TENTATIVE AGENDA AND MINIBOOK
STATE WATER CONTROL BOARD MEETING

WEDNESDAY, DECEMBER 9, 2020

ELECTRONIC COMMUNICATION MEETING

To attend and/or speak at the Board meeting you must register at:
https://attendee.gotowebinar.com/register/3568783157734739728

See Page 3 for Additional Information

Persons Wishing To Speak During The Meeting Must Register By December 4, 2020

Any Updates To The Details/Final Arrangements Or The Addition Of An In-Person Location To Be Announced On The Virginia Regulatory Town Hall

Convene – 10:00 a.m.

Agenda Item	Presenter	Page
• General Permit for Use of Surficial Aquifer on the Eastern Shore - 9VAC25-910 and Groundwater Withdrawal Regulations - 9VAC25-610 - Proposed	Kudlas	264
Significant Noncompliance Report and Chesapeake Bay Preservation Act Program Notices of Violations	Sadtler	276
Consent Special Orders	Sadtler	277
• City of Winchester (Sanitary Sewer Overflows)		
• U.S. General Services Agency (OW), M.A. Mortenson Company (OP), Hensel Phelps Parent 1 Inc. d/b/a Hensel Phelps Construction CO (OP) (Fort Pickett, Nottoway County)		
Other Business		
• FY2021 Virginia Clean Water Revolving Loan Fund Final Authorizations	Doran	278
• Agricultural Best Management Practices Loan Program Revised Guidelines	Doran	280
• Future Meetings		
• Division Director's Report	Davenport/Schneider	
• Public Forum (time not to exceed 45 minutes)		

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may an additional comment period during which a public hearing is held.
In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378, e-mail: cindy.berndt@deq.virginia.gov.

Additional Information on Virtual Meeting

Mode of Participation	Ability to make public comment if authorized by public comment policy?	Instructions
Watch and Speak Mode - GoToWebinar	YES	• Prior to hearing, register at • Participants can join the meeting starting at 9:30 a.m. on December 9, 2020. • To join the meeting access the website by using the link https://attendee.gotowebinar.com/register/3568783157734739728, telephone number, access code and audio pin provided with the meeting confirmation. • For audio, it is recommended that you call-in to the webinar. Join the webinar first, select phone audio then dial the phone number and enter the access number and PIN. • If joining from a mobile device, it is recommended you download the app prior to the meeting. • All participants will be automatically muted upon joining the meeting. • If authorized to speak under the public comment policy, when you are called on, you will be un-muted and will be able to provide comments.
Watch Only Mode - GoToWebinar	NO	• Register at:https://www.gotomeeting.com/webinar Participants can join the meeting starting at 9:30 a.m. on December 9, 2020. • To join the meeting access the website by using the link, telephone number, access code and audio pin provided with the meeting confirmation Or Access the website https://www.gotomeeting.com/webinar, click "Join" and then enter Webinar ID 769-357-603. • If joining from a mobile device, it is recommended you download the app prior to the meeting.
Listen Only Mode	NO	If you prefer to attend the meeting by telephone and do not plan to speak, contact Debra Harris at 804-698-4209 or debra.harris@deq.virginia.gov to obtain a telephone number.

Additional Meeting Information:

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- Attendees shall not block or gather in exits, doors, or aisles.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the hotel, its employees and guests.
- All violators are subject to removal.

TAB B - Policy for the Potomac River Embayments - 9VAC25-415 - Final

At the December 9, 2020, meeting staff will request the Board to accept final amendments to the Policy for the Potomac River Embayments (9VAC25-415) regulation. This amendment corrects the names of two regulations referenced in §30 of the regulation and will be processed using the exempt final regulatory process established in Section 2.2-4006 A 3 of the Code of Virginia that allows for regulations to be amended to make technical corrections. This regulation is applicable to the Potomac River embayments and their tidal and non-tidal tributaries - specifically waters of the Potomac River from the fall line at Chain Bridge in Arlington County to the Route 301 Bridge in King George County. The regulation requires effluent limitations in VPDES permits for point sources, particularly sewage treatment plants, that are more stringent than what might otherwise be required by the VPDES Permit Regulation (9VAC25-31-10 et seq.) and the Water Quality Standards (9VAC25-260-10 et seq.). The regulation sets monthly average levels for effluent concentrations of Carbonaceous Biochemical Oxygen Demand (CBOD5), total phosphorus, ammonia as nitrogen, and total suspended solids (TSS).

Tab C - Virginia Pollutant Discharge Elimination System General Permit for Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day - 9VAC25-110 - Final

The current VPDES Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day General Permit will expire on August 1, 2021 and the regulation establishing this general permit is being amended to reissue it for another term. The staff is bringing this regulation before the Board to request adoption of the amendments to the VPDES General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day. The staff will also recommend that the Board affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

The regulation took into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. A list of the TAC membership is attached.

The Notice of Public Comment and Hearing was approved by the Board on June 29, 2020, the comment period was August 3 to October 2, 2020 with a virtual public hearing held on September 9, 2020. There were two comments received during the Notice of Public Comment and Hearing. No substantive changes were in this final draft. Substantive changes presented during the proposed stage were:

Section 10 – *Definitions*. Revised the definition of "individual single family dwelling" to clarify that it includes flow from an accessory structure such as a garage or pool house. Added language to clarify when a second connection changes the status of an individual single family dwelling.

Section 15 – *Applicability of incorporated references based on the dates that they became effective*. A statement was revised to update all Title 40 Code of Federal Regulations within the document to be those published as of July 1, 2021. This is a recommendation from the DEQ Office of Policy.

Section 20 – *Purpose; delegation of authority; effective date of permit*. Updated the effective date to August 2, 2021 and the expiration date to July 31, 2026.

Section 60 – *Authorization to discharge*. For an individual single family dwelling, revised language so that the owner must submit a combined application in place of a registration statement. Made continuation of permit language more generic (for use across most general permits). Added language to address continuation of coverage when coverage is based on automatic renewal. Added reference to 12VAC5-640 criteria to provisions indicating an owner is not eligible for coverage under this general permit because VDH has determined that an onsite system is available.

Section 70 – *Registration Statement*. For an individual single family dwelling, revised language so that the owner must submit a combined application in place of a registration statement. For new and existing treatment works, added that the submittal must meet the timing deadline or a latter submittal date established by the board. Made edits to remove the existing specific dates and make the language more generic (to avoid needing to change the dates each reissuance).

For treatment works authorized under the existing general permit that do not qualify for automatic renewal, specify that a registration statement or, for a single family dwelling, a combined application, must be submitted at least 60 days prior to the expiration of the existing permit or a later submittal date established by the board.

For late registration statements, which are accepted but are not retroactive, excluded automatic renewal and replaced "after August 1, 2016" with "after the expiration of the existing general permit." Removed the second sentence in Section 70 A 3.

Under Section 70 B 1, added parenthetical that indicates that if a building is an individual single family dwelling, the owner must submit a combined application in accordance with 9VAC25-110-60 A 1.

Added a requirement to provide outfall latitude and longitude information. This is used in DEQ's CEDS database and will be required for e-reporting.

For operation and maintenance requirements applicable to individual single family dwellings, changed the referenced VDH regulations from 12VAC5-640-500 to 12VAC5-640 to allow VDH flexibility to reorganize their regulations.
For operation and maintenance requirements applicable to buildings or dwellings other than individual single family dwellings, removed the requirement (and associated language) that the permittee must keep a maintenance contract in force for the permit term unless granted an exception that allowed for the implementation of an approved operation and maintenance plan. In its place, added a requirement that such permittees engage a licensed operator. This approach is consistent with VDH requirements applicable to individual single family dwellings. As part of this change, removed the language addressing requesting an exception to the maintenance contract requirement and submitting an operation and maintenance plan for DEQ approval.
Added a requirement that applicants other than individual single family dwellings must submit their State Corporation Commission entity identification number if required to obtain one by law. This ensures the correct entity is permitted and the permittee is authorized to conduct business in the state.

Added that, like the registration statement, any combined application that is submitted must be signed in accordance with 9VAC25-31-110 A of the VPDES Permit Regulation.

Finally, clarified that the registration statement and the combined application shall be delivered to the DEQ regional office where the treatment works is located. In addition, added contingent e-reporting language for registration statements and combined applications. This language provides that following notification from the department of the start date for required electronic submission and a three-month period from such notification, such forms shall be electronically submitted to the department in compliance with 9VAC25-31-1020.

Section 80 – *General Permit*. Updated the effective date to August 2, 2021 and the expiration date to July 31, 2026.

The permit provides that the authorized discharge shall be in accordance with the information submitted with the registration statement, the cover page and Part I and Part II permit conditions. Specified that this includes the registration statement or combined application.

Revised the discharge limits in I A 1, I B 1, and I C 1 for E. coli and enterococci to reflect revised water quality standards that became effective October 21, 2019.

Clarified in I C 1 that discharges subject to 9VAC25-415-40 may be subject to conditional exemptions in 9VAC25-415-30.

For operation and maintenance requirements applicable to buildings or dwellings other than individual single family dwellings (Part I D 2 b), removed the requirement (and associated language) that the permittee must keep a maintenance contract in force for the permit term unless granted an exception that allowed for the implementation of an approved operation and maintenance plan. In its place, added a requirement that such permittees must use a licensed operator to ensure proper operation, monitoring and reporting. This approach is consistent with VDH requirements applicable to individual single family dwellings. As part of this change, removed the language that addresses requesting an exception to the maintenance contract requirement and submitting an operation and maintenance plan for DEQ approval.

As part of the operation and maintenance requirements applicable to buildings or dwellings other than individual single family dwellings, added permittee requirements, including:

- Having the system operated and maintained by a licensed operator including the operator responsibilities specified in D 2 (b) 3;
- Having a licensed operator visit the system at least semi-annually;
- Having a licensed operator collect, analyze and submit to the department any samples required under Part I A, Part I B, or Part I C, as appropriate;
- Providing prompt maintenance and repair of the treatment works once notified by the operator that repair or maintenance is necessary;
- Maintaining a copy of the log provided by the operator on the property where the system is located in electronic or hard copy form, making the log available to the department upon request, and making a reasonable effort to transfer the log to any future owner;
- Following the treatment works O&M manual (where available) and keeping a copy of the O&M manual in electronic or hard copy form on the property where the system is located, making the O&M manual available to the department upon request, and making a reasonable effort to transfer the O&M manual to any future owner.

As part of the operation and maintenance requirements applicable to buildings or dwellings other than individual single family dwellings, specified licensed operator responsibilities, including:

- Performing of all monitoring required in accordance with either Part I A, Part I B, or Part I C, as appropriate, and periodic (at least semi-annual) inspections of the treatment works. Note: Discharges from the treatment works should to the maximum extent feasible be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works);
- During visits required by this subsection, fulfilling the operator responsibilities specified in this subsection through observing the system and through laboratory or field tests required by this permit or that the operator deems appropriate. In performing a required visit, the operator is responsible for the entire system and, where applicable, shall follow the approved O&M manual;
- Providing a written or electronic notification to the owner within 24 hours whenever the operator becomes aware that maintenance or repair of the owner's treatment works is necessary.
- Reporting monitoring results to DEQ as required in I A 2, I B 2, and I C 2, as applicable, as well as II C, and maintain at the treatment works and provide to the permittee a log of items (omitted here -- specified in the general permit);
- Conducting an inspection within 48 hours after notification by the owner that a problem may be occurring.

Added language that specifies that "[a]ll individuals who perform maintenance on discharging systems pursuant to this general permit are required to hold a valid Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. Clarified that for purposes of this general permit, this requirement is satisfied where an individual is directly supervised by and under the direction of a licensed operator, who remains responsible for such maintenance.

For buildings or dwellings other than individual single family dwellings, removed the provisions that provide an exception to the maintenance contract where a permittee submitted an operation and management plan for approval. Removed the provisions that specify the information required in an operation and management plan.

With regard to reporting monitoring results, deleted language that stated that monitoring results are not required to be submitted to the department. This appears to be a remnant from the permit before the current permit. Provide that monitoring results must be submitted consistent with the requirements in I A 2, I B 2, and I C 2, as applicable. Removed the language in 9VAC25-110-80 C 1 that stated that monitoring results must be submitted to the department's regional office by the 10th day of the month after monitoring takes place since this is specified elsewhere in the permit. Clarified that monitoring results submitted to the department must be on a DMR, and added contingent e-reporting requirements, following notification from DEQ and a three-month period from such notice, for the submission of monitoring reports since such requirements may come into effect during this next permit term.

Under reports of noncompliance, added language in a new item 4 that provides "[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information." This based on EPA regulations. Also changed the NOTE regarding 24-hour reporting to be item 3.

Under duty to comply, edited language to be consistent with general permits issued as regulations.

Under duty to reapply, changed dates from August 2, 2016 to August 2, 2021 in two places.

Under inspection and entry, clarified that an authorized representative can include an authorized contractor acting as a representative of the administrator.

Public Comments: DEQ received two comments on the proposed regulations (see table below). This regulatory action continues to be needed in order to amend and reissue the existing VPDES General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day, which expires on August 1, 2021, so it remains available to the approximately 2800 permittees covered by the general permit. The regulation is no more complex than necessary to protect water quality. It has been written in coordination with VDH's alternative discharging sewage treatment regulations. It was last evaluated five years ago when reissued and conditions have not materially changed since then.

Commenter	**Comment**	**Agency Response**
Joel Pinnix (via Town Hall, 8/4/20, 5:31 pm, ID 84201)	Water Quality Standards - Disinfection The proposed E.coli and enterococci standards of 126 CFU/10oml and 35 CFU/100ml represent a significant change to the disinfection standard. Where is the evidence to suggest that discharge water quality requires significantly higher levels of disinfection? I note that the rationale for this proposed change is consistency with state water quality standards pursuant to 9VAC25-260-170. However, a review of that standard indicates that the "bacteria criteria shall apply to protect primary	The proposed bacteria standards reflect revised state water quality standards, which are based on state and federal law and regulations. The evidence for the revised water quality standards is in the record supporting 9VAC25-260-170. The commenter is correct that the proposed bacteria standards are those applicable to primary recreational uses. Under 9VAC25-260-10 A, all state waters are designated for recreational uses. In addition, DEQ notes that this regulation is a general permit, applicable to approximately 2800 permittees throughout the state. As such, the permittees covered under this permit discharge to many different surface waters. DEQ has selected the most protective bacteria standards in

Commenter	Comment	Agency Response
	contact recreational uses in surface waters...". In my experience, most receiving waters for these discharges are NOT primary contact recreational surface waters - many tend to be ephemeral streams and low-flow unnamed tributaries. If a significant increase in disinfection is warranted, perhaps a distinction between recreational and nonrecreational receiving waters is a more appropriate solution.	effect to ensure that all such discharges are protective of health and the environment.
Holland Kennedy 8/8/2020 (Via mail, received 8/12/2020)	Dear DEQ Regarding [SIC] your letter full of lawyer speak, I am wondering if this letter means…	See below.
	1. Will I be required to e-report on the septic system in my yard.	This regulation does not apply to traditional septic systems. Rather, it applies to alternative discharging sewage treatment systems. Consistent with federal regulations that require states to establish electronic reporting within their NPDES programs, Virginia has regulations for e-reporting (9VAC25-31-1020) and is in the process of implementing these regulations. The Domestic Sewage Discharge General Permit include language that provides that following notification from DEQ of the start date for electronic submission, registration statements or combined applications, as well as DMRs, must be submitted electronically in compliance with 9VAC25-31-1020. DEQ must provide 3 months' notice between notification from the department and the date after which such forms must be submitted electronically. Regulations at 9VAC25-31-1010 address waivers from e-reporting requirements.
	2. If you require e-reporting – are you going to provide internet for the poor, those with no cell signal where they live – or provide a smart phone and cell service.	DEQ is not providing internet service, cell phones or cellular service. The e-reporting regulations do provide for conditional waivers from e-reporting under 9VAC25-31-1010. In addition, licensed treatment works operators may be able to support e-reporting.
	3. Are you paying for the operation and maintenance? Seeing your	DEQ is not paying for the operation and maintenance of these treatment works serving individual single family dwellings

Commenter	Comment	Agency Response
	[SIC] the one making the laws – not us!	and buildings or dwellings other than single family dwellings. This regulation has been developed by DEQ to implement the State Water Control Law and the Clean Water Act, enacted by state and federal government respectively. Under this reissuance, the requirements for individual single family dwellings have not changed significantly and, hence, the associated costs of implementation have not increased.
	4. Will you provide the latitude and longitude information for people who don't know how to find that.	DEQ will not provide latitude and longitude information, but will provide support to assist permittees in determining latitude and longitude information. For example, DEQ's VEGIS webpage includes such information.
	5. Will you swear that the latitude + longitude position of each home will not be ever release to a party who might want to target that home?	DEQ manages VPDES permit information consistent with applicable law and regulations.
	P.S. It seems the burden of doing the DEQ requirements keep getting paid for by the poor – including the stupid server tanks (that the Sewer Nazis Required us to put in, to the cost of many thousand dollars!) in my front yard that stink and draw flies during the hottest months of the year.	DEQ recognizes that there are costs associated with treating wastewater and protecting water quality, as required by federal and state law. These costs accrue to all permitted dischargers, and have been minimized to the extent possible.

