



# VIRGINIA SOIL AND WATER CONSERVATION BOARD GUIDANCE DOCUMENT ON IMPOUNDING STRUCTURE OWNERSHIP

(Approved September 25, 2008; Revised September 7, 2016)

## **Summary:**

This guidance document serves to clarify who may be considered the “owner” of an “impounding structure” that is the responsible and liable entity for the operation and maintenance of such impounding structure.

## **Electronic Copy:**

An electronic copy of this guidance in PDF format is available on the Regulatory Town Hall 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](mailto: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 Department of Conservation and Recreation in administering the Dam Safety Program on behalf of the Virginia Soil and Water Conservation 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. This guidance is not intended and cannot be relied on to create any rights, substantive or procedural, on the part of any person or entity.

## **Impounding Structure (Dam) Ownership**

### **I. Background:**

The Virginia Dam Safety Act, §10.1-604 entitled Definitions, states that an “owner” means the owner of the land on which a dam [impounding structure] is situated, the holder of an easement permitting the construction of a dam [impounding structure] and any person or entity agreeing to maintain a dam [impounding structure]. The Impounding Structure Regulations further define “owner” in 4VAC50-20-30 to include the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities, any public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

## **II. Definitions (pursuant to 4VAC50-20-30):**

"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.

"Owner" means the owner of the land on which an impounding structure is situated, the holder of an easement permitting the construction of an impounding structure and any person or entity agreeing to maintain an impounding structure. The term "owner" may include the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities, any public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

## **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; guidance document.**

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

### **§ 10.1-613.4. Liability of owner or operator.**

A. Notwithstanding subsection B, nothing in this article, and no order, notice, approval, or advice of the Director or Board shall relieve any owner or operator of an impounding structure from any legal duties, obligations, and liabilities resulting from such ownership or operation. The owner or operator shall be responsible for liability for damage to the property of others or injury to persons, including the loss of life resulting from the operation or failure of an impounding structure. Compliance with this article does not guarantee the safety of an impounding structure or relieve the owner or operator of liability in case of an impounding structure failure. ...

Appendix 1 contains the *Code of Virginia* authorities (extended) applicable to this guidance and Appendix 2 contains the *Impounding Structure Regulations* authorities applicable to this guidance. These include:

§ 10.1-605. Promulgation of regulations by the Board; guidance document.

§ 10.1-613.4. Liability of owner or operator.

§ 55-508. Applicability. [Property Owners' Association Act]

- 4VAC50-20-20. General Provisions.
- 4VAC50-20-105. Regular Operation and Maintenance Certificates.
- 4VAC50-20-150. Conditional Operation and Maintenance Certificate.
- 4VAC50-20-170. Transfer of Certificates.

#### **IV. Discussion and Interpretation:**

The Virginia Dam Safety Program's mission is to protect the lives and property of the Commonwealth's citizen's from natural and manmade flooding in accordance with 4VAC 50-20-20.A. As part of the Program's regulatory process, the Department issues the owner of a regulated dam an Operation and Maintenance Certificate (Certificate) in an effort to ensure that dams in Virginia are operated and maintained in a safe condition. The Certificate (Regular or Conditional) entitles the owner of the dam to operate and maintain the dam pursuant to the provisions of the Dam Safety Act.

As defined above, an owner of a dam includes the entity or individual owning the land on which the dam is located; the entity or individual who hold an easement permitting the construction of a dam; and any person or entity agreeing to maintain an impounding structure. In many instances, there will be more than one owner of a dam.

#### **What legal documents prove ownership?**

- a. The entity or individual owning the land on which the dam is located is the fee-simple owner. This ownership is demonstrated through a deed recorded in the appropriate local courthouse or land records office.
- b. For an entity or individual holding an easement permitting the construction of a dam, ownership would be demonstrated through the easement which (i) is set forth in a deed between the fee-simple property owner as a grantor and an identified grantee, (ii) bears the appropriate signatures of all parties, and (iii) is recorded in the appropriate local courthouse or land records office.
- c. Any individual or entity agreeing to maintain an impounding structure that has a clear, enforceable agreement, such as a maintenance agreement, between the individual or entity and the fee simple owner(s) of the dam. While an agreement is not required to be recorded, a recorded agreement and easement allowing access to the dam location are considered strong indications of an enforceable agreement between the individual or entity and the fee simple owner(s) of the dam.

