§ 15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.

1. Any owner of a dam or other structure which impounds waters shall at all times operate and maintain said structure and all appurtenant structures in a safe condition. As used in this section and section 71-1109 of this chapter, "owner" means any person or local public corporation who owns, erects, reconstructs, repairs, maintains or uses a dam or other structure which impounds waters. The commissioner may promulgate regulations requiring any owner to prepare and implement a safety program for such dam or structure as necessary to safeguard life, property or natural resources. Regulations governing the safety program may include requirements for inspections, monitoring, maintenance and operation, emergency action planning, response and prevention of terrorism and cyber terrorism, financial security, recordkeeping and reporting or any other requirement the commissioner deems necessary to safeguard life, property or natural resources. Such requirement shall only apply to those dams or other structures that impound waters which pose, in the event of failure, a threat of personal injury, substantial property damage or substantial natural resource damage.

2. Whenever in the judgment of the department public safety requires, the department shall investigate dams and other structures impounding waters in the state, and docks, piers and wharves extending into such waters.

3. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the department shall have the power, whenever in the judgment of the department it may be necessary to safeguard life or property or to protect the natural resources of the state, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any owner:

a. to conduct studies, investigations and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing,

materials testing, hydraulic and hydrologic analyses, structural stability analyses and seepage investigations; and

b. to either remove the said structure or to erect, reconstruct or repair the same within such reasonable time and in such manner as shall be specified in said order.

It shall be the duty of every such owner to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

4. It shall be unlawful for any owner to fail, omit or neglect to comply with such order within a reasonable time as designated by the department.

5. Upon the violation of any such order, the department shall have power to enter upon the lands and waters where such structures are located for the purpose of removing, repairing or reconstructing the same and to take such other and further precautions which it may deem necessary to safeguard life or property or protect the natural resources of the state against danger occasioned by the presence of such structures. In removing, repairing and reconstructing such structures or other properties so affected the department shall not deviate from the method, manner and specifications contained in the original order.

6. The department shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal, repair or reconstruction aforesaid in any wise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the dam, dock or other structure is located, designated or described by the department as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or

localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department, who shall thereupon, pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.