Virginia Regulatory Town Hall

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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-820, et seq.
Regulation title	General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
Action title	Amend and Reissue the Existing Regulation
Final agency action date	September 22-23, 2011
Document preparation date	August 26, 2011

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), the agency 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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action consists of the reissuance of 9 VAC25-820 General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The regulation provides for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth. Changes to the existing regulation include new wasteload allocations for some facilities as required by the December 29, 2010 Chesapeake Bay TMDL, a number of changes to the administration of the program and implementation of several legislative changes as outlined below in the Substance section.

Numerous changes have been made since publication of the proposal. These changes are found in the definition section (10), the general permit section (70) and in the section addressing

facilities subject to reduced individual total nitrogen and total phosphorus waste load allocations (80).

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.

At its meeting on September 22-23, 2011, the State Water Control Board adopted the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9 VAC 25-820, et seq.)

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

1. Deletion of the definition of "biological nutrient removal technology". This definition was an artifact from a previous draft version of the regulation and the term does not appear in the regulation.
2. Modified the definition of "Eastern Shore trading ratio" to clarify the intent.
3. Modified the definition of "expansion" or "expands" to make it clear that industrial facilities that have an increase in the annual mass load of nutrients as a result of the use of a new chemical additive are not considered to have expanded unless the increase causes the facility to exceed their wasteload allocation.
4. Corrected a grammatical error in the definition of "point source nitrogen credit".
5. Modified the definition of "waste load allocation" to clarify that the most limiting of the waste load allocations included in the Water Quality Management Planning Regulation (9 VAC 25-720 et seq.) and the Chesapeake Bay TMDL is applicable in the general permit.
6. Replaced the delivered aggregate waste load allocations for the 39 significant dischargers in the James River Basin with discharged wasteload allocations for consistency with the TMDL (Part I.C.3.).
7. Modified the required contents of the annual compliance plan update to reflect the shift in compliance planning from new WWTP upgrades to broader usage of now upgraded facilities and other load management strategies (Part I.D.)
8. Added a provision to allow approval of an alternative sample type on a case-by-case basis for facilities that demonstrate <10 variability in their effluent flow (Part I.E.1.).
9. Clarified the calculation procedures for monthly load to apply only to those days on which a discharge occurred (Part I.E.4.).
10. Added a provision to allow a case-by-case approval of a chemical usage report in lieu of effluent monitoring where the only source of nutrients in a discharge is the nutrients in the surface water intake and chemical additives typically used as anti corrosive agents or biocides to condition cooling water (Part I.E.5.).
11. Modified the condition establishing a baseline requirement for storm water retention projects generating nutrient reductions to offset new point source loads. The condition was modified to apply to all urban source reduction controls (as opposed to retention ponds only) and deleted the exception to allow projects included in previously approved trading programs after it was determined that there were no previously approved programs by the Department of Conservation and Recreation (Part II.B.1.b.(6)).