#### **Entities as owners**

An entity includes the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities, any public or private institutions, corporations, associations [including homeowners' association, property owners' association, or limited liability company], firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

Associations may be incorporated or unincorporated. The entity may have recorded written covenants at the appropriate courthouse which state: (i) that all owners of record in the subdivision are uniting to create restrictions on the use of their land, and such covenants and restrictions are to run with the land; (ii) that the property owners agree that the entity is solely responsible for dam maintenance and repair; (iii) that the entity has the authority to collect mandatory special assessments from its members for dam maintenance in such amount to allow dam safety standards to be met in a reasonable time-frame, to be collected at a stated frequency, and that nonpayment of such assessments by a member will result in a lien against the member's property; and (iv) that the entity will notify prospective buyers of the covenant requirement before a purchase offer is tendered and comply with the requirements of § 10.1-613.4.C.

Any property owners wishing to form a homeowners' association, corporation, or other type of association should contact an attorney to draft the necessary documents with the appropriate provisions.

The Department reserves the right to inquire: (a) which type of association has been established, whether homeowners' association, property owners' association, or other type of association; (b) whether the association is incorporated; and (c) whether the association is registered with the State Corporation Commission. If the association is registered with the State Corporation Commission, a copy of the registration should be provided to the Department with the Application.

### **Who may complete an Operation and Maintenance Certificate Application?**

Any owner of a dam may submit an Operation and Maintenance Certificate Application. The Department will not accept a Certificate Application that does not include the certification as to authority by the owner submitting the Certificate Application and, where applicable, copies of the appropriate legal documentation verifying the authority called for in this guidance.

### **Single Owner**

If there is a single owner of a dam, that individual or entity has the responsibility to complete the Operation and Maintenance Certificate Application. The owner must certify on the Application that they are the only owner of the structure. This certification also applies if a Certificate or Permit is being transferred from a past owner to a new owner through the Transfer of Impounding Structure Notification from Past Owner to New Owner form pursuant to §10.1-613.4.

### **Multiple Owners**

When a dam has more than one owner, all owners must certify and sign the Application or the owner submitting the Operation and Maintenance Certificate Application must certify, and provide documentation of their authority to operate and maintain the dam in compliance with the Certificate. This also applies if a Certificate or Permit is being transferred from a past owner to a new owner through the Transfer of Impounding Structure Notification from Past Owner to New Owner form. As applicable, the supporting documentation may include:

- a. Contracts, or other types of written legal agreements, between multiple fee-simple owners;
- b. Copies of any recorded easements permitting the construction of the dam;

- c. Copies of any written maintenance agreements;
- d. Copies of any agreements recorded for a homeowner's association or a property owners' association including covenants, deed restrictions, recorded instruments, or other declarations as defined in §55-508; and
- e. A list of all officers of the homeowner's association or a property owners' association. If the association is registered with the State Corporation Commission, a copy of the registration also should be provided.

A Soil and Water Conservation District, which operates and maintains a dam in accordance with an established operating agreement, easement, or both, will be deemed by the Department to have the authority to submit the Application without the signature of the fee-simple owner. However, copies of the easement, operating agreement, or both must be provided with the Application.

### **What does a Certificate do?**

The Certificate entitles the owner of the dam to operate and maintain the dam pursuant to the provisions of the Dam Safety Act when it has been found that their authority to do so exists in accordance with this guidance. Holding a Certificate does not in any way increase the liability or risk associated with the ownership of a dam or waive the liability that other owners may have under the law.

### **What does operating under a Certificate not do?**

Operating under a Certificate does not relieve an owner from any legal duties, obligations, or liabilities incident to ownership, design, construction, operation or maintenance. Additionally, the Certificate does not entitle the owner to enter onto another individual's property without permission. A Certificate does not exempt the owner from complying with all applicable federal, state, and local laws.

