



The Virginia Dam Safety Act

Jim Lang

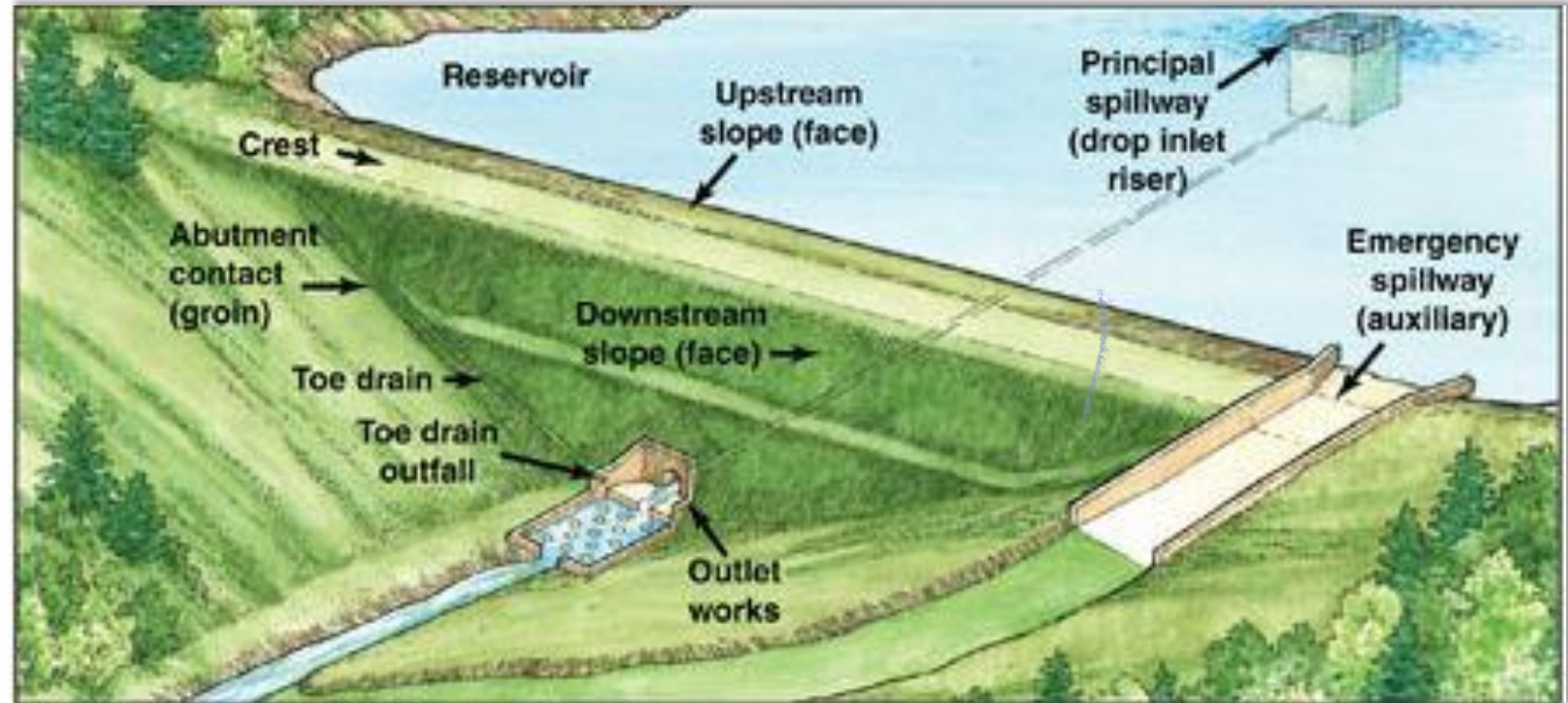
March 31, 2023

What We Will Cover Today

- Causes of dam failure
- Federal law and Virginia law
- Liability After a Dam Failure
- Unsafe Dams
(Imminent/Nonimminent Danger)
- Right of Entry
- Temporary Stop Work Orders
- Enforcement
- Criminal Penalties
- Civil Penalties

Main Causes of Dam Failure

- Over topping (water spilling over the top)
- Foundation defects
- Cracking (often caused by natural settling)
- Inadequate maintenance



Courtesy U.S. Forest Service

Dam Failure in Johnstown, PA (1889)



Artist's conception of the South Fork Dam failing or giving way on the afternoon, about 3:15 pm, of May 31, 1889
- Courtesy National Parks Service/Harper's Ferry Center

- 2,200 people killed
- “Huge trees were snapped off or uprooted one after another and went plunging off in the torrent. . . . The water advanced like a tremendous wall. Giant chunks of the dam, fence posts, logs, boulders, whole trees, and the wreckage of [a home] were swept before it, driven along like an ugly grinder that kept building higher and higher.”