Regulatory Text:

CHAPTER 110
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DOMESTIC SEWAGE DISCHARGES OF LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

9VAC25-110-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 years.

"Board" or "State Water Control Board" means the Virginia State Water Control Board.

"Combined application" means the Virginia Department of Health Discharging System Application for Single Family Dwellings Discharging Sewage Less Than or Equal to 1,000 Gallons per Day and State Water Control Board Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons per Day. This application combines the VDH Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) requirements with the board's registration statement requirements.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places.

"Individual single family dwelling" means a ~~residence housing one family or household~~ structure, including any accessory structure such as a garage or pool house, housing one family or household or one that is designed for one family only. When a treatment works serving an individual single family dwelling has additional unused connections, it remains a treatment works serving an individual single family dwelling until such time that an additional single family dwelling is connected to the treatment works.

"Receiving water" means a creek, stream, river, lake, estuary, groundwater formation, or other body of water into which treated waste or untreated waste is discharged.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"VDH" means the Virginia Department of Health.

9VAC25-110-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2021.

9VAC25-110-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general VPDES permit will become effective on August 2, ~~2016~~ 2021, and it expires on ~~August 1, 2021~~ July 31, 2026. With respect to a particular dwelling, building, or site served, this general permit shall become effective upon the dwelling, building, or site served owner's compliance with the provisions of 9VAC25-110-60.

9VAC25-110-60. Authorization to discharge.

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement, if required to do so, in accordance with 9VAC25-110-70 and that registration statement is accepted by the board. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of a registration statement;
2. The owner complies with the effluent limitations and other requirements of 9VAC25-110-80; and
3. The board has not notified the owner, in accordance with subsection B of this section, that the discharge is not eligible for coverage under this permit.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

1. The owner is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to surface waters specifically named in other board regulations that prohibit such discharges;
3. The owner is proposing to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the board;
4. The owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit has applied to the Virginia Department of Health for an onsite sewage

disposal system permit, and the Virginia Department of Health has determined that an onsite system is available to serve that parcel of land in accordance with the criteria in 12VAC5-640;

5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or

6. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b), and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for owners of sewage treatment works that serve buildings or dwellings other than individual single family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.19 of the Code of Virginia.

D. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the domestic sewage discharges general permit issued in 2011 and who is required to and submits a complete registration statement, or for an individual single family dwelling a combined application, on or before August 1, 2016, is authorized to continue to discharge treated domestic sewage under the terms of the 2011 general permit~~ Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are continued if the owner has submitted a complete registration statement or, for an individual single family dwelling, a combined application, at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. Where the expiring permit coverage was originally based on automatic renewal as found in 9VAC25-110-70 A 2 b, such coverage is continued provided the owner continues to meet the automatic renewal criteria. The permittee is authorized to continue to discharge until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage ~~under the terms of the 2011 general permit~~ or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-110-70. Registration statement.

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit, and who is required to submit a registration statement, shall submit a complete VPDES general ~~VPDES~~ permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES General ~~VPDES~~ Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons per Day. For an individual single family dwelling, the owner ~~may~~ shall submit a combined application in place of the registration statement.

1. New treatment works. Any owner proposing a new discharge shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department at

least 60 days prior to the date planned for commencing operation of the treatment works or a later submittal date established by the board.

2. Existing treatment works.

a. Any owner of an existing treatment works covered by an VPDES individual ~~VPDES~~ permit who is proposing to be covered by this general permit shall ~~notify the department and~~ submit a complete registration statement, or for an individual single family dwelling a combined application, at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal date established by the board.

b. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2011,~~ and who intends to continue coverage under this general permit, is automatically covered by this general permit and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

(1) The ownership of the treatment works has not changed since the registration statement or combined application for coverage under the ~~2011~~ expiring general permit was submitted, or, if the ownership has changed (i) a new registration statement or combined application or (ii) VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

(2) There has been no change in the design or operation, or both, of the treatment works since the registration statement or combined application for coverage under the ~~2011~~ expiring general permit was submitted;

(3) For treatment works serving individual single family dwellings, VDH has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If VDH objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing; and

(4) For treatment works serving buildings or dwellings other than individual single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the owner will be notified by the board in writing.

c. Any owner of a treatment works that was authorized to discharge under the expiring general permit ~~issued in 2011~~ that does not qualify for automatic permit coverage renewal shall submit a complete registration statement, or for an individual single family dwelling a combined application, to the department ~~on or before June 2, 2016~~ at least 60 days prior to the expiration of the existing general permit or a later submittal date established by the board.

3. Late registration statements. Registration statements, or for individual single family dwellings combined applications, for existing treatment works [not] covered under subdivision 2 b of this subsection will be accepted after ~~August 1, 2016, but authorization to discharge will not be retroactive. Owners described in subdivision 2 b of this subsection that submit registration statements or combined applications after June 2, 2016, are authorized to discharge under the provisions of 9VAC25-110-60 D if a complete registration statement, or combined application, is submitted before August 2, 2016~~ the expiration [~~date of this permit~~of the existing general permit but authorization to discharge will not be retroactive].

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the building served by the treatment works is an individual single family dwelling. (If it is an individual single family dwelling, see the requirement to submit a combined application in 9VAC25-110-60 A 1.) If the building is not an individual single family dwelling, describe the use of the building or site served.

b. Name and street address of the building or site served by the treatment works.

2. a. Name, mailing address, email address (where available), and telephone number of the owner of the treatment works. Indicate if the owner is or will be the occupant of the dwelling or building served by the treatment works.

b. If the owner is not or will not be the occupant of the dwelling or building, provide an alternate contact name, mailing address, email address (where available), and telephone number of the dwelling or building, if available.

3. Name of the water body receiving the discharge. Outfall latitude and longitude. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge from the treatment works, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day.

5. A description of any pollutants, other than domestic sewage, to be discharged.

6. For a proposed treatment works, indicate if there are central sewage facilities available to serve the building or site.

7. If the treatment works currently has a VPDES permit, provide the permit number. Indicate if the treatment works has been built and begun discharging.

8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a VPDES permit:

a. A 7.5 minute U.S. Geological Survey (USGS) topographic map or equivalent (e.g., a computer generated map) that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, other water bodies, and any residences within 1/2 mile downstream from the discharge point;

b. A site diagram of the existing or proposed treatment works; to include the property boundaries, the location of the dwelling, building, or site served, the individual sewage treatment units, the receiving water body, and the discharge line location; and

c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit ~~has been~~ was applied for and that the Virginia Department of Health has determined that ~~there is no~~ an onsite system ~~available~~ cannot be constructed to serve that parcel of land.

9. Operation and maintenance.

a. For the owner of a treatment works serving an individual single family dwelling, operation and maintenance requirements are specified in VDH regulations at ~~12VAC5-640-500~~ 12VAC5-640;

b. For the owner of a treatment works serving a building or dwelling other than an individual single family dwelling, ~~indicate if a valid maintenance contract has been obtained, or if an exception to the maintenance contract requirement has been requested and granted in accordance with subdivision 10 of this subsection. Provide the name of the individual or company contracted to perform the treatment works maintenance and the expiration date of the current contract, if applicable. If the treatment works has not been constructed yet, provide the name after the certificate to construct (CTC) is issued, and prior to requesting a certificate to operate (CTO)~~ operation and maintenance must be consistent with Part I D 2 b, which requires that such owners engage a licensed operator.

10. ~~The owner of a treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. If an operation and maintenance plan has been approved by the board previously and remains current and complete, then it does not need to be resubmitted. In such cases, the owner shall provide the date of approval of the operation and maintenance plan and identify any changes that have been made to the approved plan~~ State Corporation Commission entity identification number for dwellings other than individual single family dwellings if the facility is required to obtain an entity identification number by law.

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement or combined application shall be signed in accordance with 9VAC25-31-110 A of the VPDES Permit Regulation.

D. The registration statement ~~may be~~ or combined application shall be delivered to the ~~department~~ department's regional office serving the area where the treatment facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the treatment works is located~~. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements or combined applications), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-110-80. General permit.

Any owner whose registration statement is accepted by the board, or whose permit coverage is automatically renewed, shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG40

Effective Date: August 2, ~~2016~~ 2021

Expiration Date: ~~August 1~~ July 31, ~~2021~~ 2026

GENERAL PERMIT FOR DOMESTIC SEWAGE DISCHARGES OF LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement or combined application, this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)[1]	NA	NL	1/year	Estimate
BOD_5	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine[2]				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	0.016 mg/l[6]	1/year	Grab
E. coli[3]	NA	~~235~~ 126 CFU/100 ml	1/year	Grab
enterococci[4]	NA	~~104~~ 35 CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria[5]	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5.0 mg/l[6]	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

[1]The design flow of this treatment works is less than or equal to 1,000 gallons per day.

[2]Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[3]Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

[4]Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

[5]Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

[6]Does not apply when the receiving stream is an ephemeral stream. "Ephemeral streams" are drainage ways, ditches, hollows, or swales that contain only (i) flowing water during or immediately following periods of rainfall or (ii) water supplied by the discharger. These waterways would normally have no active aquatic community.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD_5 and total suspended solids shall not be less than 85%.

B. Effluent limitations and monitoring requirements - receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)[1]	NA	NL	1/year	Estimate
BOD_5	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine[2]				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	2.0 mg/l	1/year	Grab
E. coli[3]	NA	~~235~~ 126 CFU/100 ml	1/year	Grab
enterococci[4]	NA	~~104~~ 35 CFU/100 ml	1/year	Grab
Fecal Coliform Bacteria[5]	NA	200 CFU/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

[1]The design flow of this treatment works is less than or equal to 1,000 gallons per day.

[2]Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[3]Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

[4]Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

[5]Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I B 1 shall be maintained on site in accordance with Part II B. Monitoring results for treatment works serving buildings or dwellings other than individual single family dwellings shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th of September following the monitoring period. The monitoring period is September 1 through August 31. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings are submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD_5 and total suspended solids shall not be less than 85%.

C. Effluent limitations and monitoring requirements - discharges to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters subject to the Policy for the Potomac River Embayments (9VAC25-415).

~~The discharge~~ Discharges subject to the requirements in 9VAC25-415-40(1) shall be limited and monitored by the permittee as specified ~~below~~ in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)~~(1)~~ (2)	NA	NL	1/3 months	Estimate
pH (standard units)	6.0	9.0	1/3 months	Grab
$cBOD_5$	NA	5 mg/l	1/3 months	Grab
Total Suspended Solids	NA	6.0 mg/l	1/3 months	Grab
Ammonia as N (Apr 1 – Oct 31)	NA	1.0 mg/l	1/3 months	Grab
Ammonia as N (Nov 1 – Mar 31)	NA	3.1 mg/l	1/3 months	Grab
Dissolved Oxygen	6.0 mg/l	NA	1/3 months	Grab
E. coli~~(3)~~ (4)	NA	~~235~~ 126 CFU/100 ml	1/3 months	Grab
enterococci~~(4)~~ (5)	NA	~~104~~ 35 CFU/100 ml	1/3 months	Grab
Total Phosphorus	NA	0.18 mg/l	1/3 months	Grab
Total Residual Chlorine~~(2)~~ (3)				
After contact tank	1.0 mg/l	NA	1/3 months	Grab
Final effluent	NA	0.016 mg/l	1/3 months	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

(1) Note conditional exemptions in 9VAC25-415-30.

~~(1)~~ (2) The design flow of this treatment works is less than or equal to 1,000 gallons per day.

~~(2)~~ (3) Applies only when chlorine is used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

~~(3)~~ (4) Applies only when methods other than chlorine are used for disinfection and the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

~~(4)~~ (5) Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). When the treatment works is discharging, continuous disinfection shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I C 1 shall be maintained on site in accordance with Part II B. Monitoring results shall be submitted to the department on a Discharge Monitoring Report (DMR) no later than the 10th day of the month following the monitoring period. The quarterly monitoring periods shall be January through March, April through June, July through September, and October through December. A copy of the maintenance log required by Part I D 2 b ~~(4)~~ (2) (e) shall also be submitted with the DMR. Monitoring results for treatment works serving individual single family dwellings shall also be submitted to the Virginia Department of Health in accordance with 12VAC5-640.

3. The 30-day average percent removal for BOD_5 and total suspended solids shall not be less than 85%.

D. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. Operation and maintenance.

a. Treatment works serving individual single family dwellings. Operation and maintenance requirements for treatment works serving individual single family dwellings are specified in the Virginia Department of Health regulations at ~~12VAC5-640-500~~ 12VAC5-640.

b. Treatment works serving buildings or dwellings other than individual single family dwellings.

(1) ~~For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I D 3. A copy of the maintenance contract, if applicable, shall be kept at the site of the treatment works and made available to DEQ for examination upon request~~ To ensure the treatment works is operated, maintained, monitored, and reported properly, the permittee shall engage a licensed operator as defined in subdivision D 3 of this section.

(2) ~~For proposed treatment works, the permittee shall submit a certification that the permittee has a valid maintenance contract to DEQ prior to operation of the treatment works, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I D 3. A maintenance contract shall be kept in force during the permit term. A copy of the maintenance contract shall be kept at the site of the treatment works, and shall be made available to DEQ for examination upon request.~~ The permittee shall:

(a) Have the system operated and maintained by a licensed operator, including the responsibilities specified in Part I D 2 b (3);

(b) Have a licensed operator visit the system at least semiannually;

(c) Have a licensed operator collect, analyze, and submit to the department any samples required under Part I A, Part I B, or Part I C, as appropriate, of this general permit;

(d) Provide prompt maintenance and repair of the treatment works once notified by the operator that repair or maintenance is necessary. The owner is responsible for all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours;

(e) Maintain a copy of the log provided by the operator on the property where the system is located in electronic or hard copy form, make the log available to the department upon request, and make a reasonable effort to transfer the log to any future owner;

(f) Follow the treatment works operation and maintenance (O&M) manual (where available) and keep a copy of the O&M manual in electronic or hard copy form on the property where the system is located, make the O&M manual available to the department upon request, and make a reasonable effort to transfer the O&M manual to any future owner;

(3) ~~At a minimum, the maintenance contract shall provide for the following~~ The licensed operator has the following responsibilities:

(a) ~~Performance of~~ Perform all ~~testing~~ monitoring required in accordance with either Part I A, Part I B, or Part I C, as appropriate, and periodic (at least ~~annual)~~ semiannually) inspections of the treatment works. Note: Discharges from the treatment works should to the maximum extent feasible be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works)~~. The owner or maintenance provider should not force a discharge in order to collect a sample~~;

(b) During visits required by this subsection, fulfill the operator responsibilities specified in this subsection through observing the system and through laboratory or field tests required by this permit or that the operator deems appropriate. In performing a required visit, the operator is responsible for the entire system and, where applicable, shall follow the O&M manual;

~~(b) A~~ (c) Provide a written or electronic notification to the owner within 24 hours whenever the ~~contract provider~~ operator becomes aware that maintenance or repair of the owner's treatment works is necessary~~. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the building or dwelling or otherwise ensure that no discharge occurs if full and complete repairs cannot be accomplished within 48 hours~~;

~~(c) A log of the following items shall be maintained at the treatment works by the contract provider:~~ (d) Report monitoring results to DEQ as required in Part I A 2, Part I B 2, and Part I C 2, as applicable, as well as Part II C, and maintain at the treatment works and provide to the permittee a log of the following items:

(i) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;

(ii) Alarm activation incidents, including the date and time of equipment failure and return to service;

(iii) Maintenance, ~~corrective,~~ including the date and amount of disinfection chemicals added to the chlorinator, the date and amount of dechlorination chemicals added if applicable, the date and approximate volume of sludge removed, and date receipts for chemicals and equipment purchased and maintenance performed;

(iv) Corrective or repair activities performed;

~~(iv)~~ (v) Recommended repair or replacement items; ~~and~~

~~(v)~~ (vi) Copies of all reports prepared by the ~~contract provider~~ operator; and

~~(d) An~~ (vii) Sludge or solids removal; and

(e) Conduct an inspection ~~shall be conducted by the contract provider~~ within 48 hours after notification by the owner that a problem may be occurring.