12. Deleted references to the specific version (2006) of 40 CFR Part 136 requiring use of EPA approved monitoring methods (Parts III.J.4. and III.L.4.). Registrants are required to use the version of 40 CFR Part 136 in place at the time this regulation is adopted.
13. Added waste load allocations reduced to the Chesapeake Bay TMDL to 9 VAC 25-820-80 to clarify the goals of the schedule of compliance included in 9 VAC 25-820-40. 9 VAC 25-820-80 was also modified to clarify what facilities are included in the aggregate registrations subject to the schedule of compliance in 9 VAC 25-820-40.
14. Updated the corporate name of Smurfit Stone to RockTenn CP LLC (9 VAC 25-820).
15. Additional changes have been made to supporting documents that are not a part of the regulation itself. Extensive changes have been made to the general permit Fact Sheet to clarify how the general permit implements the Chesapeake Bay TMDL, specifically Appendix X to the TMDL which establishes a staged implementation approach for wastewater treatment facilities in the James River Basin. Changes were also made to the permit Registration List to update two corporate names and to update the current waste load allocations for the Frederick-Winchester Service Authority Opequon WRF.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency Response
Robert Wichser Rivanna Water and Sewer Authority	Suggest DEQ consider waiving load limits for E3/E4 facilities as is done for concentration based limits in individual permits	Purchasing of compliance credits under the watershed general permit already provides an alternative method of complying with the load limits.
William H. Street Adrienne F. Kotula James River Association	Support permit as proposed and suggest permit would be strengthened with further clarification of the studies as part of the James River Strategy.	Additional information on implementation of Appendix X to the Chesapeake Bay TMDL (Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin) has been added to the Fact Sheet for clarity.
David E. Evans McGuireWoods LLP on behalf of J. H. Miles, Inc.	Supports provision allowing alternative monthly load calculations and elimination of Ortho-P monitoring. Included reporting procedure for approval.	Proposed monitoring and reporting procedures for the J. H. Miles facility are acceptable under the proposed alternative reporting provision of the general permit.
Dave E. Evans McGuireWoods LLP on behalf of Alexandria Sanitation Authority	Requested ASA wasteload allocations to be footnoted to apply to dry weather flow only (54 MGD) as with other CSO communities.	Of the three CSO communities in VA, two have a footnote in the Water Quality Management Planning Regulation (9VAC25-720) indicating that their nutrient allocations only apply to flows less than the plant design flow. Until such time as the footnote is added to 9VAC25-720 for ASA, it cannot be added to the registration list
Lalit K. Sharma City of Alexandria	Requested ASA wasteload allocations to be footnoted to apply to dry weather flow only (54 MGD) as with other CSO communities.	Of the three CSO communities in VA, two have a footnote in the Water Quality Management Planning Regulation (9VAC25-720) indicating that their nutrient allocations only apply to flows less than the plant design flow. Until such time as the footnote is added to 9VAC25-720 for ASA, it

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		cannot be added to the registration list
Cheryl St. Amant Fauquier County Water and Sanitation Authority	Requested that Vint Hill WWTP Total Nitrogen allocation be amended consistent with recent court settlement	The court settlement directs DEQ to amend the Water Quality Management Planning Regulation (9VAC25-720) to include a higher wasteload allocation for Total Nitrogen. Until 9VAC25-720 is amended, the wasteload allocation in the current regulation must be included on the registration list. DEQ is planning to initiate this regulatory action in September.
Tarah Heinzen Environmental Integrity Project Ed Merrifield Potomac Riverkeeper, Inc.	Virginia's trading program is unlawful as the Clean Water Act (CWA) does not permit nutrient trading under any circumstances	Issuance of watershed general permit with provisions for trading is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
	Proposed rule violates CWA by allowing for the addition of new point source loads to an impaired segment without ensuring that all sources (point and nonpoint) are subject to compliance schedules designed to bring the segment into compliance with water quality standards.	Provision for offsetting new and expanded discharges is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
	Proposed rule includes no safeguards to ensure that trades do not impact local water quality, especially the provision allowing Eastern Shore facilities to acquire credits from the Potomac and Rappahannock basins.	Prohibition of local water quality impacts is included in 9VAC25-820-30.B as well as in Part I.B.2.d, Part I.J.2.c, Part I.J.3.c, and Part II.B.2.c of the proposed general permit. Eastern Shore facilities share no common river basin that could suffer a local water quality impact as a result of trading with other basins.
	Proposed rule adopts inadequate trading baselines for both point sources and nonpoint sources.	Proposed rule is consistent with the provisions in the trading provisions in Appendix X to the Chesapeake Bay TMDL. In order to generate credits, significant point sources and any nonpoint sources must first meet the applicable wasteload allocation or load allocation in the TMDL. Nonsignificant point sources cannot generate credits. Five baseline BMPs consistent with the agriculture sector load allocations are required by agency guidance before additional BMPs can be put in place to generate marketable nonpoint source offsets.
	Trading ratios in the proposed rule will not protect water quality. Higher point source-to-point source trading ratios would help restore water quality. Higher point source-to-nonpoint source trading	Proposed trading ratios ensure that all wasteload allocations are maintained. The Nonpoint Source-to-Point Source trading ratio (2:1) is conservative and set at a level which accounts for uncertainty in load reductions from individual BMPs. Nonpoint