### **Disputes between owners**

It is outside the scope of the Department's regulatory authority to resolve disputes among owners with respect to legal ownership of a dam or responsibility for a dam's operation and maintenance. [See Official Opinion of the Attorney General to Bradley Lambert (June 24, 2010)]. The Court of Appeals of Virginia has recently explained that "absent specific statutory authority to do so, a permitting agency has authority only to issue or to deny the permit, and that decision does not and, by law, cannot affect private rights of action between competing litigants." *French v. Va. Marine Res. Comm'n*, 64 Va. App. 226, 234 (2015). Under circumstances where no agreement is reached, any party to the dispute may wish to employ an attorney or consultants, or both, for advice and may need to seek a final resolution of the dispute through the courts. (Va. Code § 10.1-604 et seq.)

Under circumstances where there is a dispute among owners regarding legal ownership or responsibility for the operation and maintenance of a dam that is not resolved, the Department may pursue enforcement action against the owners that results in payment of civil charges (40VAC50-20-105) or the lake being drained of its contents at the owner's expense and the dam decommissioned (Va. Code § 10.1-609).

**V. Adoption, Amendments, and Repeal:**

The September 7, 2016 version of this document supersedes the September 24, 2008 version and will remain in effect until rescinded or superseded.



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Daphne W. Jamison  
Board Chair



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Clyde E. Cristman  
Department Director

## **Appendix 1**

Applicable *Code of Virginia* Authorities.

The *Code of Virginia* contains the following authorities applicable to this Guidance:

### **§ 10.1-605. Promulgation of regulations by the Board; guidance document.**

A. The Board shall adopt regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated. Dam safety regulations promulgated by the State Water Control Board shall remain in full force until amended in accordance with applicable procedures.

B. The Board's Impounding Structure Regulations shall not require any impounding structure in existence or under a construction permit prior to July 1, 2010, that is currently classified as high hazard, or is subsequently found to be high hazard through reclassification, to upgrade its spillway to pass a rainfall event greater than the maximum recorded within the Commonwealth, which shall be deemed to be 90 percent of the probable maximum precipitation.

1. Such an impounding structure shall be determined to be in compliance with the spillway requirements of the regulations provided that (i) the impounding structure will pass two-thirds of the reduced probable maximum precipitation requirement described in this subsection and (ii) the dam owner certifies annually and by January 15 that such impounding structure meets each of the following conditions:

- a. The owner has a current emergency action plan that is approved by the Board and that is developed and updated in accordance with the regulations;
- b. The owner has exercised the emergency action plan in accordance with the regulations and conducts a table-top exercise at least once every two years;
- c. The Department has verification that both the local organization for emergency management and the Virginia Department of Emergency Management have on file current emergency action plans and updates for the impounding structure;
- d. That conditions at the impounding structure are monitored on a daily basis and as dictated by the emergency action plan;
- e. The impounding structure is inspected at least annually by a professional engineer and all observed deficiencies are addressed within 120 days of such inspection;
- f. The owner has a dam break inundation zone map developed in accordance with the regulations that is acceptable to the Department;
- g. The owner is insured in an amount that will substantially cover the costs of downstream property losses to others that may result from a dam failure; and
- h. The owner shall post the dam's emergency action plan on his website, or upon the request of the owner, the Department or another state agency responsible for providing emergency management services to citizens agrees to post the plan on its website. If the Department or another state agency agrees to post the plan on its website, the owner shall provide the plan in a format suitable for posting.

2. A dam owner who meets the conditions of subdivisions 1 a through 1 h, but has not provided record drawings to the Department for his impounding structure, shall submit a complete record report developed in accordance with the construction permit requirements of the Impounding Structure Regulations, excluding the required submittal of the record drawings.

3. A dam owner who fails to submit certifications required by subdivisions 1 a through 1 h in a timely fashion shall not enjoy the presumption that such impounding structure is deemed to be

in compliance with the spillway requirements of the Board's Impounding Structure Regulations (4VAC50-20).