~~(4) The permittee shall keep a log of all maintenance performed on the treatment works including, but not limited to, the following:~~

~~(a) The date and amount of disinfection chemicals added to the chlorinator.~~

~~(b) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

~~(c) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(d) The date and approximate volume of sludge removed.~~

~~(e) Dated receipts for chemicals purchased, equipment purchased, and maintenance performed.~~

~~3. Operation and maintenance plan. The owner of any treatment works serving a building or dwelling other than an individual single family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the board for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:~~

~~a. An up-to-date operation and maintenance manual for the treatment works;~~

~~b. A log of all maintenance performed on the treatment works including, but not limited to, the following:~~

~~(1) The date and amount of disinfection chemicals added to the chlorinator (if applicable).~~

~~(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.~~

~~(3) The date and time of equipment failure and the date and time the equipment was restored to service.~~

~~(4) The date and approximate volume of sludge removed.~~

~~(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts and document and explain why no sample was taken or possible;~~

~~c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and~~

~~d. An effluent monitoring plan to conform with the requirements of Part I A, Part I B, or Part I C, as appropriate, including all sample collection, preservation, and analysis procedures. Note: Discharges from the treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that treatment works). The owner or maintenance provider should not force a discharge in order to collect a sample.~~

~~Should the permittee fail to implement the approved operation and maintenance plan, or if there are violations of effluent limitations, the board reserves the right to require the permittee to obtain a maintenance contract.~~

3. All individuals who perform maintenance on discharging systems pursuant to this general permit are required to hold a valid Class IV or higher wastewater works operator license or an alternative onsite sewage system operator license issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. For purposes of this general permit, this requirement is satisfied where an individual is directly supervised by and under the direction of a licensed operator who remains responsible for such maintenance.

4. Compliance recordkeeping under Part I A, Part I B, and Part I C.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD_5	2 mg/l
$cBOD_5$	2 mg/l
Ammonia as N	0.20 mg/l
Total Phosphorus	0.10 mg/l
TSS	1.0 mg/l
Chlorine	0.10 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in subdivision 4 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

5. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards.

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit ~~are not required to be submitted to the department~~ must be submitted consistent with the requirements in Part I A 2, Part I B 2, and Part I C 2, as applicable. ~~However, should the board request that the permittee submit monitoring results, the following subsections would apply.~~

~~1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.~~

~~2.~~ 1. Monitoring results submitted to the department shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

~~3.~~ 2. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

~~4.~~ 3. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee ~~who~~ that discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or ~~who~~ that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include~~, but are not limited to,~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1.~~ a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

~~a.~~ (1) Any unanticipated bypass; and

~~b.~~ (2) Any upset that causes a discharge to surface waters.

~~2.~~ b. A written report shall be submitted within five days and shall contain:

~~a.~~ (1) A description of the noncompliance and its cause;

~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3.~~ 2. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

[3. The immediate (within 24 hours) reports required in Parts II G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.]

[~~34.~~] Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

[~~NOTE: The immediate (within 24 hours) reports required in Parts II G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.~~]

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation~~,~~; or (ii) the manager of

one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action~~;~~ or for permit coverage termination~~, revocation and reissuance, or modification;~~ or for denial of a permit coverage renewal ~~application~~.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement, or for an individual single family dwelling a combined application, at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements or combined applications to be submitted later than the expiration date of the existing permit.

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement, or for an individual single family dwelling a combined application, if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, [~~2016~~2021], or, if the ownership has changed, (i) a new registration statement or for an individual single family dwelling a combined application or (ii) a VPDES Change of Ownership form was submitted to the department by the new owner at the time of the title transfer;

b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, [~~2016~~2021];

c. For treatment works serving individual single family dwellings, the Virginia Department of Health does not object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing; and

d. For treatment works serving buildings or dwellings other than single family dwellings, the board has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the board. If the board objects to the automatic renewal for this treatment works, the permittee will be notified by the board in writing.

3. Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement, or for an individual single family dwelling a combined application, in accordance with Part II M 1.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U) and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of ~~Parts~~ Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ cause of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage. ~~Permits are~~ Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

TAB D - Virginia Pollutant Discharge Elimination System General Permit Regulation for Seafood Processing Facilities - 9VAC25-115 - Final

The current VPDES Seafood Processing Facilities General Permit will expire on July 23, 2021 and the regulation establishing this general permit is being amended to reissue it for another term. The staff is bringing this regulation before the Board to request adoption of the amendments to the VPDES General Permit for Seafood Processing Facilities. The staff will also recommend that the Board affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

The regulation took into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. A list of the TAC membership is attached.

The Notice of Public Comment and Hearing was approved by the Board on June 29, 2020, the comment period was August 3 to October 2, 2020 with a virtual public hearing held on September 9, 2020. There were no comments received during the Notice of Public Comment and Hearing. No substantive changes were in this final draft. Substantive changes presented during the proposed stage were:

- Section 10 - Definitions - Added six new definitions to support the amended stormwater management requirements in 9VAC25-115-50 (Part II) and to be consistent with the ISWGP. Adjusted the seafood processing definition to include NAICS codes, moved the sentence about what seafood includes (crabs, oysters, etc.) to a separate definition, and added that seafood processing facilities does not include shellfish aquaculture facilities.

- Section 20 – Effective Date of Permit - Updated effective dates to July 24, 2021 – June 30, 2026 in order to begin the permit at the start of July next reissuance (and thereafter) to help ensure continuous e-DMR submittal using full calendar quarters (July – September, October – December, January – March, and April – June, etc…). Currently the permit abruptly ends before a full monitoring period is covered (July 23, 2021). This shortens the next 5 year permit by 23 days.

- Section 30 - Authorization- Added and exclusion to stormwater requirements when industrial area is not exposed.

- Section 40 - Registration - Registration statement deadlines changed from 30 days to 60 days prior to expiration of permit, commencement of discharge or adding a new process. Latitude/longitude and State Corporation Commission entity number now required for a complete registration statement. Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, registration statements shall be submitted electronically. Three months' notice shall be given by the department about this requirement.

- Section 50 Part II - Stormwater - Visual quarterly monitoring, nonstormwater annual inspections, corrective actions added. Comprehensive Site Evaluations eliminated. Routine quarterly inspections have been moved up into a section with all the other types of monitoring and inspections.

- Section 50 Part III – Conditions Applicable to All Permits - Added under reporting, that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry and 3 months' notice is given, discharge monitoring reports shall be submitted electronically.

Public Comments: No comments were received during the public comment period or at the public hearing.

Regulatory Text:

~~GENERAL~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR SEAFOOD PROCESSING FACILITIES

9VAC25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the discharge of pollutants to surface waters.

"Control measure" means any best management practice or other method, including effluent limitations, used to prevent or reduce the discharge of pollutants to surface waters.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the facility; or (iii) return to compliance with permit requirements.

"Industrial activity" means the facilities classified under NAICS 311710 and SIC Code 2091 or 2092.

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"NAICS" means North American Industry Classification System from the U.S. Office of Management and Budget, 2017 edition.

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Seafood" includes crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs, and crayfish.

"Seafood processing facility" means any facility ~~classified under SIC Code 2091, 2092, 5142, or 5146, which~~ that processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility~~. Seafood includes but is not limited to crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish.~~, where the primary purpose is classified under the following NAICS and SIC codes:

1. NAICS Code 311710 – Seafood Product Preparation and Packaging and SIC Code 2091 – Canned and Cured Fish and Seafoods, 2092 – Prepared Fresh or Frozen Fish and Seafoods;
2. NAICS Code 424420 – Packaged Frozen Food Merchant Wholesalers and SIC Code 5142 – Packaged Frozen Foods; and
3. NAICS Code 424460 – Fish and Seafood Merchant Wholesalers and SIC Code 5146 – Fish and Seafoods.

This definition does not include aquaculture facilities (including hatcheries) classified under SIC Code 0272 or 0921 and NAICS Code 112512.

"SIC" means the Standard Industrial Classification ~~Code or Industrial Grouping~~ from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes~~, but is not limited to,~~ raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing,

processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes~~, but is not limited to,~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials and intermediate and ~~finished~~ final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this ~~paragraph~~ definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, ~~finished~~ final product, byproduct, or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities, including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition, include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit Regulation.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

9VAC25-115-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2015~~ 2020.

9VAC25-115-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing facilities classified NAICS Code 311710 and as SIC ~~Code~~ Codes 2091 and 2092.

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, ~~2016~~ 2021, and will expire on ~~July 23, 2021~~ June 30, 2026. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30.

9VAC25-115-30. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process wastewater and stormwater as described in 9VAC25-115-20 A to surface waters of the Commonwealth of Virginia provided that:

1. The owner files a registration statement, in accordance with 9VAC25-115-40, and that registration statement is accepted by the board;
2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-115-50; and

4. The owner has not been notified by the board that the discharge is not eligible for coverage under this permit in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The owner is proposing to discharge annual mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year;

4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the ~~Virginia~~ Water Quality Standards; or

5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Conditional exclusion for no exposure to stormwater. Any owner covered by this permit that becomes eligible for a no exposure exclusion from stormwater permitting under 9VAC25-31-120 E may file a no exposure certification. Upon submission and acceptance by the board of a complete and accurate no exposure certification, the permit requirements for stormwater no longer apply. A no exposure certification must be submitted to the board once every five years.

D. Compliance with this general permit constitutes compliance, for purposes of enforcement, with the federal Clean Water Act §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

~~D.~~ E. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the seafood processing facilities general permit issued in 2011, and who submits a complete registration statement on or before July 23, 2016, is authorized to continue to discharge under the terms of the 2011 general permit~~ Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the ~~2011~~ general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the ~~reissued~~ amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by ~~coverage under the 2011~~ the continued general permit coverage or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-115-40. Registration statement.

A. Deadlines for submitting registration statement. Any owner seeking coverage under this general permit shall submit a complete general VPDES permit registration statement in accordance with this chapter, which shall serve as a notice of intent for coverage under the ~~general~~ VPDES general permit regulation for seafood processing facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the board at least ~~30~~ 60 days prior to the date planned for commencement of the discharge.

2. Existing facilities.

a. Any owner of an existing seafood processing facility covered by an individual VPDES permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the individual VPDES permit or a later submittal established by the board.

b. Any owner that was authorized to discharge under ~~the general~~ an expiring or expired VPDES general permit for seafood processing facilities ~~that became effective on July 24, 2011,~~ and that intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before June 24, 2016~~ at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board.

c. Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained shall submit an amended registration statement to the board at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal established by the board.

3. Late registration statements. Registration statements for existing facilities covered under subdivision 2 b of this subsection will be accepted after ~~July 23, 2016~~ the expiration date of the permit, but authorization to discharge will not be retroactive. ~~Owners described in subdivision 2 b of this subsection that submit registration statements after June 24, 2016, are authorized to discharge under the provisions of 9VAC25-115-30 D if a complete registration statement is submitted before July 24, 2016.~~

B. The registration statement shall contain the following information:

1. Facility name, owner name, mailing address, email address (where available), and telephone number;

2. Facility street address (if different from mailing address);

3. Facility operator name, mailing address, email address, and telephone number if different than owner;

4. Does the facility discharge to surface waters? Name of receiving stream or streams if yes and, if no, describe the discharge or discharges;

5. Does the facility have a current VPDES Permit? Include the permit number if yes;

6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;

7. A U.S. Geological Survey (USGS) 7.5 minute topographic map or other equivalent computer generated map with sufficient resolution to clearly show the facility location, the discharge location or locations, and the receiving water body;

8. Facility SIC code or codes;

9. Nature of business at the facility;

10. Discharge outfall information including latitude and longitude, seafood process, receiving stream, discharge flow, and days per year of discharge for each outfall;

11. Facility maximum production information;

12. Facility line (water balance) drawing;

13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;

14. Treatment and solid waste disposal information;

15. Information on use of chemicals at the facility; ~~and~~

16. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

17. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on

my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The registration statement shall be signed in accordance with 9VAC25-31-110 of the VPDES Permit Regulation.

C. The registration statement ~~may~~ shall be delivered to the ~~department~~ department's regional office where the seafood processing facility is located by either postal or electronic mail ~~and shall be submitted to the DEQ regional office serving the area where the seafood processing facility is located~~. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-115-50. General permit.

Any owner whose registration statement is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No.: VAG52
Effective Date: July 24, ~~2016~~ 2021
Expiration Date: ~~July 23, 2021~~ June 30, 2026

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations [and~~,~~] Monitoring Requirements, [~~and~~] Special Conditions, [~~and~~] Part II-Stormwater Pollution Prevention Plans [~~,~~] and Part III-Conditions Applicable to All VPDES Permits, as set forth in this general permit.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab

TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by the end of the calendar year and reported by the 10th of January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	0.15	0.30	NA	1/3 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab

TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab

BOD_5	NL	NL	25	63	NA	1/3 Months	Composite
TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

10. TUNA PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

11. TUNA PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day	DISCHARGE LIMITATIONS kg/kkg	Sample Frequency	Sample Type

	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Raw material = The weight of oyster meat after shucking.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day	DISCHARGE LIMITATIONS kg/kkg	Sample Frequency	Sample Type

	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

22. SCALLOP PROCESSING—ALL EXISTING SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day	DISCHARGE LIMITATIONS kg/kkg	Sample Frequency	Sample Type

	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

23. SCALLOP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	2.3	4.6	NA	1/3 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).
Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

26. HERRING PROCESSING—ALL

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.
NA = Not applicable.
Grab = Individual grab sample is to be taken in the middle of a composite sampling period.
Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.
Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

27. HERRING PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD_5	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

NL = No limitation, monitoring required.

NA = Not applicable.

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production = See Special Condition No. 5 (Part I B 5).

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste to be discharged, other than those listed on the owner's accepted registration statement.

3. Wastewater should be reused or recycled to the maximum extent practicable.

4. The permittee shall comply with the following solids management plan:

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures to be taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in the discharge on a routine or frequent basis of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant that is not limited in the permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

7. Compliance reporting and recordkeeping under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision 7 a of this subsection. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least ~~30~~ 60 days prior to commencing operation of the new process or a later submittal approved by the board.

10. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit or an alternative VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

(5) The following certification: "I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge seafood processing wastewater or, for facilities classified as SIC Code 2091 or 2092, stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

~~C.~~ c. The notice of termination shall be submitted to the department and signed in accordance with Part III K.

Part II

~~Stormwater Pollution Prevention Plans~~ Stormwater Management

~~A stormwater pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit,~~ The following stormwater management requirements apply only to seafood processors classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.

A. Monitoring and inspections.

1. Quarterly visual monitoring of stormwater quality. The permittee shall perform and document visual monitoring of stormwater discharges associated with industrial activity from each outfall, except discharges waived in subdivision d of this subsection. The visual monitoring must be made

during normal working hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

a. Samples will be in clean, colorless glass or plastic containers and examined in a well-lit area;

b. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed three hours, provided that the permittee explains in the stormwater pollution prevention plan (SWPPP) why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

c. The examination shall observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.

d. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided this is documented in the SWPPP. Acceptable documentation includes dates and times the outfalls were viewed or sampling was attempted, national Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

e. Representative outfalls – substantially identical stormwater discharges. If the facility has two or more outfalls that discharge substantially identical stormwater effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct quarterly visual monitoring on the stormwater discharges of just one representative outfall.

f. Visual monitoring reports shall be maintained on-site with the SWPPP. The report shall include:

(1) Outfall location;

(2) Monitoring date and time;

(3) Duration of storm event;

(4) Rainfall measurement or estimate (in inches) of the storm event that generated the discharge;

(5) Duration between the storm event sampled and the end of the previous measurable storm event;

(6) Monitoring personnel;

(7) Nature of the discharge (i.e., runoff or snow melt);

(8) Visual quality of the stormwater discharge, including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution;

(9) Probable sources of any observed stormwater contamination;

(10) Why it was not possible to take the sample within the first 30 minutes (if applicable); and

(11) Documentation to support substantially identical outfalls (if applicable) required by Part II A 1 e.

g. Corrective action. Whenever the visual monitoring shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

2. Routine facility inspections. Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the

effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater.

a. Inspections include loading and unloading areas, storage areas, including associated containment areas, waste management units, vents and stacks emanating from industrial activities, spoiled product and broken product container hold areas, animal holding pens, staging areas, air pollution control equipment, areas where spills or leaks have occurred in the past three years, discharge points, and control measures.

b. At least one member of the pollution prevention team shall participate in the routine facility inspections.

c. The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility but shall be at a minimum of once per calendar quarter unless written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

d. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

(1) The inspection date;

(2) The names of the inspectors;

(3) Weather information and a description of any discharges occurring at the time of the inspection;

(4) Any previously unidentified discharges of pollutants from the site;

(5) Any control measures needing maintenance or repairs;

(6) Any failed control measures that need replacement;

(7) Any incidents of noncompliance observed; and

(8) Any additional control measures needed to comply with the permit requirements.

e. Corrective action. Whenever the routine inspection shows evidence of stormwater pollution, the SWPPP and stormwater control measures shall be updated per Part II B.

f. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

3. Nonstormwater discharges.

a. Allowable nonstormwater discharges. Discharges of certain sources of nonstormwater listed in Part II A 3 c are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated, covered under this permit, or covered under a separate VPDES permit.

b. Annual outfall inspection for unauthorized discharges. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate unauthorized discharges if any were identified.

c. The following nonstormwater discharges are authorized by this permit:

(1) Discharges from emergency firefighting activities;

(2) Fire hydrant flushing, managed in a manner to avoid an instream impact;

(3) Potable water, including water line flushing, managed in a manner to avoid an instream impact;

(4) Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

(5) Irrigation drainage;

(6) Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;

(7) Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed. Pavement wash waters shall be managed in a manner to avoid an instream impact;

(8) Routine external building washdown that does not use detergents or hazardous cleaning products;

(9) Uncontaminated groundwater or spring water;

(10) Foundation or footing drains where flows are not contaminated with process materials; and

(11) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

B. Corrective actions. The permittee shall take corrective action whenever:

1. Routine facility inspections, visual monitoring, inspections by local, state, or federal officials, or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;

2. The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.

3. The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added, implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

4. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part III K.