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	ratios are necessary to make up for nonpoint source reductions that are claimed, but not realized.	Source Reductions approved by DEQ require yearly documentation.
	Proposed rule's nonpoint source credit provisions lack accountability and should require that new sources first seek offsets from point sources.	Implementation guidance for acquiring wasteload allocations from nonpoint source offsets has been in effect since 2008. The guidance includes nutrient reductions provided by agricultural BMPs as established by the Chesapeake Bay Watershed Model. The guidance further requires accountability in the form of financial assurance and deed restrictions where appropriate. Allowance for wasteload allocations generated by nonpoint source BMPs is required by Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia.
Sharon Nicklas Hampton Roads Sanitation District	Amendments to the Water Quality Management Regulations (9VAC25-720-10 et seq) should have been posted concurrently to provide clarity. Recommend that the 12/29/2010 Chesapeake Bay TMDL reduced wasteload allocations be included in the general permit compliance schedule to add clarity.	Amendments to the Water Quality Management Planning Regulation will be made in a subsequent rulemaking. Reduced wasteload allocations have been added to Section 80 of the general permit for clarity.
	Part I.C.3 includes a compliance schedule that exceeds the term of the general permit regulation in conflict with DEQ regulations. Paragraph also establishes wasteload allocations without benefit of the impending Chlorophyll-a study.	DEQ is required to implement the current Chesapeake Bay TMDL including wasteload allocations based on the existing water quality criteria for Chlorophyll-a. § 62.1-44.19:14 of the Code of Virginia supersedes DEQ regulations and allows for the schedule of compliance which is consistent with Appendix X to the TMDL.
	Parts 1.E.3. and 1.E.4. contain conflicting statements on rounding (may vs. shall). Recommend deleting language on different reporting procedures. Calculated daily load should not be rounded - only the monthly load reported on the DMR.	The comment compares requirements for reporting monthly and yearly loads with provisions for calculation of average daily loads that are not reported under the general permit. The two provisions are not in conflict.
Pamela F. Faggert Dominion Resources	Definition of "ML" should be clarified to include the number of discharge days in the calendar month.	Discharge days has been added to the definition of "ML" (monthly load)
	Propose language allowing DEQ to approve alternative samples on a case-by-case basis.	New provision with language allowing for alternative sampling methods at facilities with less than10% variability in diurnal flow has been added to Part I.E.1.
	Propose language authorizing DEQ to approve a chemical usage	New provision with language allowing for a chemical usage evaluation in lieu of effluent

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	evaluation in lieu of effluent monitoring on a case-by-case basis for some industrial effluents.	sampling has been added to Part I.E.5. The new requirement is limited to outfalls where the only source of nutrients is those found in the surface water intake and chemical additives used by the facility.
	"Equivalent load" definition - last sentence should be 0.5 million gallons	Typo corrected
	Part I.E.2. and Parts III.J.4 and L.4.b - should include "(2006)" in all references to 40 CFR Part 136 or strike from all for consistency and clarity	"2006" has been stricken from all references to 40 CFR Part 136.
Mike Gerel Chesapeake Bay Foundation	Add provision requiring HRSD James River Aggregate to reduce an additional 1,000,000 lbs/yr TN by 1/1/21 to meet dissolved oxygen criteria in accordance with the Phase I Watershed Implementation Plan (WIP)	Appendix X to the TMDL requires that individual wasteload allocations sufficient to provide this reduction be established in the Phase 3 Watershed Implementation Plan developed in 2017 and included in the subsequent general permit cycle. Clarification of this process has been added to the Fact Sheet.
	Add provision that the 39 significant dischargers in the James River basin reduce an additional 250,000 lbs/yr TP by 1/1/21 to meet dissolved oxygen criteria in accordance with the Phase I WIP.	Appendix X to the TMDL requires that individual wasteload allocations sufficient to provide this reduction be established in the Phase 3 Watershed Implementation Plan developed in 2017 and included in the subsequent general permit cycle. Clarification of this process has been added to the Fact Sheet.
	Modify Part I.C.3. to make it clear that the aggregate wasteload allocations on the James River will be disaggregated in the future.	The process for disaggregating the James River wasteload allocations is adequately addressed in new Fact Sheet language.
	Add definitions of "HRSD James River Aggregate" and "HRSD York River Aggregate" including specific facility names.	Specific facility names added to 9VAC25-820-80
	Provide additional permit and fact sheet language explaining how the permit implements the Phase I WIP.	Additional information on implementation of the Phase 1 Watershed Implementation Plan has been added to the Fact Sheet for clarity.
Brent Fults Chesapeake Bay Nutrient Land Trust, LLC	2:1 ratio for point source-to-nonpoint source trades should be replace with a ratio of 1:1	A 2:1 trading ratio for nonpoint source-to-point source trades appropriately addresses the uncertainty of nonpoint source reductions when compared to measured point source loads.
	Part II, Section B.1.b(6) The term "stormwater retention" is too narrow and should be expanded to include "detention" projects.	"Stormwater retention projects" replaced with "urban source reduction controls (BMPs) per discussions with DCR.
	Part II, Section B.1.b(6) - Supports a "look back period" of 5 years for example rather than the current	The July 1, 2005 baseline is consistent with the July 1, 2005 effective date of the initial nutrient trading legislation and has

