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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation(s)	4VAC50-20
Regulation title(s)	Impounding Structure Regulations
Action title	Amend the Impounding Structure Regulations to incorporate the Probable Maximum Flood Study as required by Chapters 475 and 479 of the 2014 General Assembly Session
Final agency action date	December 9, 2015
Date this document prepared	February 1, 2016

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) or an agency's basic statute, the agency is not required, however, 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapters 475 and 489 of the 2014 General Assembly directed the Department of Conservation and Recreation, on behalf of the Virginia Soil and Water Conservation Board, to conduct a study that would result in a set of new Probable Maximum Precipitation or PMP values for Virginia. The legislation further states “[s]uch PMP revisions shall be adopted by the Board if it finds that the analysis is valid and reliable and will result in cost savings to owners for impounding structure spillway construction or rehabilitation efforts”. The PMP values incorporated into the Impounding Structure Regulations currently are based on U.S. Army Corps of Engineers' hydrometeorological studies from as early as the 1970s.

The study entitled "Probable Maximum Precipitation Study for Virginia (November 2015)", was completed on December 1, 2015. The Board adopted the Study, the PMP values, and authorized this regulatory action on December 9, 2015. The Study and related Information may be found on the Department's web site at <http://www.dcr.virginia.gov/dam-safety-and-floodplains/>.

This action amends 4VAC50-20-50 titled *Performance standards required for impounding structures* and incorporates by reference the Probable Maximum Study for Virginia (and associated PMP Evaluation Tool and Database) (November 2015).

The key elements of this action include:

- Removed references to the National Weather Service, NOAA, PMP values and inserted references to PMP values "derived from the Probable Maximum Study for Virginia (and associated PMP Evaluation Tool and Database) (November 2015)".
- Removed the reference to "flat terrain" from the description of PMP as this set of PMP values does bring orographic variables into the analysis;
- Updated the citation for the Department of Environmental Quality's Virginia Stormwater Management Program (VSMP) Regulation; and
- Incorporated by reference the PMP Study and Evaluation Tool.

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.

On December 9, 2015, the Board authorized an exempt final action to incorporate the PMP values established in the Probable Maximum Precipitation Study for Virginia (November 2015) into the Impounding Structure Regulations. The Office of the Attorney General has determined that this regulatory action is exempt from the Administrative Process Act in accordance with exemptions available under §2.2-4006 A of the Code of Virginia.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Impounding Structure Regulations do not directly impact the institution of the family and family stability; however, the provisions of the Dam Safety Act and the Impounding structure Regulations do advance public safety.