- David McCullough, *The Johnstown Flood*, page 102

St. Francis Dam Failure, Los Angeles County (1928)

- Designed by William Mulholland (207 feet tall)
- Deadliest and worst civil engineering failure of the 20th century
- Waves of water traveled 54 miles to the Pacific Ocean
- Killed 385 people
- 1,000 houses damaged or destroyed
- Thousands of acres of land, bridges, roads, farms, orchards impacted

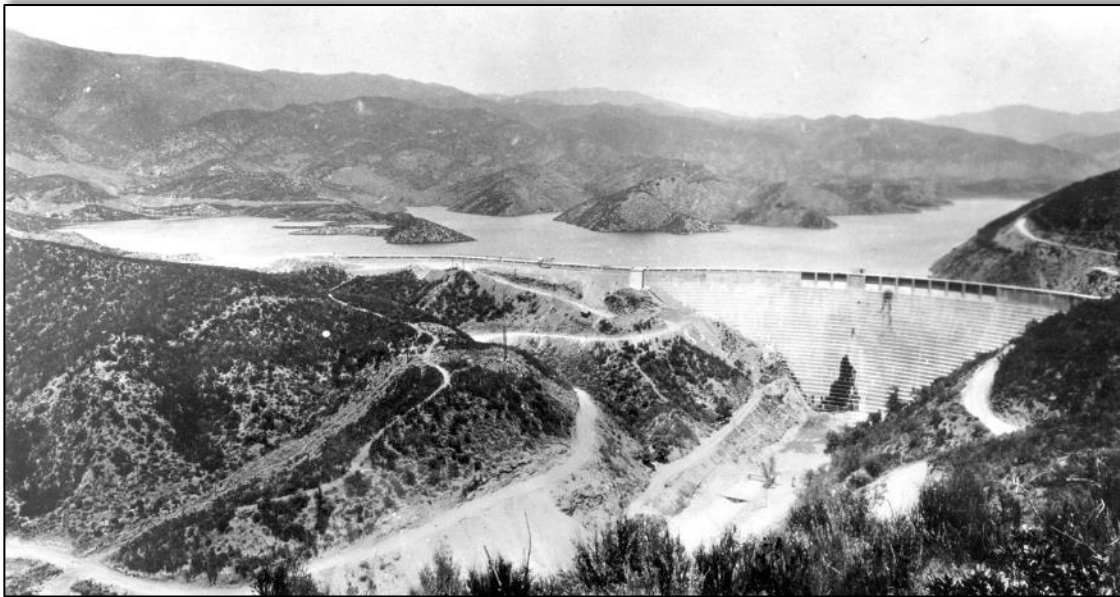


Photo credit: By Stearns, H.T. USGS - This file was derived from: The St. Francis Dam.jpg, Public Domain, <https://commons.wikimedia.org/w/index.php?curid=10829037>

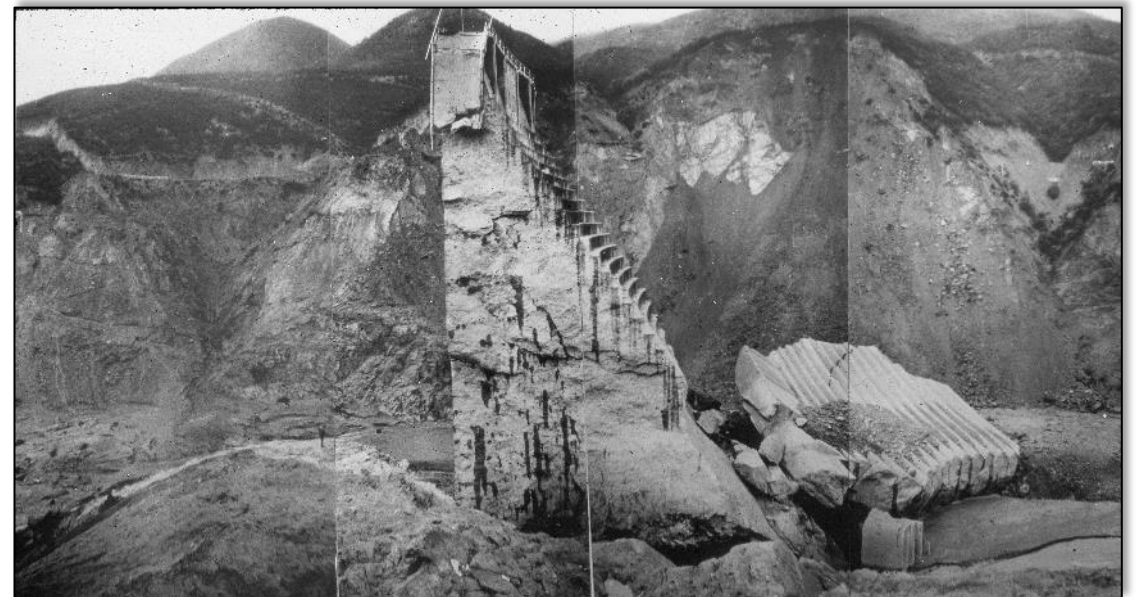


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Dam Failure in Teton Idaho (1976)