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	static baseline date of July 1, 2005. The statute does not include a justification for the 2005 date.	previously been included in agency guidance for generating offsets from land conversion activities. Discussions of this proposal with DCR staff indicate that the July 1, 2005 baseline is appropriate because it also excludes those controls in place and included in the calibration of the Chesapeake Bay water quality model.
	Part II, Section B.1.b(6) Delete subparagraph (6) and begin dialogue with affected parties to determine appropriate criteria for which "stormwater trading program" projects may be eligible to trade. The phrase concerning existing projects is too vague and should address (1) that the project was in the ground and reducing nutrients prior to 7/1/2005, (2) define "stormwater trading program", (3) be limited to projects specifically designed for Chesapeake Bay nutrient trading and (4) require the same nutrient capture calculations currently in use.	Discussions with DCR indicated that the proposed 7/1/2005 baseline requirement is appropriate. The requirement that these projects "...represent controls beyond those in place as of July 1, 2005..." indicates that the project was in the ground and reducing nutrients prior to 7/1/2005. In accordance with discussions with DCR, the provision for grandfathering projects "...specifically designed for and approved for use in a stormwater trading program prior to 7/1/2005" has been deleted as DCR did not approve any such programs and any projects in place as of 2005 are already included in the Chesapeake Bay watershed model calibration. The proposed regulation has not been modified to require the same nutrient capture calculations currently in use since guidance for generation of offsets from urban BMPs has yet to be developed.
Robert C. Steidel Virginia Association of Municipal Wastewater Agencies, Inc.	Recommend removing the James River aggregate delivered wasteload allocations (WLAs). The compliance date extends beyond the term of the permit; the WLA is legally flawed in that it is more stringent than necessary to protect the James River; and the WLAs do not reflect the planned Chlorophill-a study for the James River. If the aggregate WLA is included, VAMWA requests (a) clearer discussion in the Fact Sheet and 4 attachments to the Fact Sheet, (b) changing the permit language so that the annual compliance plan update does not apply to the aggregate James River wasteload allocation and (c) use the term "effective date" in Part I.C.3. as is used in the table in Part I.C.1.a. for clarity.	DEQ is required to implement the current Chesapeake Bay TMDL including the aggregate wasteload allocations based on the existing water quality criteria for Chlorophyll-a. The "delivered" aggregate wasteload allocation included in the proposed regulation has been replaced by a "discharged" or "edge of stream" allocation consistent with the TMDL. § 62.1-44.19:14 of the Code of Virginia supersedes DEQ regulations and allows for the schedule of compliance which is consistent with Appendix X to the TMDL. In response to specific suggestions by VAMWA: (a) Additional discussion of implementation of Appendix X to the TMDL has been added to the Fact Sheet as requested. One of the three suggested attachments has been added to the Fact Sheet along with Appendix X.(b) The annual compliance plan update language dealing with the aggregate James River wasteload allocation remains in the permit. This provision is required so