C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and implemented for the facility covered by this permit, which has stormwater discharges associated with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet applicable effluent limitations and water quality standards.

~~The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in stormwater discharges from the facility and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.~~

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of ~~this section~~. Part II C 2 (Contents of the SWPPP). If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 9VAC25-840. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee shall develop the missing SWPPP elements and include them in the required plan.

~~A.~~ 1. Deadlines for ~~plan~~ SWPPP preparation and compliance.

~~1. Facilities that were covered under the 2011 Seafood Processing Facilities General Permit.~~ a. Owners of facilities that were covered under the ~~2011~~ 2016 Seafood Processing Facilities General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~required by this part~~ within 60 days of the board granting coverage under this permit.

~~2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit.~~ b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit ~~must~~ shall prepare and implement the SWPPP within 60 days of the board granting coverage under this permit.

~~3. New owners of existing facilities.~~ c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the ~~transfer of title of the facility~~ ownership change.

~~4. Extensions.~~ d. Upon a showing of good cause, the director may establish a later date in writing for preparation of and compliance with the SWPPP.

~~B.~~ 2. Contents of the SWPPP. The contents of the SWPPP shall include, at a minimum, the following items:

~~1.~~ a. Pollution prevention team. The SWPPP shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ~~maintaining~~ ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

~~2.~~ b. Site description. The SWPPP shall include the following:

~~a. Activities at the facility.~~ (1) A description of the nature of the industrial activities at the facility.

~~b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.~~

~~c.~~ (2) Site map. A site map identifying the following:

~~(1) The size of the property (in acres)~~ (a) The boundaries of the property and the size of the property in acres;

~~(2)~~ (b) The location and extent of significant structures and impervious surfaces ~~(roofs, paved areas, and any other impervious areas)~~;

~~(3)~~ (c) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow ~~(e.g., use arrows to show which ways stormwater will flow)~~, using arrows to indicate which direction stormwater will flow;

~~(4)~~ (d) Locations of ~~all existing structural and source control BMPs~~ stormwater control measures, including BMPs;

~~(5)~~ (e) Locations of all ~~surface~~ water bodies receiving discharges from the site, including wetlands;
~~(6)~~ (f) Locations of identified potential pollutant sources identified in Part II C 2 c;
~~(7)~~ (g) Locations where significant spills or leaks identified under Part II C 2 c (3) have occurred;
~~(8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance or cleaning areas; loading or unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery; (9)~~ (h) Locations of stormwater outfalls ~~and~~, monitoring locations, an approximate outline of the area draining to each outfall, ~~and~~ the drainage area of each outfall in acres, the longitude and latitude of each outfall, the location of any municipal separate storm sewer ~~systems (MS4s), if the stormwater from the facility discharges to them;~~ system (MS4) conveyance receiving discharge from the facility, and each outfall identified with a unique numerical identification codes. For example: Outfall Number 001, Outfall Number 002, etc.;
~~(10)~~ (i) Location and description of all nonstormwater discharges;
~~(11)~~ (j) Location of any storage piles containing salt ~~used for deicing or other commercial or industrial purposes; and;~~
~~(12)~~ (k) Location and source of ~~runon~~ suspected run-on to the site from an adjacent ~~property, where the runon contains~~ property if the run-on is suspected of containing significant quantities of pollutants; and
(l) Locations of vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage area if exposed to precipitation or runoff.
~~d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams. A description of wetland sites that may receive discharges from the facility shall also be provided. If the facility discharges through an MS4, the MS4 operator and the receiving water to which the MS4 discharges shall also be identified.~~
~~3.~~ c. Summary of potential pollutant sources. The SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater. Industrial materials or activities include~~, but are not limited to,~~ material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, ~~and~~ waste products, and application and storage of pest control chemicals used on facility grounds. Material handling activities include~~, but are not limited to,~~ the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:
~~a.~~ (1) Activities in area. A list of the industrial activities ~~(e.g., material storage, equipment fueling and cleaning, cutting steel beams);~~ exposed to stormwater;
~~b.~~ (2) Pollutants. A list of the ~~associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity~~ pollutants, pollutant constituents, or industrial chemicals associated with each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to stormwater in the three years prior to the date the SWPPP was prepared or amended. The list shall include any hazardous ~~substance~~ substances or oil at the facility.
~~4.~~ (3) Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list

shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit. ~~Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities.~~

~~5. Stormwater controls.~~

~~a. BMPs~~ d. Control measure considerations. Control measures shall be implemented for all the areas identified in Part II ~~B 3~~ C 2 c (Summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the facility. If applicable, ~~steps shall be taken to control or address the quality of discharges from the site that do not originate at the facility.~~ regulated stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all ~~BMPs~~ control measures for each area where industrial materials or activities are exposed to stormwater. Selection of ~~BMPs~~ control measures shall take into consideration:

(1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;

(2) ~~BMPs~~ Control measures generally must be used in combination with each other for most effective water quality protection;

(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid groundwater contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce ~~in-stream~~ instream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

~~b.~~ e. Control measures. The permittee shall implement the following types of ~~BMPs~~ control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges ~~(e.g., there are no storage piles containing salt)~~.

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. ~~Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and of the conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized.~~ The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:

(a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) Sweep or vacuum as feasible;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Implement BMPs to eliminate stormwater discharges of plastics.

(2) Eliminating and minimizing exposure. To the ~~maximum~~ extent practicable, ~~industrial materials and activities~~ manufacturing, processing, and material storage areas, including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations, shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Unless infeasible, facilities shall implement the following:
(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;
(b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;
(c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants;
(d) Store leaking vehicles and equipment indoors, or if stored outdoors, use drip pans and adsorbents;
(e) Utilize appropriate spill or overflow protections equipment;
(f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and
(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.
(3) Preventive maintenance. The ~~permittee shall have a preventive maintenance program that includes regular inspection, testing,~~ SWPPP shall include preventive maintenance that includes a description of procedures and a regular schedule for inspection of the following:
(a) All control measures that includes a description of the back-up practices that are in place should a runoff event occur while a control measure is off line; and
(b) Testing, maintenance, and repairing of all industrial equipment and systems to avoid ~~breakdowns or failures~~ situations that could result in leaks, spills, and other releases~~. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs) of the permit~~ of pollutants in stormwater discharged from the facility.
(4) Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks~~.~~, including:
(a) Preventive measures ~~include~~, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling~~.~~;
(b) Response procedures ~~shall include (i)~~, including notification of appropriate facility personnel, emergency agencies, and regulatory agencies~~;~~ and ~~(ii)~~ procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable ~~RCRA~~ the Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. ~~One~~ If possible, one of these individuals shall be a member of the pollution prevention team~~.~~;
(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," and "fertilizers and pesticides") that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and
~~(c)~~ (d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and maintained in other locations where it will be readily available.
~~(5) Routine facility inspections. Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one~~

~~member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the SWPPP and be based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

~~(6)~~ (5) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all training and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors and maintenance personnel). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance~~, etc.~~ and pest control. The SWPPP shall include a summary of any training performed.

~~(7)~~ (6) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization ~~BMPs~~ control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

~~(8)~~ (7) Management of runoff. The plan shall describe the stormwater runoff management practices (i.e., permanent structural ~~BMPs)~~ control measures) for the facility. These types of ~~BMPs are typically~~ control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural ~~BMPs~~ control measures may require a separate permit under § 404 of the federal Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

~~C. Maintenance. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active operation (i.e., during a stormwater runoff event) to ensure that they are functioning correctly. The observations shall be documented in the SWPPP.~~

~~The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained (e.g., spill response supplies available and personnel trained).~~

~~If site inspections required by Part II B 5 b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.~~

~~D. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who~~

~~possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.~~

~~1. Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater, as identified in Part II B 3. The personnel shall evaluate:~~

~~a. Industrial materials, residue or trash that may have or could come into contact with stormwater;~~

~~b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;~~

~~c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;~~

~~d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;~~

~~e. Evidence of, or the potential for, pollutants entering the drainage system;~~

~~f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;~~

~~g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and~~

~~h. Review of the results of both visual and any analytical monitoring done during the past year.~~

~~2. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part II B 2 e; revise the description of controls required by Part II B 5 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department.~~

~~3. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, the name or names of personnel making the evaluation, the date or dates of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part II D 1 (a) through (f) of this general permit. Observations shall include such things as: the location or locations of discharges of pollutants from the site; the location or locations of previously unidentified sources of pollutants; the location or locations of BMPs that need to be maintained or repaired; the location or locations of failed BMPs that need replacement; and location or locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP.~~

~~4. Where compliance evaluation schedules overlap with routine inspections required under Part II B 5 b (5), the annual compliance evaluation may be used as one of the routine inspections.~~

~~E.~~ 3. Signature and ~~plan~~ SWPPP review.

~~1. Signature/location.~~ a. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part II B, shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All other changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

~~2.~~ b. Availability. The permittee shall ~~make the SWPPP, annual site compliance evaluation report, and other information available to the department~~ retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department,

EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

~~3.~~ c. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part II B. Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part II B and shall be signed and dated in accordance with Part III K. The director may notify the permittee at any time that the SWPPP, ~~BMPs~~ control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

~~F.~~ 4. Maintaining an updated SWPPP. ~~1.~~ The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance at the facility that has an effect on the discharge, or the potential for the discharge, of pollutants from the facility ~~sufficient to impact water quality~~;

b. Routine inspections or ~~compliance evaluations~~ visual monitoring determine that there are deficiencies in the control measures, including BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a significant spill, leak or other release at the facility; or

e. There is an unauthorized discharge from the facility.

~~2.~~ f. SWPPP modifications shall be made within ~~30~~ 60 calendar days after the discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified ~~BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C)~~ control measures shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a ~~BMP~~ control measure or implement additional ~~BMPs~~ control measures shall be documented in the SWPPP.

~~3.~~ g. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the ~~release~~ incident, the circumstances leading to the ~~release~~ incident, actions taken in response to the ~~release~~ incident, and measures to prevent the recurrence of such releases. Unauthorized ~~releases and~~ discharges are subject to the reporting requirements of Part III G of this permit.

~~G. Allowable nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:~~

~~1. Discharges from fire-fighting activities;~~

~~2. Fire hydrant flushings;~~

~~3. Potable water including water line flushings;~~

~~4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~

~~5. Irrigation drainage;~~

~~6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;~~

~~7. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred, unless all spilled material has been removed;~~

~~8. Routine external building wash down that does not use detergents;~~

~~9. Uncontaminated groundwater or spring water;~~

~~10. Foundation or footing drains where flows are not contaminated with process materials; and~~

~~11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower, for example, "piped" cooling tower blowdown or drains.~~

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s) and time(s)~~ dates and times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and

reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify (see [~~NOTE in Part III I)~~Part III I 3)] the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

~~1.~~ a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

~~a.~~ (1) Any unanticipated bypass; and

~~b.~~ (2) Any upset that causes a discharge to surface waters.

~~2.~~ b. A written report shall be submitted within five days and shall contain:

~~a.~~ (1) A description of the noncompliance and its cause;

~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

~~3.~~ 2. The permittee shall report all instances of noncompliance not reported under Parts III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx.

For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified ~~elsewhere in this permit;~~ under Part I B 6; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit ~~application~~ registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of

the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other ~~requested~~ information. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit <u>coverage</u> termination~~, revocation and reissuance, or modification;~~ or denial of a permit renewal ~~application~~.

<u>The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if this permit has not yet been modified to incorporate the requirement.</u>

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~30~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state or local laws or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions in Part III U (Bypass) and Part III V (Upset) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (Reports of noncompliance).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been

installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee that wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative~~,~~ (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours ~~and~~ or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits. Permits are~~ permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

~~1.~~ a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the board;

~~2.~~ b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~3.~~ c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-115)

Standard Industrial Classification (SIC) ~~2091, 2092, 5142 or 5046 (Office of Management and Budget (OMB) SIC Manual, 1987).~~ U.S. Office of Management and Budget (OMB) SIC Manual, 1987

North American Industry Classification System (NAICS) U.S. Office of Management and Budget, 2017

TAB E - Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management - 9VAC25-630 - Final -

Introduction

At the December 9, 2020 meeting, staff intends to bring to the Board a request to adopt the final amendments to the Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.). These final amendments will allow for the reissuance of the general permit under this regulation, which is due to expire on November 30, 2020.

Statutory Authority

Va. Code § 62.1-44.17:1.1 authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program. This Code section includes provisions that the Board must, at a minimum, include in its regulations developed pursuant to this authority, including provisions for permitting confined poultry feeding operations under a general permit. The statute also affords broad authority over the commercial poultry processor related to poultry waste and nutrient management.

Background

The VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.) first became effective on December 1, 2000 with the term of the permit being ten (10) years. The second became effective on December 1, 2010, thus expiring on November 30, 2020. This regulatory action will authorize the third ten (10) year term of the regulation and general permit.
Currently, there are 954 confined poultry feeding operations in the Commonwealth permitted under this VPA general permit. The general permit requires that poultry waste management activities be conducted with no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Poultry farms covered under the VPA general permit, which do not have a point-source discharge are not required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit for Concentrated Animal Feeding Operations (CAFOs).

This regulation also establishes the utilization, storage, tracking and accounting requirements related to poultry waste. This regulation governs the activities of permitted growers, poultry waste end-users and poultry waste brokers. The regulation also includes an option to require an end-user or broker that does not comply with the technical regulations found in section 60, 70 and 80 of 9VAC25-630 to be covered under the general permit. The VPA Regulation and General Permit for Poultry Waste Management is more stringent than the federal regulations that govern CAFOs because the VPA Regulation and General permit also governs the activities of poultry waste end-users and brokers.

Notice of Intended Regulatory Action and Technical Advisory Committee (TAC)

A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on October 1, 2018. A 30-day public comment period followed which ended on October 31, 2018. The majority of the nine commenters were requesting to participate on the Technical Advisory Committee (TAC) and in favor of reissuing the general permit in 2020. The comments can be found in the "public comment" section of the Town Hall document that is attached to this memo.

The Department utilized the participatory approach by forming an ad hoc TAC. The Department held four (4) public noticed meetings on March 25, 2019; July 18, 2019; October 19, 2019; and January 6, 2020. A list of the members of the TAC is attached to this memo. The TAC discussed amendments to the regulation, which included poultry waste storage requirements, recordkeeping and reporting requirements

of poultry waste storage and poultry waste transfers, and requirements governing the activities of commercial poultry processors. The regulation with proposed amendments is attached, with added text underlined and deleted text struck through. A concise list of the proposed language changes is provided in the "detail of changes" section of the attached Town Hall document.

Proposed Regulation

A brief summary of the significant amendments can be found below and are in the following major subject areas: poultry waste storage, site design and management; poultry waste transfer recordkeeping; permitted poultry grower - waste transfer reporting; litter amendment reporting; poultry waste end-user - waste transfer and utilization reporting; poultry waste broker - waste transfer reporting; and commercial poultry processor activities.

