



## **Economic Impact Analysis Virginia Department of Planning and Budget**

---

**4 VAC 50-20 – Virginia Impounding Structure Regulations**  
**Department of Conservation and Recreation**  
December 8, 2010

---

### **Summary of the Proposed Amendments to Regulation**

The Virginia Soil and Water Conservation Board (Board) proposes to grandfather certain dams from requirements of the Board's Virginia Impounding Structure Regulations (Regulations) that first came into effect in 2008 for one six-year permit cycle. These dams had been issued Construction Permits (permits to build a new dam) or Alteration Permits (permits to make repairs and upgrades to existing dams) under a previous version of the Regulations that was effective prior to September 26, 2008. In some cases, these dams later completed construction fully in compliance with the conditions of their permits, only for it to be found that they may not be fully compliant with all changes made to the Regulations effective September 26, 2008. Under the current regulations, there is no provision for grandfathering these dams or providing an extended timeframe for compliance. The proposed regulation would specify that these dams will be issued Regular Operation and Maintenance Certificates, and thus be found in compliance with the Regulations, for one full six year permit cycle. This is contingent on the owner completing all requirements of the permit and any applicable Conditional Operation and Maintenance Certificate by September 26, 2011. Once the full six year permit cycle is complete, the owner would need to meet the standards applied to other dams throughout the Commonwealth.

### **Result of Analysis**

The benefits likely exceed the costs for all proposed changes.

## **Estimated Economic Impact**

Historically dams in Virginia have largely been kept safe under the Regulations that were in effect prior to September 26, 2008 and under which the dams that would be affected by the Board's proposal received their permits. The Regulations that came into effect in 2008 further increase the assurance of safety.

As the Board and Department of Conservation and Recreation point out, the affected dam owners have invested significant sums of money in pursuit of the conditions of their permits and have proceeded to upgrade their dams in order to achieve compliance with their requirements. Now, due to changes to the regulations effective September 26, 2008, these dams are now no longer fully compliant with all regulatory requirements of the Virginia Dam Safety Program despite their full compliance with all permits and conditions issued by the Board.

The proposed regulatory change (grandfathering) would allow these dam owners to be considered compliant with the Regulations for the first full permit cycle following the completion of their upgrades, and would then require them to meet the same standards that are applicable to all other regulated dams following this time. This will provide an extended timeframe for compliance for these owners to have additional necessary work completed to fully meet the current regulations. In some cases, this may involve a need for dam break inundation zone mapping and other engineering work; in others, additional spillway upgrades may be needed.

Requiring all of these conditions to be met immediately would impose a significant financial burden on these dam owners at a time when they have just completed a very significant investment in their dams. The proposed grandfathering allows the affected owners to delay their next significant expenditure on dam safety, while still maintaining safe dams, and still eventually meeting the more stringent requirements of the 2008 Regulations. The benefit of permitting these affected dam owners who have maintained safe dams some additional time to meet the new requirements likely outweighs the cost of a short period of time of small additional safety risk.

## **Businesses and Entities Affected**

Approximately 14 dams across the Commonwealth would be affected by this amendment. Several of the dam owners may be small businesses. Small businesses that are located downstream of these dams may also be impacted should one of these dams fail.

## **Localities Particularly Affected**

The affected dams are located in the following counties: Albemarle – 2, Gloucester – 1, Hanover – 1, King William – 1, Lancaster – 1, Louisa – 1, New Kent – 3, Powhatan – 2, and Spotsylvania – 2.

## **Projected Impact on Employment**

The proposal amendments are unlikely to significantly affect employment.

## **Effects on the Use and Value of Private Property**

The proposed grandfathering will allow owners of the approximately 14 dams to defer required work for up to six years.

## **Small Businesses: Costs and Other Effects**

The proposed grandfathering will allow small business owners of the affected dams to defer required work for up to six years.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed amendments do not adversely impact small businesses.

## **Real Estate Development Costs**

The proposed grandfathering may delay some development costs, but will not significantly reduce costs in the long run.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small

businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.