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		that DEQ can obtain the information necessary to establish individual, Chlorophyll-a based wasteload allocations in the Phase 3 Watershed Implementation Plan as required by Appendix X to the TMDL. This process is further discussed in the Fact Sheet. (c) The use of "by January 1, 2023' rather than "effective date" in Part I.C.3 is consistent with the provisions of the TMDL which do not establish an effective date for the aggregate limit. Once DEQ has established individual wasteload allocations as part of the Phase 3 WIP, those allocations will be placed into the watershed general permit and effective dates requiring compliance as soon as possible will be established in accordance with 40 CFR 122.47.
	Replace "used to compensate for excessive loads from" with "acquired and applied by" in the definition of "Eastern Shore Trading Ratio"	Change made.
	Suggest changing compliance plan language (Part I.D.) as follows: "the compliance plans shall contain sufficient information to document a plan for the facility to achieve and maintain compliance with applicable, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus waste load allocation reductions sufficient to comply...."	Suggested change has been accepted.
	Change "July 1, 2005" to "January 1, 2006" in Part II.B.1.b(6)	No change made. The baseline is intended to coincide with the effective date of the initial legislation establishing a nutrient trading program and is consistent with the baseline for land conversions in agency guidance.
	Supports revisions to 9VAC25-820-40 which limit applicability to facilities listed in 9VAC25-820-80.	N/A
	Supports continuation of permit coverage (Part I.A.3.)	N/A
	Supports flexibility in timing of sample collection and analysis	N/A
	Opposes using <QL as half of the QL other than in this watershed general permit permit cycle.	N/A
Andrea W. Wortzel	Changes to delivery factors have	In order to allow trading on a watershed

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Hunton & Williams on behalf of the Virginia Manufacturers Association	been made on the Registration Lists but are not addressed in the regulation. New delivery factors should not be implemented until they have been made available for notice and comment and the basis of the changes has been provided.	basis, DEQ must rely on delivery factors included in the TMDL. Proposal to update delivery factors was included in the public notice for this regulation.
	Clarify that the definition of "state-of-the-art nutrient removal technology" does not apply to industrial dischargers	"State-of-the-art" is only used in Part II.B.1.d(4) of the general permit in the context of a facility land applying domestic sewage so there is no need to clarify the definition. The term "Biological nutrient removal technology" was found to be an artifact that does not occur in the regulation and has therefore been removed from the definitions section.
	Definition of "expansion" should make clear that it only applies to construction or process changes that result in a net increase in annual load that exceeds the wasteload allocation for the facility.	Definition modified so that the suggested "exceeds the WLA" provision only applies to process changes at industrial facilities. Any construction of additional capacity is considered an expansion under the requirements of the regulation.
	"Credit" definitions should make it clear that a credit is one delivered pound of TN or TP. Add definition of nonpoint source load allocation.	Present definitions and regulation wording reviewed and believed adequate.
	Clarify definition of "offset"	Present definitions and regulation wording reviewed and believed adequate.
	Use of the Terms "offset", "credit" and "waste load allocation" is confusing and should be clarified.	Present definitions and regulation wording reviewed and believed adequate.
	9VAC25-820-70 Part I.B.A. should be clarified to more clearly state that only facilities with assigned waste load allocations can generate credits.	Present wording reviewed and believed adequate.
	Modify Part I.C.3 to state that the aggregate wasteload allocation for 39 significant discharges in the James River basin shall be met by 1/1/2023 unless the chlorophyll-a standard is amend prior to 2017.	No changes made to Part I.C.3. Any change to the aggregate WLA for the James River will have to be made in accordance with Appendix X to the TMDL. Any such change is not expected until after completion of the Phase III WIP and beyond the term of the current permit. Permittees will have the opportunity to comment on any individual Chlorophyll-a based WLAs during development of the Phase III WIP, any subsequent amendment to the TMDL and in the next cycle of the watershed general permit.
	Additional detail is needed about how offsets will be quantified, the mechanics of acquiring a	DEQ believes the requirements to offset new or increased nutrient loads is clear as proposed. A facility that expands and