Poultry Waste Storage, Site Design and Management

One TAC member recommended that staff consider amending the storage location requirements for waste not stored under a roof, to include an occupied dwelling setback. The proposal specifies that poultry waste may not be stored within 200 feet of an occupied dwelling not on the permittee's property (unless the occupant of the dwelling signs a waiver of the storage site). This condition is consistent with the land application setback. The addition of this setback provides for greater protection to neighboring dwelling occupants of the storage site just as with the land application sites. The members of the TAC generally supported the addition of the condition.

The proposal included the addition of language to clarify which tools are to be used to determine the floodplain when siting poultry waste storage facilities. Adding the language ensured that the permittee will know what tools must be used to make this determination. The members of the TAC generally supported the addition of the condition.

The proposal included a new special condition that addresses situations where poultry waste storage can be threatened by emergencies such as fire or flood. The new condition provides criteria for the land application of poultry waste outside of the land application schedule found in the nutrient management plan so long as land application information is documented and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. The members of the TAC generally supported the addition of the condition.

The proposal also included a new site management special condition related to managing impervious surfaces and poultry waste. Adding this condition ensured that the permit is clear regarding site management requirements necessary to avoid point-source discharges to surface waters. The members of the TAC generally supported the addition of the condition.

Several TAC members recommended that staff consider amending the waste storage requirements to provide more flexibility for the grower and end-user. The members of the TAC considered a staff drafted proposal that provided an additional option for the temporary storage of poultry waste. The additional option allowed for a slight extension of time without a cover so long as the specific management, siting requirements and compliance measures like visual inspections and recordkeeping were completed by the regulated entity. While the majority of the TAC members supported the amendments to include the additional inspections and recordkeeping, two members stated that they would support the draft temporary storage amendments only if DEQ required permitted poultry growers to report litter amendments (litter amendments are discussed in the Litter Amendment Reporting section below). The proposal did not include the additional option for the temporary storage of poultry waste for two reasons:

1) the lack of research data related to typical field-size litter piles and 2) the uncertainty of how safe it is to extend the length of time for poultry waste to be uncovered.

Poultry Waste Transfer Recordkeeping

The proposal included the addition of "county" to the poultry waste transfer data recordkeeping items to be documented by the permitted grower, permitted end-user, permitted broker, and un-permitted end-user and un-permitted broker. This addition will facilitate a more complete and accurate dataset of poultry waste transfers that can be sent by DEQ to the Chesapeake Bay Program Office of the Environmental Protection Agency (EPA) for inclusion in the Bay model and progress runs. The members of the TAC generally supported the addition of the item in the conditions throughout the regulation and general permit.

Permitted Poultry Grower - Waste Transfer Reporting

The members of the TAC did not reach consensus regarding waste transfer reporting requirements for the poultry growers.

There was a recommendation from two TAC members that DEQ require permitted growers to report poultry waste transfers. The majority of the other members of the TAC felt that adding a requirement to submit records is unnecessary, as DEQ receives this information during inspections and can request the data at any time as stated in the current regulation.

The proposal included a new phased in requirement for the permitted grower to submit poultry waste transfer records. In the first year after the effective date of the regulation: the permitted grower will submit poultry waste transfer records on at least an annual basis, upon the request of the Department, and in a format and method determined by the Department. In the second year after the effective date of the regulation and thereafter, the permitted grower would submit poultry waste transfer records, annually, for the preceding state fiscal year (July 1 through June 30) no later than September 15. The proposed requirement will enable DEQ staff to produce a more timely tracking and accounting dataset of poultry waste movement. The addition of this requirement will ensure that the agency will receive the transfer records at least annually, which will facilitate the submittal of the transfer dataset, by DEQ, to the Chesapeake Bay Office of the EPA.

Litter Amendment Reporting

The members of the TAC did not reach consensus regarding litter amendment reporting requirements.

There was a recommendation from two TAC members that DEQ require permitted growers to report their use of litter amendments, primarily related to ammonia loss during storage. One other TAC member was a supporter of the addition if Virginia can get credit in the Bay model as a best management practice. The other TAC members were opposed to requiring the reporting of litter amendment use. Litter amendments are widely used by the poultry industry for bird health and welfare. The litter amendments are known to suppress ammonia releases while the birds are confined in the growing houses. The proposed regulation did not include the requirement to report litter amendments for two reasons: 1) the lack of research data related to litter amendments and their effectiveness on ammonia volatilization on waste stored outside and 2) since the proposal does not include an extension of uncovered temporary storage, there is no need to require the reporting of litter amendment use.

Since the proposed stage, staff have also learned of a research project currently underway to capture details related to litter amendments for the Chesapeake Bay Region of Virginia. The Chesapeake Bay

Commercial Poultry Production Research Project is being conducted by Virginia Polytechnic Institute and State University in cooperation with the commercial poultry industry. According to the research project handout, "The Virginia Tech research initiative replaces or supplements other sources of national-scale data for more accurate representation of county, state, and regional-scale poultry production and management systems for a variety of purposes, including more accurately informing decision support modeling tools, nutrient management planning, and engineering or designing improved and cost effective best management practices."

Poultry Waste End-User - Waste Transfer and Utilization Reporting

The members of the TAC did not reach consensus regarding reporting requirement for poultry waste end-users.

There was a recommendation from two TAC members that DEQ require end-users to report the records that the current regulation requires they maintain. The majority of the other members of the TAC expressed their concerns that requiring end-user reporting could result in potential end-users being reluctant to use litter, therefore causing a reduction in poultry waste transfers and the "stranding" of poultry waste on growers' farms. During one of the TAC meetings, staff in the DEQ Chesapeake Bay Program Office gave a presentation on the Bay model and credit given to specific best management practices. Based on that information and discussion, the grower and broker poultry waste transfer records are sufficient to meet the Bay model requirements for poultry waste transfer. However, two members of the TAC felt that a requirement for end-users to report their records could be used to better characterize poultry waste utilization and compliance with the technical requirements.

The proposed regulation included a new phased in requirement for the end-user to submit poultry waste transfers records and the land application records and supporting documents to include the applicable soil test reports, field maps and nutrient management plans. In the first and second year after the effective date of the regulation, the end-user would submit poultry waste transfer records and land application records on at least an annual basis, upon the request of the Department, and in a format and method determined by the Department. In the third year after the effective date of the regulation and thereafter, the end-user would submit poultry waste transfer records and land application records, annually, for the preceding state fiscal year (July 1 through June 30) no later than September 15.

Poultry Waste Broker - Waste Transfer Reporting

The proposal included the amendment of dates for recordkeeping and reporting requirements for the broker. The change to recordkeeping and reporting timeframes of the poultry waste transfer data from the broker will facilitate a more complete and accurate dataset. A condition was added related to the original sources of commingled poultry waste. This new condition will facilitate better tracking of poultry waste transfers and reduce duplicative records. These amendments will enable better tracking and accounting of poultry waste transfers that DEQ reports to the Chesapeake Bay Office of EPA. The members of the TAC generally supported the amendments and new condition.

Commercial Poultry Processors

The proposal included a new section that establishes technical requirements for the commercial poultry processor. The intention of this new section is to address activities performed by the commercial poultry processor, their company and contracted personnel on the contract poultry grower's farm related to poultry waste and nutrient management. These specific activities are performed under the control of the commercial poultry processor, not the permitted poultry grower, and include the catching and releasing of

birds and feed delivery. Each of these activities when not performed carefully can contribute to additional nutrient spills or the production of process wastewater on the farm.

The proposed requirements are placed on the commercial poultry processor, their company and contracted personnel in order to prevent situations where their activities can result in discharges to State Waters and the production of process wastewater on the farm. The new section specifies clean up and proper disposal of materials that are spilled in relation to activities in which the commercial processor performs.

Adding this section will provide accountability for the specified activities performed by a commercial poultry processor. TAC members were divided in their support of the addition of the section. Those members who were not completely supportive indicated that they could accept the proposed language if the new section is ultimately added to the regulation.

Public Comments

The proposed regulatory language was noticed for public comment on August 3, 2020. Two virtual public hearings were held (September 14, 2020 and September 16, 2020). Upon the closing of the comment period on October 2, 2020, staff received comments from 634 individuals and organizations regarding the proposed amendments.

Of the 634 commenters, 500 of the commenters responded as a part of a Chesapeake Bay Foundation (CBF) Action Alert. 486 of the respondents submitted the following identical comments: (i) requested that producers be required to report to DEQ on the type and amount of litter additives used; (ii) thanked DEQ for requiring reporting by end users; and (iii) thanked DEQ for maintaining the requirement for poultry litter to be covered within 14 days. Fourteen respondents were not identical to the CBF alert. Twelve respondents requested that producers be required to report to DEQ on the type and amount of litter additives used; 10 thanked DEQ for requiring reporting by end users; and 10 thanked DEQ for maintaining the requirement for poultry litter to be covered within 14 days. All comments are included in the preceding sections.

Of the 634 commenters, 48 of the commenters responded as a part of a Virginia Farm Bureau Action Alert. The comments received under the Virginia Farm Bureau action alert: (i) opposed to the proposed end-user reporting requirements; (ii) opposed to new reporting requirements for permitted poultry growers; and (iii) requested that DEQ continue to reject a reporting requirement for use of litter amendments.

In addition to the action alerts, there were comments received from another 86 commenters. Of the 86 other commenters, there were 65 farmers, eight agricultural organizations, four persons from three environmental organizations, two Soil and Water Conservation Districts (SWCDs), four commercial poultry integrators and three other citizens.

A total of 113 farmers submitted comments during the public comment period. Ten commenters had concerns related to public information and FOIA implications for the records required by the proposed reporting requirements. There were 86 farmers and agricultural organizations that supported DEQ in not adding the litter amendment reporting to the proposed amendments. 87 farmers, integrators, SWCDs and agricultural organizations were not supportive in requiring permitted poultry grower reporting waste transfer records.

There were 123 farmers, integrators, SWCDs and agricultural organizations that were not supportive in requiring end-users to report waste transfer records and land application records. These comments include concerns that a new reporting requirement for the non-permitted end-user could have negative financial

impacts on the poultry waste end-users, the permitted poultry growers, and poultry waste brokers. Commenters specified that they expect there may be a significant reduction in the beneficial use of poultry waste, by persons other than the grower, based on the new reporting requirements. Their concern included a reduction in the transfers of poultry waste to end-users resulting in a loss of income to the poultry grower and possibly poultry waste brokers from the sale of the poultry waste across the Commonwealth and causing the poultry waste to remain on the poultry grower's farm longer, prolonging storage times. Commenters' concern with prolonged storage of the poultry waste on the farm is that not all poultry growers have permanent poultry waste storage, which means the poultry will have to remain outside of the growing houses and not under a roofed structure. While there are strict requirements for proper storage of poultry waste outside of the growing houses, most poultry growers have a limited area at the production site to store excess poultry waste. The regulatory site limitation would affect the ability to locate appropriate on-farm poultry waste storage sites if difficulty in transferring poultry waste arose.

The comments received along with the Department's response to the comments can be found in the Public Comment section of the attached Town Hall document.

Changes Made to Regulation Since Proposed Stage

Changes were made by staff to the final language since the proposed stage. These changes include 1.) the correction to a citation in the Registration Statement Section 40 of 9VAC25-630 and 2.) the revision to the Authorization to Manage Pollutants Section 30 of 9VAC25-630, more specifically the subsection D. related to the continuation of permit coverage. The revision to the continuation of permit coverage language further clarifies the requirements that permittees must meet to allow for an administrative continuance.

One change was made to the final language based on public comments received during the public comment period. Staff revised the items to be reported in Section 70, this section contains the tracking and accounting requirements for poultry waste end-users. The language at the proposed stage required the end-user to report the poultry waste transfer records, the land application records and supporting documents to include their applicable soil test reports, field maps and nutrient management plans.

As mentioned above, 123 commenters expressed concern that the new end-user reporting requirements would be overly burdensome and could have significant negative impacts on farmer's small businesses such as financial implications and issues resulting from prolonged storage of the poultry waste on the farm if the waste is not transferred offsite. Additionally, ten commenters had concerns related to public information and FOIA implications for the records required by the new end-user proposed reporting requirements. As mentioned above in the Poultry Waste End-User - Waste Transfer and Utilization Reporting subsection under the proposed regulation, two members of the TAC felt that a requirement for end-users to report their records could be used to better characterize poultry waste utilization and compliance with the technical requirements.

Staff further analyzed the comments and what items are needed by the Department to ensure compliance with the regulation by the end-user and what is necessary for receiving credit in the Bay model through the reporting of poultry waste transfer data to the Chesapeake Bay Office of the EPA. It was determined that a better option to reporting all land application records and supporting documents (as previously required in the proposed language) would be to instead require the end-user to report (in a phased in reporting timeframe):

1. poultry waste transfer records,
2. the method they used to determine the land application rate, and

3. the county where the waste is being utilized.

This alternative strikes a balance between 1) obtaining the information related to poultry waste transactions and a subset of important land application information, as expressed by two of the TAC members, and 2) reducing the reporting burden and the concerns related to the release of private and personally identifying information contained in the specific land application records and supporting documents. This option will provide the Department with information that better characterizes poultry waste destinations and which methods poultry waste end-users are using to manage the material, while not compromising the privacy and personal identifying information that is protected by the Virginia Department of Conservation and Recreation through exemptions in the Freedom of Information Act, and protected by Federal branches of the United States Department of Agriculture. These amendments to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III – Initiative #30. Furthermore, this revision makes the end-user reporting requirements more consistent with the proposed permitted grower and registered poultry waste broker reporting requirements, which do not require reporting of land application records. As with the permitted grower, the end-user land application records can be reviewed by DEQ staff to ensure compliance without taking custody of the records.

Public Comment:
This permit regulation continues to be needed to cover the nearly 1000 permitted poultry operations across the Commonwealth. A total of 113 farmers submitted comments during the public comment period, these farmers represent small business entities which own and operate farms. These small farm owners stated they had concerns that the new reporting requirements will cause financial burdens, to include an increase in operating costs and a loss in profit from the sale of poultry litter with no environmental benefit.
The proposed regulation was published for public comment on August 3, 2020. Two public hearings were held on September 14 and 16, 2020. The comment period closed on October 2, 2020. During the comment period, 634 persons commented on the proposed regulation.
Of the 634 commenters, 500 of the commenters responded as a part of a Chesapeake Bay Foundation (CBF) Action Alert. 486 of the respondents submitted the following identical comments: (i) requested that producers be required to report to DEQ on the type and amount of litter additives used; (ii) thanked DEQ for requiring reporting by end users; and (iii) thanked DEQ for maintaining the requirement for poultry litter to be covered within 14 days. Fourteen respondents were not identical to the CBF alert. Twelve respondents requested that producers be required to report to DEQ on the type and amount of litter additives used; 10 thanked DEQ for requiring reporting by end users; and 10 thanked DEQ for maintaining the requirement for poultry litter to be covered within 14 days. All comments are included in the preceding sections.
Of the 634 commenters, 48 of the commenters responded as a part of a Virginia Farm Bureau Action Alert. The comments received under the Virginia Farm Bureau action alert: (i) opposed to the proposed end-user reporting requirements; (ii) opposed to new reporting requirements for permitted poultry growers; and (iii) requested that DEQ continue to reject a reporting requirement for use of litter amendments.
In addition to the action alerts, there were comments received from another 86 commenters. Of the 86 other commenters, there were 65 farmers, eight agricultural organizations, four persons from three environmental organizations, two Soil and Water Conservation Districts (SWCDs), four commercial poultry integrators and three other citizens.
A total of 113 farmers submitted comments during the public comment period. Ten commenters had concerns related to public information and FOIA implications for the records required by the proposed reporting requirements. There were 86 farmers and agricultural organizations supported DEQ in not adding the litter amendment reporting to the proposed amendments. 87 farmers, integrators, SWCDs and

agricultural organizations were not supportive in requiring permitted poultry grower reporting waste transfer records.

There were 123 farmers, integrators, SWCDs and agricultural organizations that were not supportive in requiring end-users to report waste transfer records and land application records. These comments include concern that a new reporting requirement for the non-permitted end-user could have negative financial impacts on the poultry waste end-users, the permitted poultry growers, and poultry waste brokers. Commenters specified that they expect there may be a significant reduction in the beneficial use of poultry waste, by persons other than the grower, based on the new reporting requirements. Their concern included a reduction in the transfers of poultry waste to end-users resulting in a loss of income to the poultry grower and possibly poultry waste brokers from the sale of the poultry waste across the Commonwealth and causing the poultry waste to remain on the poultry grower's farm longer, prolonging storage times. Commenters' concern with prolonged storage of the poultry waste on the farm is that not all poultry growers have permanent poultry waste storage, which means the poultry will have to remain outside of the growing houses and not under a roofed structure. While there are strict requirements for proper storage of poultry waste outside of the growing houses, most poultry growers have a limited area at the production site to store excess poultry waste**.** The regulatory site limitation would affect the ability to locate appropriate on-farm poultry waste storage sites if difficulty in transferring poultry waste arose. The following are the comments received along with the Department's response to the comments.