4. Any dam owner who has submitted the certifications required by subdivisions 1 a through 1 h shall make (i) such certifications, (ii) the emergency action plan required by subdivision 1 a, and (iii) the certificate of insurance required by subdivision 1 g available, upon request and within five business days, to any person. A dam owner may comply with the requirements of this subdivision by providing the same information on a website and directing the requestor to such website. A dam owner who fails to comply with this subdivision shall be subject to a civil penalty pursuant to § 10.1-613.2.

C. The Board's regulations shall establish an incremental damage analysis procedure that permits the spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure shall not significantly increase downstream hazard to life or property, provided that the spillway design flood requirement shall not be reduced to below the 100-year flood event for high or significant hazard impounding structures, or to below the 50-year flood event for low hazard potential impounding structures.

D. The 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.

#### **§ 10.1-613.4. Liability of owner or operator.**

A. Notwithstanding subsection B, nothing in this article, and no order, notice, approval, or advice of the Director or Board shall relieve any owner or operator of an impounding structure from any legal duties, obligations, and liabilities resulting from such ownership or operation. The owner or operator shall be responsible for liability for damage to the property of others or injury to persons, including the loss of life resulting from the operation or failure of an impounding structure. Compliance with this article does not guarantee the safety of an impounding structure or relieve the owner or operator of liability in case of an impounding structure failure.

B. The owner of the land upon which an impounding structure owned, maintained, or operated by a soil and water conservation district is situated shall not be responsible for liability for damages to the property of others or injury to persons, including the loss of life, resulting from the operation or failure of the impounding structure. The provisions of this subsection shall not apply if the damages to the property of others or injury to persons is the result of an act or omission of the landowner unrelated to ownership, maintenance, or operation of the impounding structure.

C. Prior to dissolution or termination of an entity that owns an impounding structure, the entity shall either convey ownership to a third party by deed or other legal conveyance or decommission the impounding structure pursuant to the requirements of the Virginia Impounding Structure Regulations. Prior to conveying ownership, the owner shall notify the Director of such transfer of ownership in accordance with requirements set out in the Virginia Impounding Structure Regulations. Such notice to the Director shall include a warrant by the transferring owner that the transferee is a responsible party capable of discharging all obligations of an impounding structure owner imposed by law and regulations.

D. The Commonwealth, the Board, or the Department shall not be deemed to become an owner of an impounding structure by providing funding or other assistance for maintenance, repair, or decommissioning of an impounding structure owned by another person or entity.

## **Appendix 2**

### *Applicable Impounding Structure Regulations Authorities.*

The *Impounding Structure Regulations* contains the following authorities applicable to this Guidance.

#### **4VAC50-20-20. General Provisions.**

A. This chapter provides for the proper and safe design, construction, operation and maintenance of impounding structures to protect public safety. This chapter shall not be construed or interpreted to relieve the owner or operator of any impoundment or impounding structure of any legal duties, obligations or liabilities incident to ownership, design, construction, operation or maintenance.

B. Approval by the board of proposals for an impounding structure shall in no manner be construed or interpreted as approval to capture or store waters. For information concerning approval to capture or store waters, see Chapter 8 (§ 62.1-107) of Title 62.1 of the Code of Virginia, and other provisions of law as may be applicable.

C. In promulgating this chapter, the board recognizes that no impounding structure can ever be completely "fail-safe," because of incomplete understanding of or uncertainties associated with natural (earthquakes and floods) and manmade (sabotage) destructive forces; with material behavior and response to those forces; and with quality control during construction.

D. All engineering analyses required by this chapter, including but not limited to, plans, specifications, hydrology, hydraulics and inspections shall be conducted or overseen by and bear the seal of a professional engineer licensed to practice in Virginia.

E. Design, inspection and maintenance of impounding structures shall be conducted utilizing competent, experienced, engineering judgment that takes into consideration factors including but not limited to local topography and meteorological conditions.

F. The forms noted in this chapter are available from the department at the department's website.

#### **4VAC50-20-105. Regular Operation and Maintenance Certificates.**

##### Part III. Certificate Requirements

A. A Regular Operation and Maintenance Certificate is required for an impounding structure. Such six-year certificates shall include the following based on hazard classification:

1. High Hazard Potential Regular Operation and Maintenance Certificate;
2. Significant Hazard Potential Regular Operation and Maintenance Certificate; or
3. Low Hazard Potential Regular Operation and Maintenance Certificate.