- Designed by Bureau of Reclamation
- 305 feet tall/Teton River
 - Flood control
 - Hydropower
 - Irrigation
 - Drinking water
- Failed as the dam was filling for the first time
- Killed 11 people / \$400M in damages
- Flooded 5 counties, 300 square miles, traveled 155 miles downstream



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Legal Response to Dam Failures

- Common law
- Federal Dam Inspection Program (33 USC §§ 467 to 467o)
 - FEMA
- Regulations (7 CFR § 1724.55)
- Virginia Dam Safety Act (Va. Code Va. Code §§ 10.1-604 to 613.6)
 - Virginia Soil and Water Conservation Board (“Board”)
 - Department of Conservation and Recreation (“Director”)
- Regulations (4 VAC 50-20-10 to 4 VAC 50-20-400)



Owner & Operator Liability After Dam Failure

- Common law
 - Nuisance
 - Negligence
 - Trespass
- Strict liability (Va. Code §10.1-613.4)
 - Owner liable
 - Operator liable
 - All personal injury and all property damage
 - Even if dam is fully compliant with Va Dam Safety Act

Photo Credit Everett/shutterstock.com

Unsafe Dams (1 of 2)

- Imminent Danger (Va. Code §10.1-608)
 - If the owner does not take appropriate and timely action the Governor has authority to take immediate appropriate action without a hearing
 - Attorney General can sue owner to recover to expenses for action taken by Governor
 - Lien to secure owner's obligation to pay
 - Owner's defense: the dam was known to be safe

Photo credit: melissamn/shutterstock.com

Unsafe Dams (2 of 2)

- Nonimminent Danger (Va. Code §10.1-609)
- Virginia Soil and Water Conservation Board (VSWCB) issues report to owner after safety inspection
- Owner shall implement recommendation in the report
- If owner refuses, Director can issue an administrative order to owner
- Owner can contest the order at hearing before the VSWCB
- Owner can appeal VSWCB'S decision to Circuit Court
- Civil and/or criminal penalties if owner defies the order and does not contest the order at VSWCB



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Right of Entry (Va. Code §10.1-610)

- VSWCB's regulators can enter to inspect and perform tests
- Reasonable times
- Reasonable circumstances
- Will seek consent
- If consent withheld, seek warrant
- Probable cause to believe there is a dam on the property “which is not known to be safe” (affidavits)

Photo Credit CCO Public Domain

Temporary Stop Work Orders (Va. Code §10.1-612.1)

- Director of DCR may issue the order
- Grounds
 - Construction or alteration without necessary approvals
 - Construction or alteration not in accordance with approvals
- Order will have time/date of hearing before VSWCB to show cause why the order should be vacated (within 15 days)
- Owner can appeal results of show cause hearing to Circuit Court
- If owner defies the order
 - Injunction, civil, criminal penalties



Oroville, CA Dam and Spillway Feb 2017
Photo credit: Public Domain

Enforcement (Va. Code §10.1-613)

- VSWCB may sue any person who fails or refuses to comply with an order
- Remedy
 - Injunction to halt unlawful construction, modification, operation, maintenance
 - Owner pays the VSWCB's expenses
 - Lien on the owner's land

Criminal Penalties (Va. Code §10.1-613.1)

- **Class 3 misdemeanor**
 - No jail time
 - \$500 fine maximum, per day following service of the notice of violation
 - \$25,000 total maximum
- Operate, construct or alter a dam without approval
- Violate an order
- Obstruct the VSWCB, its agents or employees

Civil Penalties (Va. Code §10.1-613.2)

- \$500 per day NTE maximum of \$25,000
- VSWCB sends written penalty notice to owner
- Owner can contest at hearing before VSWCB
- Owner can appeal VSWCB decision to Circuit Court



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Additional Resources

- DCR website:
<https://www.dcr.virginia.gov/dam-safety-and-floodplains/dam-safety-index>
- Virginia Law and Regulation Regarding Dam Safety:
<https://www.waterfrontpropertylaw.com/blog/posts/virginia-law-and-regulation-regarding-dam-safety/>
- Virginia Law on a Dam Owner's Liability After a Dam Failure:
<https://www.waterfrontpropertylaw.com/blog/posts/virginia-law-on-a-dam-owner-s-liability-after-a-dam-failure/>



Thank You & Questions

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