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	wasteload allocation, and how DEQ will document the new wasteload allocation on the registration list. Facilities my rely on compliance credits during the short term and implement expansions while still relying on compliance credits This section should be carefully vetted to make it clear when the offset requirement is triggered as opposed to purchase of a credit..	increases their nutrient load beyond their wasteload allocation must acquire additional wasteload allocation to offset the increase. A facility cannot rely on the acquisition of nutrient credits to offset the increase.
	Smurfit-Stone Container should be listed as RockTenn Corp. BWX Technologies should be listed as Babcock & Wilcox. The name change should be reflected in the regulation and the registration lists.	Changes made to registration lists and regulation. RockTenn Corp. listed as "RockTenn CP LLC - West Point", consistent with DEQ records.
	Typo in the "equivalent load" definition. Should be 0.5 MGD rather than 0.05 MGD.	Typo corrected
	Typo in definition of "point source nitrogen credit" - "that" at the start of the 5th line should be "where".	Typo corrected
Jesse Moffett Frederick-Winchester Service Authority	Opequon WRF waste load allocation should reflect the proposed regulations for both TN (115,122 lbs/yr) and TP (11,512 lbs/yr) at a design flow of 12.6 MGD.	Correction made to Potomac Basin registration list.
David McGuigan EPA Region III Office of NPDES Permits and Enforcement	EPA comments that no new loads would be allowed to be added to the registration list while it is administratively continued.	EPA interpretation is correct.
	EPA requests further clarification of how Appendix X to the Chesapeake Bay TMDL is incorporated into the general permit and requests further clarification in the Fact Sheet. The TMDL includes discharged aggregate loads for the James River and the regulation includes delivered loads. Suggest including delivered loads to be consistent with TMDL.	Additional information on implementation of Appendix X to the Chesapeake Bay TMDL (Staged Implementation Approach for Wastewater Treatment Facilities in the Virginia James River Basin) has been added to the Fact Sheet for clarity. Additionally, the aggregate wasteload allocations for the 39 significant James River dischargers included in Part I.C.3. of the general permit have been converted to discharged loads to ensure consistency with the TMDL.
	Request additional discussion in the Fact Sheet to explain how waste load allocations for sediment are addressed in the VPDES program.	Under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia, the watershed general permit is issued for the control of Total Nitrogen and Total Phosphorus. Compliance with sediment wasteload

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		allocations will be ensured through individual VPDES permits as outlined in Virginia's Watershed Implementation Plan.
	Approach for addressing CSO loads in the individual VPDES as well as the nutrient trading general permit should be spelled out more clearly in the fact sheets for both permits.	Additional language addressing permitting of CSO systems has been developed with EPA and added to the Fact Sheet for clarification. No additional language has been added to the general permit.
	Typo in the "equivalent load" definition. Should be 0.5 MGD rather than 0.05 MGD.	Typo corrected
	Need further discussion of Eastern Shore trading ratios	See discussion under J.2. on p. 4 of Fact Sheet
	Definition of "waste load allocation" - (iii) should be replaced with "approved TMDL point source allocations" and the definition should be modified to indicate that the more limiting of (i) and (iii) should apply.	Definition modified to indicate that the most limiting of (i), (ii) or (iii) is applicable. Language in (iii) left as originally drafted to avoid confusion as to definition of "approved".
	Request deletion of the intake credit provision.	Only one discharger currently has "net" wasteload allocations recognized in the Water Quality Management Planning Regulation (9VAC25-720) however additional facilities could be identified in the future. This provision is particularly applicable a facilities that use large amounts of cooling water without contributing significant additional loads of nutrients to the discharge.
	Request deletion of the bioavailability provision as not appropriate bioassay establishing bioavailability of nutrients in the Chesapeake Bay is available.	Although the provision allowing for adjustments to wasteload allocations to account for bioavailability cannot be used until acceptable bioassays are established, it is an important provision to dischargers whose effluent is dominated by Organic Nitrogen. DEQ proposes to continue to include the provision in the event that appropriate bioassay procedures become available in the future.
	Request increase sampling frequency for all flow tiers to obtain more representative loads. The following frequencies are requested: >20 MGD.....1/Day 1 MGD - 20 MGD.....3/Week 0.04 MGD - 0.999 MGD.....1/Week	Although the more frequent sampling proposed by EPA would provide more precise determination of annual loads, the existing sampling frequencies provide an adequate representation that is not biased high or low. For the flow categories referenced by EPA, existing frequencies result in 24 to 156 samples/year which is adequate for establishing yearly loads.
Steven Herzog Hanover County Dept. of Public Utilties	Supports the watershed general permit	N/A