B. The owner of an impounding structure shall apply for the renewal of the six-year Regular Operation and Maintenance Certificate 90 days prior to its expiration. If a Regular Operation and Maintenance Certificate is not renewed as required, the board shall take appropriate enforcement action.

C. Any owner of an impounding structure that does not have a Regular Operation and Maintenance Certificate or any owner renewing a Regular Operation and Maintenance Certificate shall file an Operation and Maintenance Certificate Application. A form for the application is available from the department (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures). Such application shall be signed by the owner

and signed and sealed by a licensed professional engineer. The following information shall be submitted on or with the application:

1. The application shall include the following required information:
  - a. The name of structure and inventory number;
  - b. The proposed hazard potential classification;
  - c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
  - d. An operating plan and schedule including a narrative on the operation of control gates and spillways and the impoundment drain;
  - e. For earthen embankment impounding structures, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages;
  - f. For concrete impounding structures, a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages;
  - g. An inspection schedule for operator inspection, maintenance inspection, technical safety inspection, and overtopping situations;
  - h. A schedule including the rainfall amounts, emergency spillway flow levels or storm event that initiates the Emergency Action or Preparedness Plan and the frequency of observations;
  - i. A statement as to whether or not the current hazard potential classification for the impounding structure is appropriate and whether or not additional work is needed to make an appropriate hazard potential designation;
  - j. For newly constructed or recently altered impounding structures, a certification from a licensed professional engineer who has monitored the construction or alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were constructed or altered in conformance with the plans, specifications, drawings and other requirements approved by the board;
  - k. Certification by the owner's engineer that the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and
  - l. Owner's signature certifying the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection and that the operation and maintenance plan and schedule shall be conducted in accordance with this chapter.
2. An Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures) in accordance with subsection E of this section;
3. An Emergency Action Plan in accordance with 4VAC50-20-175 or an Emergency Preparedness Plan in accordance with 4VAC50-20-177 and evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management;
4. Any additional analysis determined necessary by the director, the board or the owner's engineer to address public safety concerns. Such additional analysis may include, but not be limited to, seismic stability, earthen spillway integrity, adequate freeboard allowance, stability assessment of the impoundment's foundation, potential liquefaction of the embankment, overturning or sliding of a concrete structure and other structural stress issues; and

5. If applicable, a current certification from the dam owner in accordance with 4VAC50-20-53.

D. If the Operation and Maintenance Certificate Application submittal is found to be not complete, the director shall inform the applicant within 30 days and shall explain what changes are required for an acceptable submission. Within 60 days of receipt of a complete application the board shall act upon the application. Upon finding that the impounding structure as currently operating is in compliance with this chapter, the board shall issue a Regular Operation and Maintenance Certificate. Should the board find that the impounding structure as currently operating is not in compliance with this chapter, the board may deny the permit application or issue a Conditional Operation and Maintenance Certificate in accordance with 4VAC50-20-150.

E. Inspections shall be performed on an impounding structure annually.

1. Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) signed and sealed by a licensed professional engineer shall be submitted to the department in accordance with the following schedule:

- a. For a High Hazard Potential impounding structure, every two years;
- b. For a Significant Hazard Potential impounding structure, every three years;
- c. For a Low Hazard Potential impounding structure, every six years; or
- d. For a High Hazard Potential impounding structure, annually in accordance with 4VAC50-20-53, where applicable.

In years when an Inspection Report signed and sealed by a licensed professional engineer is not required, an owner shall submit the Annual Inspection Report for Virginia Regulated Impounding Structures.