General Comments (GC)

GC-1 Subject: Support

COMMENT: Tyson Farms, Inc. ("Tyson") is a part of Tyson Foods, Inc., one of the largest protein companies in the world and has independent farmers that raise poultry across Virginia and are covered under the VPA General Permit for Poultry Waste Management. Tyson thanks you for the opportunity to comment on the proposal to renew the VPA General Permit for Poultry Waste Management program for another ten years. Tyson supports much of the proposal…

COMMENTER: Kendra Jones, Tyson Farms, Inc.

COMMENT: I am writing on behalf of Virginia Poultry Federation (VPF) to comment on the referenced regulatory action. VPF is a statewide trade association representing all sectors of the poultry industry. Virginia's largest agricultural sector, the poultry industry contributes about $13 billion annually to the Virginia economy; supports the livelihood of nearly 1,100 family farms; and employs more than 15,000 people. I have had the privilege of representing VPF on all three of the technical advisory committees (TACs) for this regulatory program since it began 20 years ago. VPF appreciates the opportunity to have been involved in the development of the program and reissuance of the permit every ten years. We support much of what DEQ is proposing.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: I support strong legislation to control poultry litter in Virginia. That litter produces excess nutrients that ends in the Chesapeake Bay where it has adverse affect on the creatures that live in the Bay and diminishes catch of our important seafood industry a driver of economic life in many communities.

COMMENTER: Walter Zadan

COMMENT: I am very concerned about protecting our water and air quality. These are vital to our life! Also, considering the current pandemic, I think it's extremely important that we pay attention to the interface between animals and humans. So, thank you for what you have been doing already to help.

COMMENTER: Victoria Hook

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed based on these comments.***

GC-2 Subject: FOIA and Public Information Concerns

COMMENT: DPI is also concerned about the information being supplied to DEQ becoming subject to Freedom of Information Act (FOIA) requests from advocacy organizations and rival producers. This aspect of end-user reporting was not discussed or brought up during TAC

discussions. There is a clear exemption from FOIA of nutrient management plans and other proprietary information collected by DCR. This is not the same of information requested by DEQ. We have already had instances this past year of advocacy organizations requesting information and distorting, misrepresenting and misusing the information to advance their agenda. This provides yet another disincentive for end-users and will encourage other forms of fertilizer use.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: As such, the TAC did not discuss data privacy concerns resulting from DEQ's mass collection of reported transfer information which represents poultry growers' private and proprietary customer lists. We are concerned that once DEQ has assembled this proprietary information it will not be protected from Freedom of Information Act (FOIA) and be available to the public, including both persons interested in disrupting poultry waste transfers or harassing end-users, as well as poultry litter brokers and other poultry growers competing for poultry waste end-user clients. The agricultural industry, law enforcement, national security and intelligence communities are increasingly concerned about terrorism and other attacks against agriculture, related biosecurity and cybersecurity, and associated risks to national security. Intentional and unintentional data releases and data theft threaten the privacy of confidential data which can and has been used against an individual or group of farms. Platforms already exist to collect and publish confidential information belonging to individual farms for sale or distribution for any third-party use. In addition, DEQ did not present the TAC any format or method for growers to report their information annually. In many rural communities, it is not so easy to simply hit send on an email or stick a stamp on an envelope. We are concerned the format and method eventually selected by DEQ may prove burdensome for individuals with limited internet access due to limited internet provider capacity, or no internet access due to religious beliefs, income level or comfort with technology. Mailing printed copies is a low-tech method of reporting the information but will prove time consuming for both growers without copier access and DEQ which will be required to enter the data into some digital framework yet to be designed and tested. We also have concerns that under the Freedom of Information Act (FOIA), end-user data would be available to the general public. The number of end-user farms affected by this mass data collection will easily surpass the number of permitted poultry farms. As end-user reporting was not included in any draft proposal or language during the TAC meetings, this FOIA issue was not discussed, and the possibility of private business information being available to advocacy groups, competing farmers, and others, will most certainly deter producers from utilizing poultry waste. Again, DEQ did not present the TAC any format or method for growers to report their information annually. Also, the agricultural industry, law enforcement, national security and intelligence communities are increasingly concerned about terrorism and other attacks against agriculture, related biosecurity and cybersecurity, and associated risks to national security. Intentional and unintentional data releases and data theft threaten the privacy of confidential data which can and has been used against an individual or group of farms. Platforms already exist to collect and publish confidential information belonging to individual farms for sale or distribution for any third-party use.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: During the public hearings on this regulation, testimony from some environmental groups seemed to dismiss as silly the notion that farmers would have any problem filing an annual report with DEQ. They obviously have not walked in farmers' shoes. A member of VPF, who is a veteran litter broker, surveyed his customers, and only one said they would continue to use litter with such a requirement. Farmers tend to consider agronomic inputs as proprietary, and thankfully nutrient management plan information held by DCR is exempt from the Freedom of Information Act (FOIA). Unfortunately, such protections are not afforded to plans in possession of DEQ that are associated with VPA regulations. We, therefore, have concerns that under FOIA,

end-user data would be available to the general public. As end-user reporting was not included in any draft proposal or language during the TAC meetings, this FOIA issue was not discussed, and the possibility of private business information being available to advocacy groups, competing farmers, and others, will most certainly deter producers from utilizing poultry litter.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: • Potential end-users are very concerned about some advocacy groups desire to obtain such information via a FOIA request and use it to distort, harass, or otherwise dis-incent them from using poultry litter as a source of locally-produced, slow-release, organic fertilizer;…

COMMENTERS: Kurt H. Fuchs, Senior Vice President, Government Affairs, MidAtlantic Farm Credit
Katie Frazier, Chief External Affairs and Marketing Officer, Farm Credit of the Virginias
Jim Belfield, Chief Information Officer, Colonial Farm Credit

COMMENT: I am also concerned about my personal information as well as information about my operation becoming public information.

COMMENTER: Nicholas Moody, Dinwiddie County Farmer

COMMENT: End-user reporting. The general public has a very limited understanding of soil and crop fertility needs. They don't understand the benefits gained by using litter on the land, such as increased soil health, biological activity, soil organic matter, water infiltration, etc. I am opposed to the general public accessing such records.

COMMENTER: Junior Beachy, Staunton

COMMENT: We are also concerned about the information being supplied to DEQ becoming subject to Freedom of Information Act (FOIA) requests from advocacy organizations and rival producers. This aspect of end-user reporting was not discussed or brought up during TAC discussions. There is a clear exemption from FOIA of nutrient management plans and other proprietary information collected by the Department of Conservation and Recreation. No such exemption exists for information submitted as a requirement of the permit for DEQ. We have already had instances this past year of advocacy organizations requesting information and distorting, misrepresenting and misusing the information to advance their agenda and the Council is concerned this practice will continue and expand if the Board includes this reporting requirement. This will provide yet another disincentive for end-users to utilize other forms of fertilizer.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

RESPONSE: DEQ acknowledges these comments and understands that one of the reasons for the opposition to the new proposed reporting requirements is due to the concern that the information to be reported under the new proposed regulations will be subject to the Freedom of Information Act (FOIA). At this time, there are no laws or regulations that exempt the reported data from the requirements of the FOIA.

The Freedom of Information Act also addresses Nutrient Management Plans. Specifically, Va. Code 2.2-3705.6(25) excludes from mandatory disclosure "Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action." Still, such records may be disclosed by the custodian in his discretion. Even so, this exclusion only applies to information of a proprietary nature (which could include a Nutrient Management Plan) submitted to DCR, DEQ, or VDACS pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9 which is not the case when someone is seeking coverage under the Poultry Waste Management Regulations.

After analyzing the comments and determining what information the department needs to ensure compliance with the regulation by the end-user and what is necessary for receiving credit in the

Bay model through the reporting of poultry waste transfer data to the Chesapeake Bay Office of the EPA. Staff determined that a better option to reporting all land application records and supporting documents (as previously required in the proposed language) by the end-user would be to instead require the end-user to report (in a phased in reporting timeframe): poultry waste transfer records; the method they used to determine the land application rate; and the county where the waste is being utilized.

This alternative strikes a balance for obtaining the information related to poultry waste transactions and a subset of important land application information, as expressed by two of the TAC members, while reducing the reporting burden and the concerns related to the release of private and personally identifying information contained in the specific land application records and supporting documents. This option will provide the department with the necessary information in a timely manner while not compromising the privacy and personal identifying information that is protected by the Department of Conservation and Recreation through exemptions in the Freedom of Information Act, and protected by Federal branches of the United States Department of Agriculture. Furthermore, this revision makes the end-user reporting requirements more consistent with the proposed permitted grower and registered poultry waste broker reporting requirements. As with the permitted grower, the end-user land application records can be reviewed by DEQ staff to ensure compliance without taking custody of the records.

The following changes are being proposed based on these comments. Section 70, Tracking and Accounting Requirements for End-Users is being revised to report the following items to the Department in a phased in timeframe:

1. ***poultry waste transfer records,***
2. ***the method the end-user used to determine the land application rate, and***
3. ***the county where the waste is being utilized.***

GC-3a Subject: Litter Amendment Reporting – Supportive to Require

COMMENT: I ask that producers be required to report to DEQ on the type and amount of litter additives used. Ammonia pollution from poultry houses poses a significant threat to local waters and the Chesapeake Bay. These additives have substantive influence upon the stability of nitrogen within poultry litter and have the potential to influence air and water pollution. Tracking the additives used by producers is fully consistent with the intent of this permit and represents a critical first step to addressing this issue that has minimal burden to producers.

COMMENTERS: Respondents to Chesapeake Bay Foundation Alert (names listed in Table B and Table C)

COMMENT: The permit should require reporting of litter amendments as a reasonable, non-burdensome first step in addressing deleterious nutrient runoff and emissions from poultry facilities. Virginia DEQ currently has the expertise and the authority to add this requirement.

a. Requiring litter additive reporting offers opportunities to enhance nutrient management to prevent runoff

DEQ should require reporting of litter additives for several reasons. First, understanding the content of litter additives will help prevent runoff-related nutrient losses via nutrient management planning. These relationships have been documented several times in the peer-reviewed scientific literature. Here, we provide several examples of that documentation. A peer-reviewed study from Virginia Tech in 2006 documented the influence of amendments (alum) to chicken litter and stated: “In conclusion, the results of this study show that the use of ATPL [Alum Treated Poultry Litter] can reduce runoff P and soil test P when using poultry litter as a nutrient source for corn production without significant changes in production management strategies.” Guo et al. 2006 suggested litter additives have the capacity to prevent excessive phosphorus runoff losses from soils with high test phosphorus levels.4 A 2011 study found litter amendments consistently reduced nitrogen losses compared to litter without amendments, and thus improved the economic

value of the commodity and reduced the environmental impact.5 A 2010 study from the Delmarva Peninsula, which considered long-term effects of additives on nutrient availability in litter, found clear differences in nutrient content over a three-year period. The authors consider application rates that are dependent upon additives and their influence upon nutrient availability. They go on to suggest, "Alum amendments significantly reduced P leaching from field-weathered poultry litter in comparison with non-amended poultry litter." Sisatani et al. 2006 concluded that, "alum treatment was effective in reducing the concentration of NH4 and all the analyzed forms of P in runoff water from fescue plots fertilized with the treated litter." These studies show that understanding of litter additives can significantly guide nutrient management for water quality protection and economic benefits. For example, this information could help nutrient management planners reduce producer costs by prescribing specific application rates based upon litter treatments. Without a permit requirement to report litter additives, there is no clear path for a nutrient management planner to obtain this information. At a minimum, therefore, amending this permit to require submission of relevant additive information would assist DEQ and the Department of Conservation and Recreation (DCR)—now and going forward—in carrying out their responsibilities to protect water quality while ensuring a thriving poultry industry. In this connection, adequate protections of producer privacy and "trade secrets" could certainly be devised.

b. Knowledge of these additives is relevant to environmental catastrophe, emergency management and public health

DEQ, in its role as staff to the State Water Control Board, is responsible for assessing and reducing the introduction of toxic substances into state waterways. Yet we understand that numerous types of litter additives are being used to control ammonia across the state in a manner and to a degree that is currently unknown to Virginia regulators and litter end-users. Several studies have considered the potential for toxicity arising from additives; while toxicity is uncommon, it has been suspected to be possible, posing a potential threat to waterways. To our knowledge, neither DEQ—nor DCR, despite its oversight role for nutrient management planning—has an approved list of additives that will be protective of water quality. Further, some additives have a propensity to catch fire. While such products have specific Material Safety Data Sheets (MSDS) and a clear statement of content would be beneficial to emergency management, there is no obligation to provide that information to end-user recipients. Additives have also been shown to influence salmonella levels in the litter as well as horizontal transmission between chickens. In these circumstances, requiring reporting on the use and type their poultry operations and protect Virginia waters. c. Addressing ammonia air emissions We asked DEQ in our initial comments from 2018 and throughout this process to address ammonia emissions from poultry through appropriate amendments to this proposed general permit reissuance. We raised concerns about direct ammonia emissions from poultry facilities, its subsequent deposition and transport to public waters, and in managing the stockpiling of litter. DEQ responded by declining all recommendations on ammonia management: The proposed regulation does not include the requirement to report litter amendments for two reasons: 1) the lack of research data related to litter amendments and their effectiveness on ammonia volatilization on waste stored outside and 2) since the proposal does not include an extension of uncovered temporary storage, there is no need to require the reporting of litter amendment use. DEQ's response to the recommendation that reporting of litter additives be required is wholly inadequate and does not respond to our broad concerns related to ammonia. Here, we describe the problems associated with ammonia and our recommendations for moving forward. i. Scientific evidence that ammonia emissions are a substantive source of nitrogen to estuarine waters and problematic for aquatic life Agricultural emissions of ammonia have been shown to be a substantial and increasing source of nitrogen pollution that exacerbates eutrophication of estuarine and degradation of freshwater systems. Of particular concern in this and other regions across the country are air emissions of ammonia from poultry facilities that represent a virtually unaddressed pollution source. The emissions have been

documented by numerous peer reviewed studies, most recently by Gilbert 2020 who estimates that across the nation, "based on the animal inventory of 2019, a total of 4,500,000 megatons year of NH3 were emitted. Of this, broilers and turkeys made the largest contribution." Strikingly, the study suggests that this level of emissions and associated deposition exceeds wastewater contributions across the country, predicting alarming results worldwide: "a near-term future with reductions in nutrient and greenhouse gas emissions by the U.S. farming industry is bleak, and the negative consequences will be felt worldwide for the foreseeable future." Notably, ammonia emissions, which are largely from agricultural production, have emerged as the largest source of nitrogen deposition to the Bay and are expected to remain larger than power plant and vehicle emissions based on historic trends.18 Recent studies suggest that across the Chesapeake Bay watershed, ammonia emissions from poultry production likely represents a substantive source to Bay waters, particularly in the absence of litter amendments. A study from 2011, co-authored by the United States Department of Agriculture, describes litter amendments "as essential to the future of sustainable poultry production," and describes multi-faceted benefits to amendments. The use of efficient, cost-effective litter amendments to maximum agronomic, environmental and financial benefits is essential for the future of sustainable poultry production.… Poultry use less than 30% of the N included in their feed; the remainder is excreted in manure and urine. Failure to re-capture this N lowers the efficiency of the livestock/crop production process and reduces the value of litter as a commodity. In this study, litter amendments consistently reduced N loss as compared to no amendment. Well-documented evidence that poultry production causes ammonia emissions is not new, even within the Chesapeake region. Boyer et al. 2002, which has been cited by over 200 other peer-reviewed studies, includes a broad review of nitrogen sources across the eastern United States including portions of the Chesapeake Bay watershed within Virginia. They summarize papers documenting emissions by animal category from 1984 to 1998. Siefert et al. 2004 characterized ammonia emissions from a commercial chicken house on the Delmarva Peninsula and concluded: When compared with the current estimates of total atmospheric N deposition (nitrate + NHx) to the Delaware (34 x 106 kg of N yr-1) and Chesapeake Bay (177 x 106 kg ofNyr-1) watersheds (1) and assuming a sizable fraction of the local emissions are deposited locally (NOTE: See Baker et al. 2020 below), NH3 emissions from poultry operations on just the Delmarva Peninsula would represent a significant additional contribution. Baker et al. 2020 recently modeled emissions and deposition from poultry production in Maryland, under the assumption that litter amendments are not used (because there was no access to amendment application data). The results suggested the total ammonia nitrogen emissions from more than 600 AFOs in Maryland would correspond to 16,914 tons or 33.8 million pounds per year. These emissions correspond to deposition estimates of 12,220 tons or 24.4 million pounds per year. This modeling suggests that 30 percent of emissions were deposited within 500 meters of their sources and 70 percent was deposited within 50 kilometers (31 miles). The local deposition of these emissions is important and suggests local and downstream water quality is likely to be degraded as a result of this source of emissions. A recent analysis from the Chesapeake Bay Program suggests 11 percent of ammonia emissions in Maryland are delivered to the Chesapeake Bay. Applying such a factor to these estimates suggests that these facilities had the potential to deliver 3.8 million pounds of nitrogen to the Bay every year from Maryland which corresponds to 17 percent of agricultural loads in the state. These estimates are not directly applicable to Virginia, of course, but would suggest ammonia emissions from poultry houses in Virginia are contributing substantial amounts of nitrogen to waterways. Unfortunately, the agency knows little about how or if these emissions are managed in any meaningful way. Not only does ammonia represent a source of nitrogen pollution that degrades the Chesapeake Bay, but it is also toxic to freshwater mussels which represent the most sensitive class of organisms in Virginia and the United States at large. DEQ recognizes this sensitivity; because of it, DEQ recently adopted new ammonia criteria and, in the process, determined that freshwater mussel habitat is ubiquitous across the freshwaters of Virginia. Thus, deposition of ammonia pollution is likely to degrade sensitive aquatic life in

