

Anne Arundel Soil Conservation District
Board of Supervisors
Resolution 2008-1

Policy Concerning Dam Safety Reviews by the
Anne Arundel Soil Conservation District

The purpose of this resolution is to establish, as a policy of the Anne Arundel Soil Conservation District, guidelines for the dam safety review of non-farm small ponds.

Environment Article, Section 5-503 (a), Annotated Code of Maryland requires all persons to obtain a permit from the Maryland Department of the Environment (MDE) to construct, reconstruct or repair any reservoir, dam or water obstruction. Section 5-503 (b) exempts a person from the need to obtain a permit from MDE if, among other criteria:

1. The dam is not greater than 20 in height, and
2. The facility has a contributory drainage area of less than one square mile, and
3. The dam is a low hazard structure the failure of which would be unlikely to cause loss of life or property damage, and
4. The plans and specifications are approved by the appropriate soil conservation district.

Although the Environment Article exempts persons that obtain district approval from the need to acquire an MDE permit for a dam and despite the fact that districts have a discretionary general statutory authority to act as an agent for the State in the construction of certain erosion prevention projects within their boundaries, a corollary dam safety authority for small dams has never been established in the authorization statute that governs the mission and authorities of the soil conservation districts. The respective districts, including Anne Arundel, have administered various small pond dam safety programs over the years without specific statutorily mandated authorities. Instead, the districts have simply relied upon engineering support from the Natural Resource Conservation Service and criteria embodied in the USDA, Maryland Conservation Practice, Standard Pond Code 378.

Unfortunately, NRCS staff restructuring combined with funding constraints have significantly reduced engineering support available to the Anne Arundel Soil Conservation District for urban related pond projects. Project reviews involving larger structures that are near a high hazard classification have been particularly problematical for the District and NRCS. Although such structures are rare they require an inordinate amount of review time from a dam safety perspective.

The reduced NRCS engineering support, coupled with the lack of direct program mission statutory and regulatory mandate for the District to administer an effective dam safety program has resulted in the need to narrow District involvement in future urban pond reviews. Henceforth, it is the policy of the Board of Supervisors of the Anne Arundel

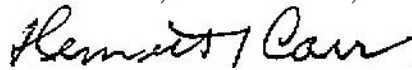
Soil Conservation District that the District will undertake a threshold examination of proposed dams with a height greater than 8 feet as measured vertically from the lowest point on the top of the dam to the lowest point on the upstream toe of the dam. If, within its sole discretion, the District determines, as a result of its threshold analysis, there are safety, workload or other issues that could complicate review of a particular project, the applicant will be instructed to forward the plans to the Maryland Department of the Environment for a State dam safety review. Should the District elect to review a dam greater than 8 feet in height, but less than 20 feet high, the District will forward the plans for the proposed structure to NRCS for their concurrence in any determinations rendered by the District. In an effort to expedite approvals for structures below the 8 foot threshold, the District will undertake all reviews “in-house” for consistency with MD 378 and will no longer forward such projects to NRCS for duplicative review.

In addition, the District will no longer provide official “as built” certifications on any dams constructed in the County. The Maryland Code of Regulations 26.17.04.05 G. governs the specific conduct of MDE and the regulated community in situations where an exemption from the need for State dam safety review is granted based on adherence to MD 378 criteria, the meeting of size parameters, and approval by the local soil conservation district. COMAR 26.17.04.05 G (3) states that when the district submits an “as built” certification to MDE the “certification shall state that the subject pond was constructed in conformance with the approved plans and specifications.” There are no existing circumstances under which the Anne Arundel Soil Conservation District is capable of legitimately rendering such a certification. There are no professional engineers currently employed by the District. The District has no dam safety inspection staff capable of monitoring dam construction to ensure that the structure was properly built.

COMAR 26.17.04.05 G (3) further provides a specific alternative to district “as built” certification by stating “[a] certification by a professional engineer, land surveyor, or landscape architect practicing in accordance with the laws of Maryland shall be acceptable to the Administration instead of a certification by the soil conservation district.”

Henceforth, the Anne Arundel Soil Conservation District will direct owners of newly constructed dams to exercise the alternative provided by COMAR and forward all official “as built” certifications directly to MDE. The District will, however, for projects it has approved, forward an e-mail to the Anne Arundel County Department of Inspections and Permits indicating whether it appears from an office review of the “as built” submittal that a dam has been constructed in accordance with the originally approved plan.

Policy Concerning Dam Safety Reviews, Adopted by
Resolution of the Anne Arundel Soil Conservation District
Board of Supervisors this date, November 18, 2008



Kenneth Carr, Chairman, Board of
Supervisors