2. The Inspection Report shall include the following required information:

- a. Project information including the name and inventory number of structure, name of the reservoir, and purpose of the reservoir;
- b. City or county where the impounding structure is located;
- c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
- d. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;
- e. Inspection observation of the impounding structure including the following:
  - (1) Earthen embankment information including any embankment alterations; erosion; settlement, misalignments or cracks; seepage and seepage flow rate and location;
  - (2) Upstream slope information including notes on woody vegetation removed, rodent burrows discovered, and remedial work performed;
  - (3) Intake structure information including notes on deterioration of concrete structures, exposure of rebar reinforcement, need to repair or replace trash rack, any problems with debris in the reservoir, and whether the drawdown valve operated;
  - (4) Abutment contacts including notes on seepage and seepage flow rate and location;
  - (5) Earthen emergency spillway including notes on obstructions to flow and plans to correct, rodent burrows discovered, and deterioration in the approach or discharge channel;
  - (6) Concrete emergency spillway including notes on the deterioration of the concrete, exposure of rebar reinforcement, any leakage below concrete spillway, and obstructions to flow and plans to correct;
  - (7) Downstream slope information including notes on woody vegetation removed, rodent burrows discovered, whether seepage drains are working, and any seepage or wet areas;

(8) Outlet pipe information including notes on any water flowing outside of discharge pipe through the impounding structure and a description of any reflection or damage to the pipe;

(9) Stilling basin information including notes on the deterioration of the concrete, exposure of rebar reinforcement, deterioration of the earthen basin slopes, repairs made, and any obstruction to flow;

(10) Gates information including notes on gate malfunctions or repairs, corrosion or damage, and whether any gates were operated and if so how often and to what extreme;

(11) Reservoir information including notes on new developments upstream of the dam, slides or erosion of lake banks, and general comments to include silt, algae, or other influence factors;

(12) Instruments information including any reading of instruments and any installation of new instruments; and

(13) General information including notes on new development in the downstream dam break inundation zone that would impact hazard classification or spillway design flood requirements, the maximum stormwater discharge or peak elevation during the previous year, whether general maintenance was performed and when, and actions that need to be completed before the next inspection.

f. Evaluation rating of the impounding structure and appurtenances (excellent, good, or poor), general comments, and recommendations;

g. Certification by the owner and date of inspection; and

h. Certification and seal by the owner's engineer and date of inspection, as applicable.

F. The owner of an impounding structure shall notify the department immediately of any change in the use of the area downstream that would impose hazard to life or property in the event of failure.

#### **§ 55-508. Applicability. [Property Owners' Association Act]**

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the former Subdivided Land Sales Act (§ 55-336 et seq.), and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998; however, any development established prior to the enactment of the former Subdivided Land Sales Act may specifically provide for the applicability of the provisions of this chapter.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such

lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.

#### **4VAC50-20-150. Conditional Operation and Maintenance Certificate.**

A. During the review of any Operation and Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures) completed in accordance with 4VAC50-20-105 should the director determine that the impounding structure has nonimminent deficiencies, the director may recommend that the board issue a Conditional Operation and Maintenance Certificate.

B. The Conditional Operation and Maintenance Certificate for High, Significant, and Low Hazard Potential impounding structures shall be for a maximum term of two years. This certificate will allow the owner to continue normal operation and maintenance of the impounding structure, and shall require that the owner correct the deficiencies on a schedule approved by the board.

C. A Conditional Certificate may be extended in accordance with the procedures of 4VAC50-20-155 provided that Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) are on file, and the board determines that the owner is proceeding with the necessary corrective actions.

D. Once the deficiencies are corrected, the board shall issue a Regular Operation and Maintenance Certificate based upon the impounding structure's meeting the requirements of 4VAC50-20-105.

#### **4VAC50-20-170. Transfer of Certificates.**

A. Prior to the transfer of ownership of an impounding structure the certificate holder shall notify the director in writing and the new owner shall file a transfer notification with the department. A form for the transfer notification is available from the department (Transfer of Impounding Structure Notification from Past Owner to New Owner). The new owner may elect to continue the existing operation and maintenance certificate for the remaining term or he may apply for a new certificate in accordance with 4VAC50-20-105. If the owner elects to continue the existing certificate, he shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the certificate.

B. The transfer notification shall include the following required information:

1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;

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. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and

8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the impounding structure owner, impounding structure operator, rainfall and staff gage observer, and alternate observer.