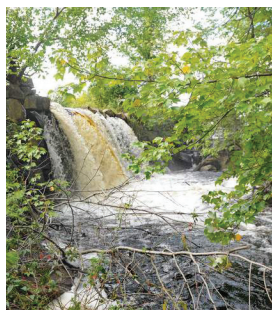


# FLOODING AND DAM SAFETY



Flash floods and floods can occur at any time of year. Rapid warming in conjunction with spring runoff and excessive rain increase the likelihood of flooding, especially in areas where large amounts of snow are common. Conditions of flooding greatly increase the potential for liability and property damage to Primex<sup>3</sup> members. Careful planning can reduce the potential for flood damage to your property and make recovery much easier. It is critical that employee training be conducted and that supplies, such as sand bags, be purchased and stored in an accessible location — prior to flood season.

There are a number of resources available to assist in planning for flooding such as the Federal Emergency Management Agency, the New Hampshire Bureau of Emergency Management, and your Primex<sup>3</sup> Risk Management Consultant.

Such flooding will impact local dams that may already be severely stressed by heavy rainstorms. With this in mind, we are issuing this safety bulletin which generally outlines the liability and responsibility of dam owners subject to any applicable defenses and immunities. Whether you own a dam or have private or publicly owned dams in or adjacent to your communities, we recommend that you re-examine your *Emergency Management Plan* to make sure it addresses all potential exposures that would be faced in the event of a dam failure.

Depending on the location of the dam, its failure could result in substantial liability claims against the owner resulting from property damage, injury and even the death of people living and working in areas below the dam. If defects in the dam had been identified through the Dam Safety Bureau or engineering inspections and were not corrected, the liability could be even greater and include adverse publicity for the community. If the Dam Safety Bureau has issued an order for the correction of a defect, a violation of that order is a criminal offense under RSA 482:14 &15 and is subject to a penalty of \$100 per day of non-compliance. Noncompliance with the Bureau's order of correction may affect your liability coverage with Primex<sup>3</sup>.

The following information on liability of dam owners was taken from the *Dam Safety Bureau Fact Sheet, WD-DB-10*

## Potential Liability and Responsibility for 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.

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 the 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 flood waters 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 must carefully inspect the structural integrity of any dam prior to purchase and then provide inspection, maintenance, and repair thereafter.

## 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. 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 which 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. If damages occur, the dam owner must be in a position to clearly show that actions taken did not increase flooding.

## 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 that advice could truly save the dam owner the “pound of cure.”

*For information on the management of risks associated with flooding, dams and other property & liability exposures, please contact your Primex<sup>3</sup> Risk Management Services Consultant.*

*Questions on inspections and dam safety should be referred to the NH Department of Environmental Services Dam Safety Bureau at 603-271-3406 or [damsafety@des.state.nh.us](mailto:damsafety@des.state.nh.us). General information can also be found at [www.des.nh.gov/Dam/](http://www.des.nh.gov/Dam/).*