freshwater in addition to exacerbating eutrophication. Ammonia is a pressing issue across the Commonwealth; Virginia must take steps to address emissions and deposition. The problems associated with ammonia emissions have been clearly documented by the scientific literature with mounting evidence and documentation over the past four decades. Still, DEQ has yet to address these problems in any substantive way. ii. The role of litter additives in controlling air emissions Litter additives are used by growers to manage ammonia air concentrations within the houses in order to protect bird health and this has environmental benefits by reducing ammonia emissions from houses. While improving the effectiveness of litter additives remains an area of emerging research, these methods have been verified by the peer review literature for a quarter of a century. Moore et al. 1996 which has been cited by over 120 other peer-review papers, documented these effects suggesting that "the results of this research indicate that alum [Al2(S04)3-18H20], ferrous sulfate (FeS04-7H20), and phosphoric acid (H3PO4) dramatically reduce ammonia volatilization from litter." Several studies have followed up on Moore et al. 1996. The Chesapeake Bay Partnership has previously established efficiencies associated with this treatment. Currently, these efficiencies are still under review but the Chesapeake Bay Program Best Management Practice Reference Guide suggests these "will be available in future editions." Maryland has set a goal to achieve litter treatment at 75 percent of facilities in their Phase III Watershed Implementation Plan to achieve nutrient reductions. Delaware has set a goal of achieving litter Amendments on 7,269 acres. In these circumstances, these solutions are not novel and should be considered and evaluated as a part of management efforts. This documentation shows (1) there is scientific evidence that litter amendments reduce air emissions, (2) the Chesapeake Bay Partnership is working to establish efficiencies related to these additives, and (3) partner states are already pursuing implementation related to this practice. This permit reissuance, which will extend to 2030, should at a minimum, evaluate the current use of this practice. iii. DEQ's authority on this issue We are not aware of any action DEQ has taken to address ammonia emissions from poultry houses, despite the fact that nitrogen deposition from such emissions degrades water quality. The agency has no records on type or use of litter amendments. While DEQ has suggested it does not have authority to address ammonia issues within this water permit, we respectfully disagree, for the reasons set out below. DEQ's authority, acting for the Board, is sufficiently ample to require poultry operators to submit to DEQ data regarding litter additives. Indeed, the agency is tasked with taking "all appropriate steps to prevent [water] quality alteration contrary to the public interest or to standards or policies thus established [by the Board]," including conducting "investigations, studies, and research to discover methods for maintaining water quality." Further, while the underlying statute identifies several matters to be included in a regulatory program governing the "storage, treatment and management of poultry waste," it also clarified that those matters are only the "minimum" possible steps. Thus, the proposed requirement for poultry operators to provide data on litter additives to allow consideration and development of new strategies to reduce nutrients in poultry waste falls directly within the ambit of that statute. iv. Other means of obtaining litter additive inventory There were suggestions during the technical advisory committee process that this data could be collected through other mechanisms. While we are open to other considerations, there are broad questions as to how and even if this data could be collected outside of a regulatory framework. First, it is unclear that any other entity would have a comprehensive list of producers across the Commonwealth. Second, the duty to respond is critical to developing a comprehensive and accurate set of responses. Finally, the concept of industry-collected data has been discussed for several years and yet there is still no product to show for it at the time of writing this letter. For those reasons, we urge DEQ and the Board to include this simple reporting requirement, which can be crafted in a manner both to protect producers' interests in confidentiality and also to be minimally burdensome.

COMMENTERS: Peggy Sanner, VA Executive Director, Chesapeake Bay Foundation
Joseph Wood, VA Senior Scientist, Chesapeake Bay Foundation

Phillip Musegaas, Vice President of Programs and Litigation, Potomac Riverkeeper Network

COMMENT: I am writing to you regarding the poultry VPA permit, We live on one planet and must protect the long-term stability of our clean air, water, and land. PLEASE make sure that poultry producers are required to report to DEQ on the type and amount of litter additives used. We must know - and monitor - what is going into our water and air. In addition, the ammonia pollution from poultry houses poses a significant threat to our local waters and the Chesapeake Bay. We fish and swim in these waters. We raise marine food in these waters. It is essential that we continue to keep our waterways clean. Our own future and the future of our descendants depend on what we do NOW to keep our beautiful land and waterways clean and healthy. Thank you for acting to maintain the health of our country.

COMMENTER: Virginia Masterson

COMMENT: Require the reporting of litter amendments that might affect ammonia emissions. In conjunction with ammonia monitoring, this would allow DEQ to quantify the degree of ammonia reduction that litter amendments achieve.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

COMMENT: Require litter additive reporting

COMMENTER: Frank Filipy

COMMENT: Local waters in Virginia and the fish and wildlife and environmental health of the Chesapeake Bay are significantly threatened by ammonia pollution from poultry houses. As a lifelong VA resident, I urge the DEQ to add reporting requirement to the poultry VPA permit that poultry producers (end users) be required to report to DEQ on the type and amount of litter additives used.

COMMENTER: Martha Ellett

COMMENT: I still believe that the reporting of the Litter Amendments is an easy way to gain more knowledge of the use in our industry. We can also use the information as added reporting to the Bay Model now and in the future. Adding an item to our yearly report that asks if amendments are used and at what quantity would allow us to gather this information rather effectively. Once a way is figured out how to verify the information to Bay Model standards we could begin to get credit for this and many of the other conservation practices that our Poultry community is doing.

COMMENTER: Kevin Dunn, Poultry Grower in Buckingham County

RESPONSE: Litter amendments are widely used by the poultry industry for bird health and welfare to suppress ammonia releases while the birds are confined in the growing houses. There is a lack of research data related litter amendments and their effectiveness on ammonia volatilization on waste stored outside. The regulation does not include the requirement to report litter amendments nor does it require the use of these amendments. The appropriate rate and timing of litter amendments to achieve desired results depends upon a number of variables, thus reporting “yes” or “no” would provide little useful information. Collection and use of appropriate data would be more suited to research.

A research project is currently underway to capture details related to litter amendments for the Chesapeake Bay Region of Virginia. The Chesapeake Bay Commercial Poultry Production Research Project is being conducted by Virginia Polytechnic Institute and State University in cooperation with the commercial poultry industry. According to the research project handout, “The Virginia Tech research initiative replaces or supplements other sources of national-scale data for more accurate representation of county, state, and regional-scale poultry production and management systems for a variety of purposes, including more accurately informing decision support modeling tools, nutrient management planning, and engineering or designing improved and cost effective best management practices.”

As required by the regulation and general permit, the nutrient content of the litter is measured and reported through the laboratory analysis.

The State Water Control Law, specifically Section 62.1-44.17:1.1 of the Code of Virginia authorizes the State Water Control Board to develop a regulatory program known as the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management 9VAC25-630-10 et seq. Section 62.1-44.17:1.1 of the Code of Virginia requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation; provides for waste tracking and accounting; and ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan. There are no provisions included in Section 62.1-44.17:1.1 of the Code of Virginia to authorize the State Water Control Board to include ammonia emission monitoring or other conditions related to ammonia air emissions in 9VAC25-630-10 et seq. ***No changes are being proposed based on this comment.***

GC-3b Subject: Litter Amendment Reporting - Not-Supportive to Require

COMMENT: Two TAC members have recommended requiring permitted poultry growers report their usage of litter amendments annually. Poultry litter amendments are various products used to promote used to safeguard flock health and welfare suppressing ammonia levels in production facilities. The proponents wish to capture data on the extent of litter amendment use and its implications on ammonia emissions within the environment. There is no research data related to litter amendments and their effectiveness on ammonia volatilization on waste stored outside. One of the proponents, the Chesapeake Bay Foundation (CBF), recently commented about the shortcomings of its commissioned study, "Modeling and measurements of ammonia from poultry operations: Their emissions, transport, and deposition in the Chesapeake Bay" published March 2020 in Science of the Total Environment. In its own December 5, 2019 press release, CBF noted, "The study does have some limitations. The model didn't account for litter amendments or other practices to reduce ammonia emissions that are in use, but the extent of which is unknown. [emphasis added]". We are concerned about extending this regulation beyond its legislative authority to regulate air emissions. Furthermore, any amount of ammonia that may be temporarily sequestered by litter amendment use is subject to varying degrees of potential atmospheric loss based on the type and timing of incorporating the poultry waste into the soil upon application, crop type, organic matter, soil and atmospheric temperatures and humidity. management plans in force among permittees. It is highly likely poultry litter is broadcast and not incorporated in these pastures and fields.

We strongly oppose mandatory reporting of poultry litter amendment data. This state regulation should not be used for the sole purpose of generating raw data for private or public research. The poultry industry has expressed its willingness to assist the Chesapeake Bay Commission in conducting research into secondary benefits that may be associated with litter amendment use across the entire Bay region, not just Virginia.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: Two TAC members recommended that DEQ require permitted growers to report their use of litter amendments, which are products used to safeguard the health and welfare of poultry flocks by suppressing ammonia levels within poultry growing houses. DEQ staff stated in its report to the State Water Control Board that it did not include a reporting requirement in the proposed regulation for two reasons:

"1) the lack of research data related to litter amendments and their effectiveness on ammonia volatilization on waste stored outside and 2) since the proposal does not include an extension of uncovered temporary storage, there is no need to require the reporting of litter amendment use."

VPF agrees with the DEQ staff on this matter and strongly opposes a reporting requirement. These products are used primarily to create a beneficial environment for growing poultry. They are also marketed for certain properties related to improved nutrient management, such as binding ammonia to increase litter's nitrogen fertilizer value. Mandating reporting of the use of primarily animal welfare products in a VPA permit, presumably for greater knowledge of how the products

could potentially help Virginia with Chesapeake Bay restoration goals, is beyond the proper scope of the VPA program. A better approach would be for the Chesapeake Bay Program, through its Agriculture Working Group, to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: Tyson believes DEQ should continue to avoid the creation of a reporting requirement for growers' use of litter amendment products intended for maintaining an optimal environment for bird health. The potential water quality benefits of these products should be researched by independent groups such as the Chesapeake Bay Program in collaboration with university researchers, industry, and the environmental community.

COMMENTER: Kendra Jones, Tyson Farms, Inc.

COMMENT: DPI thanks DEQ for not including reporting from growers of the use of litter amendments and we oppose this from being added. The discussion of litter amendments was not even brought to the attention of the TAC participants until the last TAC meeting, which was an additional meeting that was requested by a small number of TAC members to discuss the litter storage research. It was stated in the minutes that only two out of 15 of the TAC members had recommended that growers report the use of litter amendments. Litter amendments are used for poultry health and is an animal husbandry best management practice (BMP), not a nutrient management BMP and there is not enough research to identify the benefit of having that data for nutrient and water quality concerns, which is the premise of the permit.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: Please continue to reject a reporting requirement for use of litter amendments. There is no clear benefit to this added burden, and a better approach to understanding the potential water quality benefits of these products is for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTERS: Respondents to Farm Bureau Action Alert (Table A)
Tom Hall
Bruce Stanger, Montgomery County Cattle Farmer
Marty Potts, Purcellville

COMMENT: Finally, we encourage DEQ to continue to reject a reporting requirement for growers' use of litter amendment products intended for maintaining an optimal environment for bird health. A better approach to understanding the potential water quality benefits of these products is for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTER: Kevin Craun, Chairman, Shenandoah Valley Soil and Water Conservation District Board

COMMENT: The TAC also discussed the reporting of litter amendments or additives by poultry growers. Litter amendments are critical for the health and safety of birds, but there is not enough data to require them as a part of a permit whose purpose is water quality. VAC opposes any amendment to the permit that would require litter amendment reporting. DEQ staff has acknowledged in their report to the board that there is a lack of research related to their effectiveness on ammonia volatilization on waste stored outside and the Council agrees.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

COMMENT: Finally, I ask that DEQ continue to reject a reporting requirement for producers using manure amendment products that should help maintain a better in-house environment for our birds.

COMMENTER: Rodney Wagner, Green Valley Poultry Farm, Washington County Poultry Grower

COMMENT: As far as the reporting of litter amendments is concerned, it's my understanding that some of the environmental groups are looking for a backdoor way to eventually force us to

use the amendments for the purpose of nutrient control instead of bird health. It is also my understanding that there needs to be far more research done on this to find out what effects the amendments actually have in that area. Dr. Mark Reiter at the Painter AREC would be an excellent choice for the research, but that's just my opinion.

COMMENTER: Dave Lovell, Old Mill Farms, Accomack County Farmer
COMMENT: I understand that DEQ is also considering that farmers report use of litter amendments. Wouldn't more scientific research help insure that something of this nature is necessary?

COMMENTER: Bud Schultz, Rockingham County Poultry Grower
COMMENT: I urge DEQ to continue to reject a reporting requirement for use of litter amendments. I believe a better approach to understanding the potential water quality benefits of these products is for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry and the environmental community.

COMMENTER: Ronnie Matthews, Accomack County Poultry Grower
COMMENT: Finally, I ask that DEQ continue to reject a reporting requirement for growers' use of litter amendment products intended for maintaining an optimal environment for bird health. A better approach to understanding the potential water quality benefits of these products is for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTERS: Wayne Merrill, Fox Creek Farm, Inc. Orange County Farmer
Ernest Ambler, Amber-rillo Farm Inc., Augusta County Poultry Grower
Jeffrey E. Thomas, Blue Rock Farm, Inc. Page County Poultry Grower
Rob Preston, Preston Hills Farm, Rockingham County Poultry Grower
JT Anderson, Pineview Farm, Goochland County Poultry Grower
Kate Anderson, Pineview Farm, Goochland County Poultry Grower
Thomas Thacker, Augusta County Poultry Grower
Vincent A. Wolford, Rockingham County Poultry Grower
Brett Washington, Washington Farms, Inc. Louisa County Poultry Grower
Chris Turner, Carlton Turner Poultry, Page County Poultry Grower
Sandra K. Rumer, Smokey Valley Farm, Inc. Rockingham County Poultry Grower
David Beery, Rockingham County Poultry Grower
Myron Reedy, Reedy Farms, LLC., Rockingham County Poultry Grower
Joseph Turner, Page County Poultry Grower
Forest N. Atwood, Pass Run, Page County Poultry Grower
Rex A. Sours, Rex Sours, LLC., Page County Poultry Grower
Anna Housden, Living Country Farm, LLC., Page County Poultry Grower
Michael Scott Housden, Page County Poultry Grower
Vicki Dinges, Page County Poultry Grower
Russel J. Wenger, Augusta County Poultry Grower
Kimviet Ngo, Accomack County Poultry Grower
Tri Nguyen, Accomack County Poultry Grower
Dustin Wenger, Rockingham County Poultry Grower
Kathy Kagey, V&K Farms, Shenandoah County Poultry Grower
VLD Kagey, V&K Farms, Shenandoah County Poultry Grower
COMMENT: Please reject a reporting requirement for use of litter amendments. A suggestion would be for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTERS: Geri Maloney, Rockingham County Farmer
Kerry Maloney, Rockingham County Farmers

COMMENT: Also, please continue to reject reporting requirements for use of litter amendments. A better approach to this might be to investigate this in collaboration with university researchers, industry and the environmental community !!!

