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## Liability and Responsibility of Dam Owners

Dam ownership carries with it significant legal responsibilities. Dam owners should be aware of the potential liabilities and how to effectively minimize their exposure to these liabilities. This fact sheet addresses general legal and insurance matters to assist dam owners in minimizing exposure to liability; it does not answer specific legal issues, and dam owners and operators should obtain competent legal counsel when dealing with specific issues.

### **Potential Liability Problems for Dam Owners**

A dam owner should first be familiar with the legal obligation to maintain a dam in a safe condition. The common legal understanding is that the dam owner is the prime benefactor of the impounded waters behind his dam, and is therefore responsible for the potential impacts, which the impoundment of waters may have on upstream or downstream properties. The dam owner is responsible for flood damages incurred to upstream properties by the storage of floodwaters and is responsible for damages caused by the sudden release of stored water from a failure of the dam or intentional rapid draining of the impoundment.

The general rule is that a dam owner is responsible for the dam's safety. Liability can be imposed upon a dam owner if he or she fails to maintain, repair, or operate the dam in a safe and proper manner. This liability can apply not only to the dam owner, but also to any company that possesses that dam, or any person who operates or maintains the dam. If any unsafe condition existed prior to ownership of the dam, the new dam owner may not be absolved of liability should the dam fail during his term of ownership. Thus, the owner or his engineer must carefully inspect the structural integrity of any dam prior to purchase and then provide inspection, maintenance, and repair thereafter.

### **Potential Personal Injury Liability**

Dams and impoundments are popular places, even if located in remote areas. Employees, contractors, invited visitors, or trespassers may visit a dam. The presence of these persons is a potential liability to the dam owner. Liability insurance or workers' compensation insurance should cover employees, contractors or invited guests. However, trespassers present a unique problem.

The majority of trespassers at a dam site are probably members of the public who wish to use the site for fishing, picnicking, boating or swimming. While they may mean no harm, their unauthorized use of the site may be a serious liability problem for the dam owner.

The dam owner is responsible for making and keeping his premises safe. The general rule is that the dam owner must avoid conduct or conditions that could injure any person, even one who trespasses. If the dam owner knows that an unsafe condition exists, he is responsible to correct it and/or **post warnings**. Typical dangers at a dam site include fast moving water, open spillways (pipes) and thin ice. An example of this occurred when two men scuba-diving at a municipally owned lake in Connecticut were sucked

through the 24-inch diameter drain pipe, which was open for the normal fall lake drawdown. The men lived, miraculously, but they filed suit against the municipality for damages. A particularly dangerous area is the portion of the weir immediately below the spillway. Boaters have been trapped in the violent eddies at the base of spillways of dams on major New England rivers commonly frequented by canoeists and fishermen.

Owners of dams are charged with greater responsibility when the trespassers are children. By reason of children's inability to understand the danger, which a condition may pose, a dam owner is expected to protect children from the dangers of a dam site. In effect, this rule requires you to anticipate what parts of the facility would be particularly attractive to children. Since signs may not adequately warn children, security fencing may be necessary. Dam sites located near state or county roads, campgrounds or picnic areas, or near populated areas will attract many more people. These popular dam sites require frequent visits by the dam owner to inspect and assure safety.

### **Potential Liability due to Operation of the Dam**

In addition to liability problems arising out of dam ownership, operation of a dam has legal ramifications. First and foremost is the right to impound water. State law requires a permit to construct, repair and/or operate a dam. The New Hampshire Department of Environmental Services' Water Division may be consulted for particular matters regarding the issue of operation of a dam.

Beyond the basic permitting question, all dam owners must consider the effect of dam operation on the rights of other water users, whether they are upstream or downstream from the facility. For both upstream and downstream users, this responsibility includes a duty to avoid negligent flooding of their property.

In times of high runoff, the dam owner must assess the effects of operations that alter prevailing conditions. Increasing discharge may create flooding downstream while decreasing discharge may protect downstream property but cause flooding or other damage upstream. The dam owner must always consider the maximum discharge capacity of the structure relative to prevailing hydrologic conditions and weather forecasts. Overtopping of a dam due to insufficient or untimely operations must be avoided.

In situations where there is no specific duty to protect downstream owners from flooding, the dam owner must still operate the dam conscientiously. Should damages occur, the dam owner must be in a position to clearly show that his dam did not increase flooding.

Upstream users may also have the right to be protected from damage caused by operation of the dam. Therefore, the dam owner is advised to assess the legal as well as the physical impact of any change in the level of the impoundment, including dam removal.

### **A Final Word about Liability**

This fact sheet is only a general introduction to the many issues regarding dam owner liability. The discussion is intended solely to provide a basis to consider liability potentials and to encourage dam owners to seek competent legal counsel and/or technical experts to help resolve any specific problems. Where the ownership and operation of dam and impoundments are concerned, the old saying "an ounce of prevention ..." is appropriate. Following it could truly save the dam owner the "pound of cure."

For more information relative to the design, construction, maintenance and operation of dams, please contact the NHDES Dam Bureau at (603) 271-3406 or email [damsafety@des.nh.gov](mailto:damsafety@des.nh.gov). General information is available at NHDES Dam Bureau Webpage. You may also visit our office at 29 Hazen Drive, Concord, NH.

This fact sheet is accurate as of December 2019. Statutory or regulatory changes or the availability of additional information after this date may render this information inaccurate or incomplete.