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	Supports implementation of new delivery factors in the last year of the general permit (2016)	N/A
	Expressed concern for the long term viability of trading nutrients if delivery factors are constantly changing.	DEQ is required to implement the delivery factors included in the TMDL. EPA is considering establishing permanent delivery factors in the future.
	Some changes to the previous delivery factors do not seem to make sense. An explanation of the science/logic behind individual delivery factors has not been provided.	Delivery factors are pulled from EPA's Chesapeake Bay TMDL and represent EPA's latest Chesapeake Bay modeling effort. EPA is evaluating further refinement of delivery factors.
	Hanover County endorses VAMWA comments	N/A

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Changes Made Prior to Initial State Water Control Board Authorization to Publish Public Notice

1. Deletion of sections dealing with initial compliance plans and a schedule of compliance. Nutrient limits went into effect as of 1/1/11 and these sections are no longer necessary. Sections are held as "reserved" to maintain the section references included in credit exchange contracts previously executed by members of the The Virginia Nutrient Credit Exchange Association.
2. Miscellaneous changes meant to correct inaccuracies introduced by previous requirements to calculate loads based on flows expressed to the nearest 0.01 MGD and to round nutrient loads to the nearest whole pound on a daily basis. These two procedures introduced errors into calculations provided by smaller facilities.
3. A change to the definition of "expansion" to recognize that production changes or the use of treatment additives at industrial facilities could result in increased nutrient loads to be addressed under the watershed general permit.
4. Inclusion of a new definition of "local water quality based limitations"; a term used in the existing permit.
5. A new definition of "quantification level" to match that used by the Division of Consolidated Laboratory Services.
6. Provisions to implement a number of bills addressing nutrient trading that have become effective since the original regulation was adopted. These provisions include:
    a. Allowance for VPA treatment systems in existence as of 7/1/2005 that need to replace their system with a discharging system to petition the Board for a wasteload allocation for coverage under the watershed general permit.
    b. A requirement that new municipal treatment systems with a design flow between 1,000 and 40,000 gpd that are not discharging as of 1/1/2011 must offset all nutrient loads and register for coverage.
    c. Allowance for permitted facilities on the Eastern Shore to acquire compliance credits from the Potomac and Rappahannock basins.
7. Clarification of analytical and reporting requirements.
8. A requirement that offsets required for the full 5-year term of the permit be provided at the time of registration.

9. Updated prices of TN and TP credit purchases from the Water Quality Improvement Fund
10. Establishing a baseline condition for offsets generated by new stormwater BMPs..
11. Deletion of the Ortho Phosphorus monitoring requirement as enough data was generated in the first permit cycle to characterize the discharges for modeling purposes.

Changes Made in Response to the EPA Chesapeake Bay TMDL and Prior to Public Notice

12. Add reduced TN and TP wasteload allocations for the HRSD facilities on the James River and reduced TP allocations for all facilities in the York Basin. The new limitations required reinstating the sections dealing with initial compliance plans and a schedule of compliance addressed in #1 above.
13. Add aggregate, Chlorophyl a-based TN and TP wasteload allocations for the significant James River dischargers with a compliance deadline of January 1, 2023.
14. Push the registration deadline back one month to November 1, 2011.
15. Add provisions allowing for coverage under the general permit to be administratively continued, if necessary.

