



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC50-20
Regulation title	Virginia Impounding Structure Regulations
Action title	Amendments to conform the Virginia Impounding Structure Regulations to legislative changes made during the 2010 General Assembly
Final agency action date	July 15, 2010
Document preparation date	October 7, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Legislation enacted by the 2010 General Assembly Session resulted in modifications to certain technical elements of the Virginia Dam Safety Act that require amendments to the Virginia Impounding Structure Regulations. Elements of two of these bills do not leave discretion for the Virginia Soil and Water Conservation Board as to the composition of the necessary amendments. The two bills were:

- Chapter 270 of the 2010 Virginia Acts of Assembly (HB438 – Delegate Toscano); and
- Chapter 249 of the 2010 Virginia Acts of Assembly (SB276 – Senator Houck).

This regulatory action amends the Impounding Structure Regulations to incorporate non-discretionary elements of the bills mentioned above through an exempt action.

- From Chapter 270 (HB438), this action incorporates the incremental damage analysis floor of the 100-yr flood for high hazard dams (per §10.1-605 B) and language allowing the dam owner to submit his or her own plan to address impounding structure deficiencies (per §10.1-609 A).
- From Chapter 249 (SB276), this action incorporates most of §10.1-605 B to address the revised 0.9 PMP standard for dams in existence or under construction as of July 1, 2010 as well as the certification requirements associated with the opportunity for certain dams to come into compliance with a 0.6 PMP standard.

Specifically, the action makes the following amendments to the regulations:

- In Section 4VAC50-20-30, definitions are added that explain the difference between an existing impounding structure and new construction for the purposes of defining to which impounding structures the 0.9 PMP is applicable.
- In Section 4VAC50-20-50, in Table 1, the new terms (new construction and existing impounding structures) are used to delineate spillway design standards and a column is added to set out the revised spillway standards for existing impounding structures. The primary change here is the reduction from a PMF spillway design flood standard to 0.90 PMP for high hazard dams in accordance with Chapter 249 (SB276).
- Also in Table 1 under the “Minimum Threshold for Incremental Damage Analysis” column, the threshold floor for high hazard dams is changed from 0.50 PMF to 100-year in accordance with Chapter 270 (HB438).
- To further explain Table 1, the action also:
 - Adds a subsection F to point to the location of the new definitions for “existing impounding structures” and for “new construction”;
 - Adds a subsection G to indicate that a 0.6 PMP spillway design flood may be acceptable if the owner meets the requirements set out in a new Section 4VAC50-20-53; and
 - Adds a subsection H that explains what “probable maximum precipitation” (PMP) means.
- Adds a new Section 4VAC50-20-53 that sets out special criteria and certification requirements for a high hazard dam owner that wants to utilize a 0.6 PMP spillway design flood standard. The requirements are taken directly from Chapter 249 (SB276) with the exception of a statement that cross-references the inspection report criteria to section 4VAC50-20-105 E where such inspection requirements are already set out, as well as an owner document retention statement is included.
- In Section 4VAC50-20-105, a requirement is added for the inclusion of the certification statement as part of a dam owner’s regular operation and maintenance certificate application if the owner is claiming the 0.6 PMP standard that is set out in the new Section 4VAC50-20-53.
- Also in Section 4VAC50-20-105, in the subsection that speaks to inspection frequency, a statement is added that references the annual inspection requirement by a licensed professional engineer for a dam owner that is claiming the 0.6 PMP standard pursuant to the new Section 4VAC50-20-53. Under Section 53, the inspections are annual versus typically every two years normally for a high hazard dam.
- Section 4VAC50-20-175 clarifies via reference to the new Section 4VAC50-20-53 that a table-top exercise needs to be done at least once every two years if the dam owner is claiming the 0.6 PMP standard. The current standard is once every six years.
- In Section 4VAC50-20-220, in accordance with Chapter 270 (HB438), a statement is included regarding the ability for a dam owner to submit to the Board his or her own plan to address

deficiencies. This is already a standard practice within the Dam Safety Program and the statement only adds clarity.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

This action to amend and adopt final regulations 4 VAC 50-20, Impounding Structure Regulations was unanimously approved by the Virginia Soil and Water Conservation Board on July 15, 2010.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this final regulation will have a direct impact on the institution of the family or family stability.