



GUIDANCE DOCUMENT ON AGRICULTURAL EXEMPTION REQUIREMENTS

(Approved November 30, 2010)

Summary:

This guidance document specifies the criteria and processes to be utilized in determining whether an impounding structure is eligible for an agricultural exemption.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Regulatory TownHall under the Virginia Soil and Water Conservation Board at <http://townhall.virginia.gov/L/GDocs.cfm>.

Contact Information:

Please contact the Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management at dam@dcr.virginia.gov or by calling 804-371-6095 with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation that administers the program on behalf of the Board. This guidance provides a general interpretation of the applicable Code and Regulations but is not meant to be exhaustive in nature. Each situation may differ and may require additional interpretation of the Dam Safety Act and attendant regulations.

Agricultural Exemption

I. Background:

The Virginia Dam Safety Act, §10.1-604 stipulates that the Board shall not regulate as an impounding structure those "dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet". The Code of Virginia further specifies that agricultural purpose means the production of an agricultural commodity as defined in § 3.2-3900 [as recodified]. Agricultural commodity is defined in § 3.2-3900 as any plant or part thereof, animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals. An owner covered by an agricultural exemption pursuant to § 10.1-604 of the Code of Virginia and 4VAC50-20-30 may validate such exemption by submitting an Agricultural Exemption Report (Agricultural Exemption Report for Impounding Structures, Form DCR199-106) in accordance with 4VAC50-20-165. The regulation also specifies that the Agricultural Exemption Report may be verified by the Department through a site visit.

This guidance document shall provide additional details on how the Board shall make determinations on whether an impounding structure is eligible for an agricultural exemption.

II. Definitions (pursuant to § 10.1-604 and 4VAC50-20-30) (emphasis added by underlining):

"Impounding structure" or "dam" means a man-made structure, whether a dam across a watercourse or structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes: (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater, and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of 50 acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to § 45.1-222 or § 45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water. "Operation and Maintenance Certificate" means a certificate required for the operation and maintenance of all impounding structures.

"Agricultural purpose dams" means impounding structures which are less than 25 feet in height or which create a maximum impoundment smaller than 100 acre-feet, and operated primarily for agricultural purposes.

"Agricultural purpose" means the production of an agricultural commodity as defined in § 3.1-249.27 [recodified as § 3.2-3900] of the Code of Virginia that requires the use of impounded waters.

Other definitions utilized for the purposes of this guidance include:

§ 3.2-3900. Definitions: "Agricultural commodity" means any plant or part thereof, animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

III. Authority:

The Dam Safety Act in the Code of Virginia contains the following authorities applicable to this guidance:

§ 10.1-605. Promulgation of regulations by the Board.

The Board shall promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated.

The Impounding Structure Regulations contain the following authorities applicable to this guidance:

4VAC50-20-165. Agricultural exemption.

A. Impounding structures operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet are exempt from the Impounding Structure Regulations.

B. An owner covered by an agricultural exemption pursuant to § 10.1-604 of the Code of Virginia and 4VAC50-20-30 may validate such exemption by submitting an Agricultural Exemption Report (Agricultural Exemption Report for Impounding Structures). The Agricultural Exemption Report shall include the following information:

1. Project information including the name and inventory number of the structure and name of the reservoir;
2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;
3. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
4. The impounding structure height in feet and the maximum impounding capacity in acre-feet;
5. A list of the agricultural functions for which the impoundment supplies water;
6. The date of validation; and
7. The owner's signature validating that the impoundment is operated primarily for agricultural purposes and is exempt from the regulations.

C. The Agricultural Exemption Report may be verified by the department through a site visit.

IV. Discussion and Interpretation:

Impounding structures operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet are exempt from the Impounding Structure Regulations.

If a dam owner believes that the impounding structure is eligible for an agricultural exemption pursuant to §10.1-604 of the Code of Virginia and 4VAC50-20-30, the dam owner may fill out an Agricultural Exemption Report for Impounding Structures, Form (DCR 199-106) (09-08) and submit the Form to the appropriate Dam Safety Regional Engineer (Engineer).

Should the dam height or impoundment capacity requirements be met, an exemption is available to dams operated primarily for agricultural purposes. For the use of making an exemption determination, "agricultural purpose" means the use or holding in reserve of impounded waters for the production of an agricultural commodity, which is defined to include any plant or part thereof, animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals. Agricultural purpose does not speak to who is engaged in this activity, and for the purposes of an impounding structure receiving an exemption, the owner(s) is not required to be the user of the impounded waters for the production of an agricultural commodity. However, in this situation, the owner should provide a signed certification from the operator of the agricultural use substantiating the

use claim. The certification should also provide permission for the Department to verify the agricultural use through a site visit.

Situations that would meet the agricultural purpose requirement include any of the following:

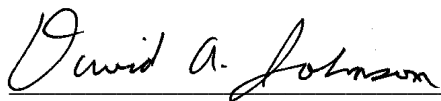
1. The dam owner demonstrates that the agricultural land consists of a minimum of five contiguous acres upon which the agricultural commodity is produced and the impounded water is used or held in reserve primarily to assist in this production.
2. As part of the dam owner's exemption request, the owner of the agricultural use certifies gross sales in excess of \$1,000 annually over the previous three years for the sale of agricultural commodities produced from the lands served by the impounding structure waters.
3. The dam owner demonstrates that the land on which the agricultural commodity is produced is zoned for agricultural use and the impounded water is used or held in reserve primarily to assist in this production.

As an alternative to the above situations, the dam owner may also provide documentation to the Dam Safety Regional Engineer for consideration explaining the agricultural purpose and commodity, size of the operation, the use of the impounded water in the production of the commodity, and the periodicity and duration of use of the waterbody in the production of the agricultural commodity. The dam owner must identify the other uses of the waterbody as well.

Verification for compliance may be made through a site visit by the Dam Safety Regional Engineer. A site visit is followed by a letter from the Dam Safety Regional Engineer to the dam owner(s) stipulating the findings of the visit. If an exemption is verified, the dam owner will be informed that Dam Safety will reevaluate the exemption at least once every six years, and that once the impounding structure is no longer primarily used for agricultural purposes, the impoundment will become eligible for regulation. Although an exempt impounding structure does not have to comply with the Regulations, the Dam Safety Regional Engineer will recommend, that during the time the impoundment is being used for agricultural purposes, that in the interest of public safety, it is a good practice to maintain the dam according to Virginia Code and the Virginia Impounding Structure Regulations. Conversely, should an agricultural exemption not be verified, then the dam owner shall be subject to regulation.

V. Adoption, Amendments, and Repeal:

This document will remain in effect until rescinded or superseded.



David A. Johnson
Director, Department of Conservation and Recreation

November 30, 2010
Date