



1 written application provided to the secretary requesting that a  
2 person be issued a certificate of approval.

3 (c) "Appurtenant works" means any structure or facility that  
4 is an adjunct of, or connected, appended or annexed to, a dam,  
5 including, but not limited to, spillways, a reservoir and its rim,  
6 low-level outlet works or water conduits such as tunnels, pipelines  
7 and penstocks either through the dam or its abutments.

8 (d) "Authority" means the Water Development Authority provided  
9 in section four, article one, chapter twenty-two-c of this code.

10 (e) "Certificate of approval" means the written approval  
11 issued by the secretary to a person who has applied to the  
12 secretary for a certificate of approval that authorizes the person  
13 to place, construct, enlarge, alter, repair or remove a dam and  
14 specifies the conditions or limitations under which the work is to  
15 be performed by that person.

16 (f) (1) "Dam" means an artificial barrier or obstruction,  
17 including any works appurtenant to it and any reservoir created by  
18 it, which is or will be placed, constructed, enlarged, altered or  
19 repaired so that it does or will impound or divert water and:

20 (A) Is or will be twenty-five feet or more in height from the  
21 natural bed of the stream or watercourse measured at the downstream  
22 toe of the barrier and which does or can impound fifteen acrefeet  
23 or more of water; or

24 (B) Is or will be six feet or more in height from the natural

1 bed of the stream or watercourse measured at the downstream toe of  
2 the barrier and which does or can impound fifty acrefeet or more of  
3 water;

4 (2) "Dam" does not mean:

5 (A) Any dam owned by the federal government;

6 (B) Any dam for which the operation and maintenance of the dam  
7 is the responsibility of the federal government;

8 (C) Farm ponds constructed and used primarily for agricultural  
9 purposes, including, but not limited to, livestock watering,  
10 irrigation, retention of animal wastes and fish culture and that  
11 have no potential to cause loss of human life in the event of  
12 embankment failure; or

13 (D) Roadfill or other transportation structures that do not or  
14 will not impound water under normal conditions and that have a  
15 designed culvert or similar conveyance or capacity that would be  
16 used under a state designed highway at the same location:  
17 *Provided*, That the secretary may apply the provisions of section  
18 ten of this article for roadfill or other transportation structures  
19 that become a hazard to human life or property through the frequent  
20 or continuous impoundment of water.

21 (g) "Deficient dam" means a noncoal-related dam that exhibits  
22 one or more design, maintenance or operational problems that may  
23 adversely affect the performance of the dam over a period of time  
24 or during a major storm or other inclement weather that may cause

1 loss of life or property; or a noncoal-related dam that otherwise  
2 fails to meet the requirements of this article.

3 (h) "Department" means the Department of Environmental  
4 Protection.

5 (i) "Enlargement" means any change in or addition to an  
6 existing dam which: (1) Raises the height of the dam; (2) raises  
7 or may raise the water storage elevation of the water impounded by  
8 the dam; (3) increases or may increase the amount of water  
9 impounded by the dam; or (4) increases or may increase the  
10 watershed area from which water is impounded by the dam.

11 (j) "Noncompliant dam owner" means an owner who has received  
12 two or more orders to repair or remove a deficient dam without  
13 completion of the repairs or removal within time frames established  
14 by the secretary.

15 (k) "Owner" means any person who:

16 (1) Holds legal possession, ownership or partial ownership of  
17 an interest in a dam, its appurtenant works or the real property  
18 the dam is situated upon;

19 (2) Has a lease, easement or right-of-way to construct,  
20 operate or maintain a dam; or

21 (3) Is a sponsoring organization with existing or prior  
22 agreement with the Natural Resources Conservation Service for a dam  
23 or its appurtenant works constructed with assistance from Public  
24 Law 78-534, Section 13 of the Flood Control Act of 1944; Public Law

1 83-566, the Watershed Protection and Flood Prevention Act of 1954;  
2 the pilot watershed program authorized under the heading "Flood  
3 Prevention" of the Department of Agriculture Appropriation Act of  
4 1954, Public Law 156, 67 Stat. 214; or Subtitle H of Title XV of  
5 the Agriculture and Flood Act of 1981, commonly known as the  
6 Resource Conservation and Development Program, 16 U. S. C. § 3451.

7       ~~(k)~~ (l) "Person" means any public or private corporation,  
8 institution, association, society, firm, organization or company  
9 organized or existing under the laws of this or any other state or  
10 country; the State of West Virginia; any state governmental agency;  
11 any political subdivision of the state or of its counties or  
12 municipalities; a sanitary district; a public service district; a  
13 drainage district; a conservation district; a watershed improvement  
14 district; a partnership, trust or estate; a person or individual;  
15 a group of persons or individuals acting individually or as a  
16 group; or any other legal entity. The term "person", when used in  
17 this article, includes and refers to any authorized agent, lessee  
18 or trustee of any of the foregoing or receiver or trustee appointed  
19 by any court for any of the foregoing.

20       ~~(l)~~ (m) "Reservoir" means any basin which contains or will  
21 contain impounded water.

22       ~~(m)~~ (n) "Secretary" means the Secretary of the Department of  
23 Environmental Protection.

24       ~~(n)~~ (o) "Natural Resources Conservation Service" means the

1 Natural Resources Conservation Service of the United States  
2 Department of Agriculture or any successor or predecessor agency,  
3 including the Soil Conservation Service.

4 ~~(o)~~ (p) "Water" means any liquid, including any solids or  
5 other matter that may be contained in the liquid, which is or may  
6 be impounded by a dam.

7 ~~(p)~~ (q) "Water storage elevation" means the maximum elevation  
8 that water can reach behind a dam without encroaching on the  
9 freeboard approved for the dam under flood conditions.

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(NOTE: The purpose of this bill is to define the owner of a  
dam for purposes of the Dam Control Act.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.)