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Dams: Regulation of
Bureau of Civil Emergency Preparedness: Dam Regulation
~~37-A~~ 37-A M.R.S.A. 180 et seq.

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
November 14, 1977

To: Charles L. Wyman, Special Assistant, Executive Department
From: Donald G. Alexander, Deputy Attorney General
Re: Authority regarding inspection of dams.

This responds to your request for advice on the question of whether, and to what extent, the Bureau of Civil Emergency Preparedness has authority to coordinate and develop plans for a state response to a dam disaster in non-emergency situations.

Response to your question requires analysis of the provisions of 37 M.R.S.A. § 180, et seq. relating to dams and reservoirs. In that analysis, the definition of "emergency" or "emergency situation," 37-A M.R.S.A. § 181-4, is important. That section defines "emergencies" to include not only emergencies declared by the Governor pursuant to 37-A M.R.S.A. § 57, but also other dam-related emergencies where there is an actual break and where there is a situation posing an imminent threat of danger.

Analysis of the Bureau of Civil Emergency Preparedness authority must then be divided into those areas where the Bureau has authority to act generally, and those areas in which the Bureau's authority to act is limited to emergency situations.

First, it should be noted that, while the Bureau has general authority to consult with other specified state departments, its capacity to require those state departments to provide assistance is limited to emergency situations. 37-A M.R.S.A. § 183.

Further, the Bureau's ability to act to control or avoid emergency situations, including such activities as reducing water levels or other necessary steps to avoid dam disasters is limited to perceived and identified emergency situations, 37-A M.R.S.A. §§ 184-2 and 184-5.

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However, the powers of the Bureau in the area of development of regulations, 37-A M.R.S.A. § 184-1, investigations and inspections, 37-A M.R.S.A. § 184-3, and contingency plans, § 184-6, would apply in any situation. Clearly the Legislature could not have intended that the Bureau wait until an emergency situation arises to begin planning and investigation on how to deal with an emergency situation. Further, the Bureau's authority to investigate and inspect, as expressed in the first sentence of § 184-3, is not limited by the emergency situations qualification.

Thus, in preparing regulations and plans to deal with emergencies, the Bureau would have authority to make investigations and inspections consistent with its statutory authorized purposes. There is one qualification on this authority; that qualification is specified in the second sentence of § 184-3. That sentence limits the Bureau's authority to mandate its entry onto property to emergency situations where such entry may not be approved by the owner. One cannot anticipate how great an effect this limitation has. It should be noted that many dams are on public waterways so that it would appear unlikely that compelled access to them would be unnecessary in order to make necessary inspections. Further, it is likely that even if the owners of some land or owners of the dam would not give permission to cross their land or the dam to inspect, the dam access might be gained by property of other owners who would be willing to permit crossing of their property in order to permit the Bureau to engage in at least a visual inspection of the dam property.

I hope this information is helpful.

Sincerely,


DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec
cc: Nicholas Caraganis