§ 15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.

1. Whenever in the judgment of the commissioner, public safety requires, or an illegal excavation, fill, or dam exists in or on the waters of the state, the commissioner may cause an investigation to be made of the nature of the hazard or violation and its probable effect on the health, safety and welfare of the people of the state, and the effect on the environment and natural resources including forests, soil, water, fish and wildlife.

2. 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 commissioner shall have the power, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any person or local public corporation, who hereafter makes or allows to be made or is making an illegal or unsafe excavation or fill, or who constructs an illegal dam, 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 analysis and seepage investigations and to remove, replace or correct the dam or excavated or filled materials, within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person or local public corporation 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.

3. It shall be unlawful for any person or local public corporation to fail, omit or neglect to comply with such order within a reasonable time as designated by the commissioner.

4. Upon the violation of any such order, the commissioner, or a duly appointed representative, shall have power to enter upon the lands and waters where such illegal or unsafe disturbances are located for the

purpose of removing, replacing or correcting the same and to take such other and further precautions which the commissioner may deem necessary to safeguard life or property or protect the environment of the state against danger occasioned by the presence of the illegal or unsafe excavation, fill or dams. In removing or replacing such structures or other properties so affected the commissioner shall not deviate from the method, manner and specifications contained in the original order.

5. The commissioner shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal or replacing aforesaid in anywise 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 excavation, fill or dam is located, designated or described by the commissioner 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 which 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.