- (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 to \$ 25,000;
 - ii. Class II Dams: \$ 5,000 to \$ 10,000;
 - iii. Class III and IV Dams: \$ 1,000 to \$ 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 to \$ 25,000;
 - ii. Class II Dams: \$ 5,000 to \$ 10,000;
 - iii. Class III and IV Dams: \$ 1,000 to \$ 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 to \$ 25,000;

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- ii. Class II Dams: \$ 5,000 to \$ 10,000;
 - iii. Class III and IV Dams: \$ 1,000 to \$ 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 to \$ 5,000;
 6. Failure to implement a security plan:
 - i. Class I Dams: \$ 10,000 to \$ 25,000;
 - ii. Class II Dams: \$ 5,000 to \$ 10,000;
 - iii. Class III and IV Dams: \$ 1,000 to \$ 5,000;
 7. Failure to comply with any permit requirement:
 - i. Class I Dams: \$ 10,000 to \$ 25,000;
 - ii. Class II Dams: \$ 5,000 to \$ 10,000;
 - iii. Class III and IV Dams: \$ 1,000 to \$ 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 to \$ 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;

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5. The deterrent effect of the penalty;
 6. Any costs or impacts directly or indirectly 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.

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, this chapter 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.

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- (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.
- (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) above 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.
- (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.