

Impounding Structure Regulation Action Approvals

Virginia Soil and Water Conservation Board
Senate Room A, General Assembly Building, Richmond
(May 24, 2011)

Introductory remarks

Before you today for consideration is a motion to authorize the Department to initiate three fast-track regulatory actions to amend the Board's Impounding Structure Regulations.

The three fast-track actions are as follows:

- 1) Develop regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure;
- 2) Develop regulations that provide a method to conduct a simplified dam break inundation zone analysis; and
- 3) Develop regulations that set out the necessary requirements to obtain a general permit for a low hazard impounding structure.

Each of these is being taken in response to legislative actions that are outlined in the attached motion.

Fast-track Regulatory Process

- The Fast-track Process is **appropriate when an action is expected to be noncontroversial**. A rulemaking is deemed noncontroversial if no objections are received from (1) certain members of the General Assembly or (2) ten or more members of the public.
- After approval of the draft final language by the Board and subsequent review by the Administration (DPB, SNR, and Governor), a notice of a proposed fast-track rulemaking will be published in the *Virginia Register of Regulations* and will appear on the Virginia Regulatory Town Hall. This will be followed by a public comment period of at least 30 days.
- If, during the public comment period, an objection to the fast-track regulation is received from:
 - Any member of the applicable standing committee of Senate,
 - Any member of the applicable standing committee of the House of Delegates,
 - Any member of the Joint Commission on Administrative Rules (JCAR), or
 - 10 or more members of the public,then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA) and standard rulemaking process is followed to promulgate the regulation.
- If there are no objections as described above, the regulation will become effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the Board.

In accordance with the attached motion, we respectfully request the Board to authorize the Department to initiate these actions. With that overview, I am happy to answer any questions, or turn it back to you Madame Chairwomen for Board action.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

May 24, 2011 Meeting

In Senate Room A in the General Assembly Building

Richmond, Virginia

Motion to authorize and direct the development of three separate fast-track regulatory amendment actions to the Board's Virginia Impounding Structure Regulations (§ 4VAC50-20):

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to develop three separate draft final fast-track regulatory actions for the Board's consideration. As part of the regulation development process, the Board directs that a Regulatory Advisory Panel(s) be assembled to make recommendations to the Director and the Board on the contents of the draft final regulations.

The three fast-track actions are as follows:

- 1) Develop regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure;
- 2) Develop regulations that provide a method to conduct a simplified dam break inundation zone analysis; and
- 3) Develop regulations that set out the necessary requirements to obtain a general permit for a low hazard impounding structure.

The Board recognizes that these actions are predicated on the following legislation and information and directs the Department to consider the following in the development of the regulations:

For Action 1:

- Chapter 270 of the 2010 Virginia Acts of Assembly (HB438 - Delegate David J. Toscano) amended § 10.1-605 C. of the Code of Virginia to direct that “[t]he Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure”.
- Chapter 41 of the 2010 Virginia Acts of Assembly (SB244 – Senator John C. Watkins) resulted in the Codification of § 10.1-605.2 of the Code of Virginia that stipulates “[t]hat the Virginia Soil and Water Conservation Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.)”.
- During 2010, in partial response to these legislative directives, the Director of the Department approved on November 30, 2010 a “Guidance Document on Roadways On or Below Impounding Structures”. Such guidance shall be strongly considered in the construct of the regulations.

For Action 2:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 – Senator Ryan T. McDougle) created a § 10.1-604.1 titled “Determination of hazard potential class” with a subsection C. that specifies that “[t]he Board may adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis”.

For Action 3:

- Chapter 637 of the 2011 Virginia Acts of Assembly (SB1060 – Senator Ryan T. McDougle) created a § 10.1-605.3 titled “General permit for certain impounding structures” with a subsection A that specifies that “[t]he Board shall develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605”.

The Department shall follow and conduct these actions in accordance with: the fast-track processes within the Administrative Process Act, the Virginia Register Act, the Board’s Regulatory Public Participation Procedures, the Governor’s Executive Order 14 (2010) on the “Development and Review of Regulations Proposed by State Agencies”, and other applicable technical rulemaking protocols.

Further the Board recognizes that following the completion of these actions, that the entire body of the Virginia Impounding Structure Regulations (§ 4VAC50-20) may benefit from a reorganization of sections in order to increase the readability of the document. The Board will entertain a future motion at the appropriate time to authorize this action.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings and will consider the adoption of these regulations at a future meeting(s) following their development.

Motion made by: _____

Motion seconded by: _____

Action: _____

Susan Taylor Hansen
Chairman

David A. Johnson
Director