Changes Made Since the Proposed Stage

16. Deletion of the definition of "biological nutrient removal technology". This definition was an artifact from a previous draft version of the regulation and the term does not appear in the regulation.
17. Modified the definition of "Eastern Shore trading ratio" to clarify the intent.
18. Modified the definition of "expansion" or "expands" to make it clear that industrial facilities that have an increase in the annual mass load of nutrients as a result of the use of a new chemical additive are not considered to have expanded unless the increase causes the facility to exceed their wasteload allocation.
19. Corrected a grammatical error in the definition of "point source nitrogen credit".
20. Modified the definition of "waste load allocation" to clarify that the most limiting of the waste load allocations included in the Water Quality Management Planning Regulation (9 VAC 25-720 et seq.) and the Chesapeake Bay TMDL is applicable in the general permit.
21. Replaced the delivered aggregate waste load allocations for the 39 significant dischargers in the James River Basin with discharged wasteload allocations for consistency with the TMDL (Part I.C.3.).
22. Modified the required contents of the annual compliance plan update to reflect the shift in compliance planning from new WWTP upgrades to broader usage of now upgraded facilities and other load management strategies (Part I.D.)
23. Added a provision to allow approval of an alternative sample type on a case-by-case basis for facilities that demonstrate <10 variability in their effluent flow (Part I.E.1.).
24. Clarified the calculation procedures for monthly load to apply only to those days on which a discharge occurred (Part I.E.4.).
25. Added a provision to allow a case-by-case approval of a chemical usage report in lieu of effluent monitoring where the only source of nutrients in a discharge is the nutrients in the surface water intake and chemical additives typically used as anti corrosive agents or biocides to condition cooling water (Part I.E.5.).
26. Modified the condition establishing a baseline requirement for storm water retention projects generating nutrient reductions to offset new point source loads. The condition was modified to apply to all urban source reduction controls (as opposed to retention ponds only) and deleted the exception to allow projects included in previously approved trading programs after it was determined that there were no previously approved programs by the Department of Conservation and Recreation (Part II.B.1.b.(6)).
27. Deleted references to the specific version (2006) of 40 CFR Part 136 requiring use of EPA approved monitoring methods (Parts III.J.4. and III.L.4.). Registrants are required to use the version of 40 CFR Part 136 in place at the time this regulation is adopted.
28. Added waste load allocations reduced to the Chesapeake Bay TMDL to 9 VAC 25-820-80 to clarify the goals of the schedule of compliance included in 9 VAC 25-820-40. 9 VAC 25-820-80

was also modified to clarify what facilities are included in the aggregate registrations subject to the schedule of compliance in 9 VAC 25-820-40.

29. Updated the corporate name of Smurfit Stone to RockTenn CP LLC (9 VAC 25-820).
30. Additional changes have been made to supporting documents that are not a part of the regulation itself. Extensive changes have been made to the general permit Fact Sheet to clarify how the general permit implements the Chesapeake Bay TMDL, specifically Appendix X to the TMDL which establishes a staged implementation approach for wastewater treatment facilities in the James River Basin. Changes were also made to the permit Registration List to update two corporate names and to update the current waste load allocations for the Frederick-Winchester Service Authority Opequon WRF.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This general permit complements 9 VAC 25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and to 9 VAC 25-720 (the Water Quality Management Planning Regulation) and is intended to provided compliance flexibility to the affected facilities in order to ensure the most cost-effective nutrient reduction technologies are installed within the respective tributary watersheds. This regulation does not impose any additional compliance costs upon regulated entities above and beyond those already imposed by the aforementioned regulatory amendments, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

125 facilities were initially affected by this regulation, most of which are publicly owned treatment works or large industrial facilities. One facility (J.H. Miles) is categorized as a small business. Certain smaller new or expanded dischargers are required to register for general permit coverage in accordance with §62.1-44.19:14C.5 and §62.1-44.19:15 of the Code of Virginia as amended in the 2005 session of the General Assembly. These facilities would also be subject to 9 VAC 25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed); again, this proposed general permit should provide these new or expanding facilities compliance flexibility.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability.