



## Responsibility and Liability

“Common law holds that the storage of water is a hazardous activity.”



## INTRODUCTION

Dams are owned and operated by individuals, private and public organizations, and the government. The responsibility for maintaining a safe dam rests with the owner. A dam failure resulting in an uncontrolled release of the reservoir can have a devastating effect on persons and property downstream.

Tens of thousands of public and private dam owners in the United States have exposure to liability for the water stored behind their dams.

For many owners, the proper operation and maintenance of a dam is only one aspect of their organization's activities. But, safely maintaining a dam is a key element in preventing a failure and limiting the liability that an owner could face.



### ASSOCIATION OF STATE DAM SAFETY OFFICIALS

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# DAM OWNERSHIP





# DAM FAILURE

## AND OWNER LIABILITY

The failure of a dam has the potential for catastrophic impact on communities, private property and public works downstream. The record of dam performance suggests that there are approximately 10 to 20 failures per year involving uncontrolled release of the reservoir. Experience reveals that the failure of even small dams can result in serious injuries, fatalities and extensive property damage.

### LOSS FROM FAILURE

The cost of dam failure is difficult to assess because flooding can affect large areas. The dam owner loses a valuable asset, and faces reconstruction costs and possible liability for downstream damages. Local communities may be directly impacted due to building damage, injuries, fatalities, lost water supply, damage transportation and infrastructure, and lost recreational assets.

### STRICT LIABILITY AND NEGLIGENCE

The extent of an owner's liability will vary from state to state, depending on the statutes and case law precedents. The concept of strict liability imposes liability on a dam owner for damages that occur regardless of the cause of failure. The alternative theory of negligence considers the degree of care employed by the owner in constructing, operating and maintaining a dam. Historically, courts have sought to compensate those injured by a dam failure.

When assessing liability, the standard of care exercised by an owner will be closely examined. The standard of care should be in proportion to the downstream hazards involved. Where the risk is great, owners must be especially cautious.



In many cases, a dam regulated by the federal government or a state dam safety program must be designed to withstand an unprecedented flood or earthquake.

### COMPLIANCE

Compliance with government or professional standards does not absolve an owner from liability, but it does establish a minimum standard of care to be used by owners. The extent of liability in any situation depends on the facts of the case and how those facts are interpreted by a judge or jury.

Consequently, actions that result in owner liability in one state may not result in liability in different states. In general, a dam owner is required to use "reasonable care" in the operation and maintenance of a dam and reservoir.



# RISK

## MANAGEMENT

"In today's litigious society it is safe to assume that in the case of catastrophic dam failure, extensive litigation will ensue. Any competent lawyer, representing the victims, will sue all possible wrong doers in seeking redress...including...the owners and operators of the facility, and...architects, engineers, contractors, sub-contractors, and consultants involved in the original construction and any subsequent modifications..."

– DENIS BINDER, PROFESSOR OF LAW, WESTERN NEW ENGLAND COLLEGE OF LAW

An essential and logical part of an organization's management program is the control of potential losses that may arise. To manage risks, and owner can utilize a combination of standard operating procedures, employee training, regular maintenance, emergency preparedness and liability insurance.

A dam owner can take several actions to protect against financial loss. Technical guidance and information is available from your state's Dam Safety office.

Each dam should have:

- A state dam safety permit (if applicable)
- An operation plan, documented regular maintenance plan and emergency action plan
- Documented periodic inspections
- Warning signs and controlled access

# MORE

## INFORMATION

For information on state dam safety statues and administrative rules, contact:

- State Dam Safety Office
- Association of State Dam Safety Officials
- State Attorney General's Office

Additional information and technical assistance can be obtained from the following federal, state and local agencies:

- Office of Emergency Services
- U.S. Army Corps of Engineers
- U.S. Department of the Interior, Bureau of Reclamation
- U.S. Department of Agriculture-Soil Conservation Service

ASDSO's Web site – Tools and downloadable guidelines are available. [www.damsafety.org](http://www.damsafety.org)

