



GUIDANCE DOCUMENT ON CREDITS AND REFUNDS OF DAM SAFETY CERTIFICATE APPLICATION FEES

(Approved November 30, 2010)

Summary:

This guidance document serves to clarify how a partial fee credit from an unexpired Conditional Operation and Maintenance Certificate is to be applied towards a Regular Operation and Maintenance Certificate fee as well as it outlines the refund policy for Regular Operation and Maintenance Certificate applicants that are instead issued a lower cost Conditional Operation and Maintenance Certificate.

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.

Credits and Refunds of Dam Safety Certificate Application Fees

I. Background:

The Virginia Dam Safety Act, §10.1-613.5 stipulates that the Board is authorized to establish and collect application fees from any applicant. Such fees are established for six-year Regular Operation and Maintenance Certificates in accordance with 4VAC50-20-380 and for Conditional Operation and Maintenance Certificates in accordance with 4VAC50-20-390. Subsection C of 4VAC50-20-390 further specifies that "[t]he board may allow a partial credit towards the Regular Operation and Maintenance Certificate fee if the owner of the impounding structure has completed, to the director's satisfaction, the conditions of the Conditional Certificate prior to its expiration". The regulations do not provide guidance to the Board regarding how much partial credit may be applied. As such, this guidance document shall outline the crediting approach to be utilized.

Additionally, an applicant may submit an application and the required fee for a Regular Operation and Maintenance Certificate. Based on a review of the application materials and the condition of the dam, the Board may issue a Conditional Operation and Maintenance Certificate instead. In this case, this guidance document instructs the Department to refund to the dam owner the difference between the two fees (note that there may be other situations requiring refunds of fees as well).

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

"Conditional Operation and Maintenance Certificate" means a certificate required for impounding structures with deficiencies.

"Operation and Maintenance Certificate" means a certificate required for the operation and maintenance of all impounding structures.

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.

§ 10.1-613.5. Program administration fees.

The Board is authorized to establish and collect application fees from any applicant to be deposited into the Flood Prevention and Protection Assistance Fund established pursuant to § 10.1-603.17 for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of dams.

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

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

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.

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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.

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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.

4VAC50-20-340. Authority to establish fees.

Under § 10.1-613.5 of the Code of Virginia, the board is authorized to establish and collect application fees for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of impounding structures. The fees will be deposited into the Dam Safety, Flood Prevention and Protection Assistance Fund.

4VAC50-20-380. Regular Operation and Maintenance Certificate application fees.

A. Any application for a six-year Regular Operation and Maintenance Certificate after September 26, 2008, except as otherwise exempted, shall be accompanied by a payment as determined in subsection B of this section.

B. Fees for High, Significant, or Low Hazard Potential impounding structures shall be as follows:

1. \$600 for High Hazard Potential.
2. \$600 for Significant Hazard Potential.
3. \$300 for Low Hazard Potential.

C. Fees for extension of Regular Operation and Maintenance Certificates shall be \$250 per year or portion thereof.

4VAC50-20-390. Conditional Operation and Maintenance Certificate application fee.

A. Fees for issuance of a Conditional Operation and Maintenance Certificate shall be as follows:

1. For a certificate for more than one year but no more than two years: \$300.
2. For a certificate for one year or less: \$150.

B. The fee for an extension of a Conditional Operation and Maintenance Certificate shall be \$250 per year or portion thereof.

C. The board may allow a partial credit towards the Regular Operation and Maintenance Certificate fee if the owner of the impounding structure has completed, to the director's satisfaction, the conditions of the Conditional Certificate prior to its expiration.

IV. Discussion and Interpretation:

Section 4VAC50-20-390 C. of the Virginia Impounding Structure Regulations states that the Virginia Soil and Water Conservation Board (Board) may allow a partial credit towards the Regular Operation and Maintenance Certificate fee if the dam owner of the impounding structure has completed, to the director's satisfaction, the conditions of the Conditional Operation and Maintenance Certificate prior to its expiration.

In addition, in order for a dam owner to receive partial credit of a fee paid for a Conditional Operation and Maintenance Certificate, it is required that the dam owner submit the required

recertification documents and appropriate full fee for a Regular Operation and Maintenance Certificate. Upon approval of the Regular Operation and Maintenance Certificate by the Board, the Department shall determine the appropriate credit and issue a refund to the dam owner.

Partial credits shall be determined in accordance with Table 1 and are based on the term of the conditional permit issued (one or two-year) as well as the number of months lapsed since issuance of the conditional permit and the approval of Regular Operation and Maintenance Certificate by the Board.

Table 1: Proportion of Conditional Operation and Maintenance Certificate Application Fee Applicable for Partial Credit Towards a Regular Operation and Maintenance Certificate

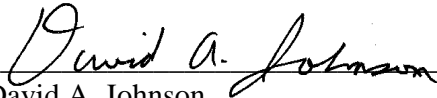
One-Year Cert.: # of Months Lapsed Between Conditional and Regular Certificate Issuance	Cond. Cert. Amt. Applied To Reg. Cert.		Two- Year Cert.: No. Months Lapsed Between Conditional and Regular Certificate Issuance	Cond. Cert Amt. Applied To Reg. Cert.
(original fee)	150		(original fee)	300
2	125		2	275
4	100		4	250
6	75		6	225
8	50		8	200
10	25		10	175
			12	150
			14	125
			16	100
			18	75
			20	50
			22	25

NOTE: For any month of the Conditional Operation and Maintenance Certificate cycle not listed, the next higher number of months will be used to determine the amount to be applied (for example, if nine months of a one-year certificate have lapsed, the amount applied would be \$25).

Additionally, should an applicant submit an application and the required fee for a Regular Operation and Maintenance Certificate to the Department for review, and based on the review of the application materials and the condition of the dam the Board determines that a Conditional Operation and Maintenance Certificate should be issued instead, the Department shall refund to the dam owner the difference between the two fees.

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