COMMENTER: Gerald Wenger, Hillside Poultry, LLC, Rockingham County Poultry Grower

COMMENT: I also am opposed to the reporting requirement for litter amendments or ammonia controls in poultry houses.

COMMENTER: Lareth L. May, May Poultry Farm, Rockingham County

COMMENT: I ask the DEQ to continue to reject a reporting requirement for the use of litter amendments. The Chesapeake Bay Program would be better served to collaborate with university researchers, industry and the environmental community.

COMMENTER: Chip Turlington, Turlington Farms Inc., Chancetown, on Virginia's Eastern Shore

COMMENT: Use of litter amendments, most of which are designed to control ammonia, also bind phosphorus and thus help with water quality. These products are largely required by our integrators.I have been raising poultry for almost 35 years, and find that most growers are good stewards of our environment.

COMMENTER: Philip Bowman, Shenandoah County Poultry Grower

COMMENT: If further studies need to be done to find if litter amending is having an impact on the water quality of the Chesapeake Bay, then a cooperative effort can be done utilizing the resources of college agricultural and environmental programs, industry organizations, and environmental organizations. Farmers are generally good stewards of the environment so imposing regulatory requirements that have little, if any, justification does not promote progress in today's economy. Also, more reporting may mean bigger government which ends up placing a greater tax burden on Virginia taxpayers.

COMMENTER: Richard Newell

COMMENT: Lastly, asking growers to report their usage of litter amendment products within the poultry houses has nothing to do with the Chesapeake Bay program — which is why the permitting process was established. I ask DEQ to continue to reject the reporting requirement for the use of these products. If the Chesapeake Bay Program is interested in the how these products may affect water quality, it would benefit them to work directly with university research programs to attain this information.

COMMENTER: Gloria Long, George's Inc.

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed based on these comments.***

GC-4a Subject: Temporary Storage Covering Requirements - Support Current Requirements

COMMENT: Thank you for maintaining the requirement for poultry litter to be covered within 14 days. Uncovered piles represent a risk to waterways, especially during heavy precipitation events.

COMMENTERS: Respondents to Chesapeake Bay Foundation Alert (names listed in Table B and E)

COMMENT: Not only that, such piles emit terrible odors. We have definitely noticed an improvement over the years and attribute that to the 14-day cover requirement.

COMMENTER: Joy Loving

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed based on these comments.***

GC-4b Subject: Temporary Storage Covering Requirements - Support Making Revisions – Increase Number of Days to Cover

COMMENT: One commenter suggested requiring the covering of all temporary poultry waste storage within 24 hours of delivery to the site instead of the current 14-day limit except when litter is being added to or removed from the litter pile.

We oppose mandatory covering of temporary storage piles within 24 hours. Virginia's 14-day limit is the most stringent among states in the Chesapeake Bay region. In fact, we would support extending the current 14-day limit to 30 days provided the pile is properly shaped and monitored as discussed by the TAC.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: Finally, while we appreciate the maintenance of the 14-day period for temporary uncovered litter storage, a study reviewed by the TAC from the University of Delaware showed that a longer period is sustainable without any negative environmental impact. While the litter remains uncovered, the outer layer of the litter hardens to prevent leeching of nutrients as long as the litter pile is properly shaped. The Council supports aligning the time period closer to that of Maryland and Delaware, both of which have at least a 90 or longer period of time for uncovered, temporary storage. The Council supports increasing the amount of time litter can temporarily remain uncovered at the field of application from 14 to 30 days.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

RESPONSE: DEQ acknowledges the support for maintaining the requirement to cover litter that is stored outside, not under roof within 14-days. We understand that there is research that supports a longer period of time to be uncovered and that other states allow an extended timeframe uncovered. However, the agency did not propose changes to the temporary storage requirements because there is not enough information available to determine if changing the requirement would be more or less protective. There is a lack of research data related to typical field-size waste piles, and it is uncertain as to how safe it is to extend the length of time for poultry waste to be uncovered. ***No changes are being proposed based on these comments.***

COMMENT: Lastly, we are concerned that the proposal does not alter the 14-day period for temporary field storage of litter and would ask the Department to consider lengthening that timeframe. A University of Delaware study reviewed by the TAC showed a longer timeframe is possible to accomplish without any negative environmental impacts as long as the pile is properly shaped. Extending the timeframe will bring Virginia closer in-line with Maryland and Delaware's temporary field storage requirements and potentially increase the number of producers willing to utilize poultry litter.

COMMENTERS: Kurt H. Fuchs, Senior Vice President, Government Affairs, MidAtlantic Farm Credit
Katie Frazier, Chief External Affairs and Marketing Officer, Farm Credit of the Virginias
Jim Belfield, Chief Information Officer, Colonial Farm Credit

COMMENT: Litter stored on piles outdoors. When statements are given in opposition to storing litter uncovered in outside piles, statements are given such as these: To avoid possible nutrient runoff or to avoid the possibilities of nutrient runoff. No statistical evidence is provided to show studies proving that this is actual fact. I have attached a copy of the results of a study that was done on this issue. It is pointless and a waste of time and money to attempt to cover litter piles with plastic because of issues with wind events. Litter piles that have steep sides and a nice rounded peak at the top form a crust and do a great job of shedding rainwater.

COMMENTER: Junior Beachy, Staunton

COMMENT: DPI was very disappointed to see that DEQ did not add to the draft a proposal to extend the timeframe for uncovered litter from 14 days to 30 days. Once again, this was a topic that was discussed at length during the TAC meetings, including sharing research both for and opposed to this extension. DEQ had even drafted proposed language which would have allowed for 30 days, while still requiring compliance measures like visual inspections and additional record-keeping. While DPI appreciates the permit maintaining the 14-day window for litter to be stored without cover, we are disappointed that the timeline was not extended. The Binford study,

conducted at the University of Delaware and currently the only year-long, field-trial research study (not a short-term, small research plot), shows there is minimal concern for nutrient runoff if properly field staged and actually shows more concerns for covering. This study has been noted in other states that allow for longer field staging, including Delaware and Maryland, that allow for a minimum of 90 days up to several months. Properly field-staged chicken litter will create a crust that not only prevents run-off, but likely minimizes any ammonia release. Again, this is in direct conflict with policies incentivizing farmers to use this locally sourced, organic fertilizer by making it more difficult.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: During the TAC meetings, there was discussion of a staff drafted proposal to provide an additional option for temporary storage of poultry waste. The additional option extended the current 14-day limit to 30 days for uncovered litter stockpiles so long as specific management, siting requirements, and compliance measures like visual inspections and recordkeeping were completed by the regulated entity.

The staff proposal does not contain the additional option and retains the 14-day limitation for uncovered outdoor litter storage, despite a presentation from Bud Malone of University of Delaware (retired) on research showing properly stacked, uncovered litter piles have minimal environmental impact. VPF is supportive of the additional option. However, under no circumstances, should DEQ reduce the limitation below 14 days, which is far more restrictive than Maryland and Delaware, both of which are guided by the aforementioned studies and allow for a minimum of 90 days up to several months. Properly field-staged litter will create a crust that not only prevents run-off, but will likely also minimize any ammonia release.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

RESPONSE: We understand that there is research that supports a longer period of time to be uncovered and that other states allow an extended timeframe uncovered. However, the agency did not propose changes to the temporary storage requirements due because there is not enough information available to determine if changing the requirement would be more or less protective. There is a lack of research data related to typical field-size waste piles, and it is uncertain as to how safe it is to extend the length of time for poultry waste to be uncovered. ***No changes are being proposed based on these comments.***

GC-4c Subject: Temporary Storage Covering Requirements - Support Making Revisions – Decrease Number of Days to Cover

COMMENT: Change outside storage of poultry litter from 14 days to 24 hours. The 14 day allowance as caused more confusion and waste of state resources. A simple requirement that poultry litter stored outside meaning not in the poultry house or litter shed shall be covered at all times. The exception would be if the pile is being added to or subtracted from.

COMMENTER: Tad Williams

COMMENT: Dear board members, I am forwarding you this response I received from the Director of the DEQ Valley Regional Office so you see for yourself what a cat and mouse game and waste of DEQ staff resources the 14-day requirement for covering stockpiled poultry waste has become. The board will be taking up the renewal of these regulations before the end of the year. The board should adopt a 24-hour requirement for covering or removing poultry waste when it is stockpiled outside. It will provide certainty for the farmer and save precious staff resources. Contact me if you have questions.

EMAIL response from Ms. Owens to Tad Williams: Subject: Re: Fw: FOIA for PC 295615 uncovered litter piles

Dear Mr. Williams: Thank you for your patience respecting a response to your email of September 9. You identified several issues, the details of which took several days to compile. Hopefully the information below is helpful. Your inquiry led staff to research the complaints received related to the site in question. Through this research, staff discovered that documentation of the 2020 uncovered litter pile complaint was incomplete and

inaccurate in the Agency's Pollution Response Program (PReP) database. The PReP database is used to document and track pollution complaints across the Commonwealth. Regrettably, this has caused confusion, and DEQ staff will be correcting the information in the PReP database for completeness and clarity, the substance of which is as follows: The initial complaint was filed in 2019. DEQ received a complaint of uncovered litter piles at this site on Friday, February 22, 2019. The following week, staff made several unsuccessful attempts to contact the farmer to discuss the complaint. Failing to reach the farmer, staff left a telephone message, sent the farmer a letter, and ultimately scheduled an inspection to investigate the uncovered litter pile allegation. A March 4, 2019 site inspection confirmed the presence of uncovered litter. The inspector observed and determined that the location of the storage site was consistent with the requirements outlined in the Poultry Litter Use and Storage Fact Sheet related to the location and siting conditions of storage and thereby in compliance with the requirements for storage location found in section 80 of 9VAC25-630. Regulatory agencies are limited to initiating compliance deadlines after they have observed the triggering condition such as, in this case, the presence of uncovered litter. Based on the March 4, 2019 site inspection and the observation of uncovered litter, DEQ required the farmer to remove or cover the litter by March 18, 2020. A site inspection conducted on March 15, 2019 revealed that 90% of the existing pile had been covered. During this site inspection, staff also observed that new litter had been placed at the site in a new pile. A follow-up inspection conducted on March 18, 2019, confirmed that the original pile (observed by DEQ staff on March 4, 2020) had been land-applied. The farmer and site were determined to be in compliance with the 14-day cover requirement deadline of March 18th, established by DEQ staff observation on March 4, 2019. On March 20, 2019, DEQ conducted another site inspection and confirmed that all of the poultry litter had been removed from the site. The complaint investigation (filed on February 22, 2019) was then closed by staff since the farmer was deemed in compliance with the regulations related to poultry storage. A second complaint related to this same site was received on June 23, 2020. DEQ conducted a site inspection and investigation on June 25, 2020 that confirmed the presence of an uncovered litter pile. Staff spoke with the farmer and informed him that the litter pile must either be covered within 14-days or removed from the site. Due to staffing limitations related to COVID-19, staff was unable to conduct a follow-up visit until July 16, 2020. This inspection revealed that much of the litter observed on June 25, 2020 had been removed (more specifically it was land applied) and what remained had been covered thus resolving the complaint filed on June 23, 2020. This is the fact that was found to be inaccurately documented in the PReP database. During the July 16, 2020 site visit, staff also observed new litter piles on the site, resulting in new exposures and, therefore, new requirements and deadlines to cover the piles by July 30, 2020. Staff conducted a site visit on August 6, 2020 and confirmed that all litter on the site had either been land applied or covered. The complaint investigation (filed on June 23, 2020) was then closed by staff since the farmer was deemed in compliance with the regulations related to poultry storage. Consultation with the Department's Office of Agricultural and Land Application Programs affirmed that staff application of the 14-day covering requirement was consistent with agency guidance. DEQ continues to commit considerable resources to inspection of, and compliance action with, Virginia producers. Thank you for supporting those efforts.
Kindest regards -- Amy Owens

EMAIL to Ms. Owens from Tad Williams:
Dear Ms. Thatcher Owens, I am hoping you can help me understand DEQ's enforcement protocols for uncovered litter piles. I have attached and forwarded documents that I requested from DEQ for complaint #295615. This involved an uncovered litter pile at

Meems Bottom in Shenandoah County. DEQ received the complaint on 6/23/20 and investigated and confirmed an uncovered litter pile on 6/25/20. The pile remained uncovered until 7/16/20 when DEQ received complaint #295868 that the litter pile was still uncovered. According to the complaint log the pile remained uncovered until at least 8/6/20. As you are aware 9VAC25-630-80.B.1.a. requires that poultry litter that is stockpiled outside for more than 14 days shall be covered to protect it from precipitation and wind. I have several questions. Why did DEQ give this individual more than 40 days to cover their uncovered litter pile when the regulation requires coverage after 14 days? Why was no enforcement action taken by DEQ when non-compliance was observed on 7/16/20 after receiving the second complaint on the exact same pile? Why is the complaint document and photos of the uncovered litter pile lack details as to why DEQ did not take any action, dates on pictures for when those observations were made, and memos documenting site visits or details on conversations with the complainant? This same site received a complaint on 2/22/19 (#197195) for having an uncovered litter pile. The complainant at that time was given nearly 30 days to comply with the coverage requirement after 14 days. This site has a history of non-compliance. Why has no enforcement action been taken? If there exists letters of non-compliance, warning letters, or notices of violation issued by DEQ for this site I would welcome them to dissuade me from assuming DEQ does not care about uncovered litter piles. Thanks for your response to this information request.

COMMENTER: Tad Williams

RESPONSE: DEQ appreciates the comments and concerns related to poultry waste storage and DEQ resources. DEQ staff responded to this complaint and question with further clarification and the description of the actual events and follow-up inspections made by DEQ staff in response to the complaint. Staff further described internal procedures related to this and similar complaints. While staff resources are always a concern, it is imperative that DEQ staff verify the legitimacy and extent of each complaint that is received prior to making any compliance determinations. The procedure to investigate complaints begins once the complaint is received. Because DEQ staff must verify the complaint and make at least one site visit, this process does take time to complete. The handling of this complaint investigation with relation to the 14-day covering requirement was consistent with agency guidance, designed to ensure that the regulated community complies with the laws, regulation and permits that DEQ administers. DEQ staff investigation procedures would not change based on the requirement for the number of days to cover the poultry waste. ***No changes are being proposed based on this comment.***

COMMENT: Temporary stockpiles should be covered as soon as possible to minimize runoff, leaching and emissions. Further, the site of temporary stockpiles should be rotated to avoid groundwater buildup of pollutants. The technical advisory committee focused a significant amount of time evaluating whether current cover requirements should be extended. This suggestion largely stemmed from a workshop synthesis report from 2004. This study suggested that uncovered piles have the potential to have similar leaching losses to covered piles; it is also worth noting that even in this study, ammonia concentrations below the covered piles was in fact lower (although not statistically significantly different) than uncovered piles. Binford et al. "The average amount of inorganic N in the soil under the four poly covered piles was 13 lbs, while the average under the no-cover pile was 16 lbs. Because there was no significant difference in amounts of N found in the underlying soil between the poly covered and no-cover piles, this suggests that N is moving from the litter into the soil as ammonia." This work has never been published in a peer-reviewed journal, to our knowledge. One co-author, Mr. Malone, who presented to the technical advisory committee, suggested the reason for not achieving peer-review was that "it would be difficult to publish work like this in a peer reviewed journal." We are unclear why that is the case, given there are several peer-reviewed studies on this subject and these results contrast to what is in the scientific literature. Thus, the lack of technical peer review

raises critical questions about utilizing this study as the basis to eliminate a protective measure. In order to evaluate these questions, we performed a review of the scientific literature on the subject of cover for stockpiles. Very few studies consider implications within a 14-day period; however, several studies have considered long-term implications of uncovered piles. These results indicate that several factors play an important role in both leaching and runoff losses from piles, including rainfall, soil type, temperature, climate, moisture, and other chemical and biological factors. Over long periods of time, several studies demonstrate substantial leaching and runoff losses from uncovered piles, and in many cases, these are greater than for covered piles. Therefore, while these results do not directly consider the timescale of 14 days, they do provide some important insights. First, the studies suggest it is clearly possible for various pollutants to leach into the ground and runoff into surface water, and these risks are elevated at longer time scales. Second, these losses are highly variable based on conditions that are not fully understood. Finally, the effect of cover on mitigating these losses is also variable with some instances of tremendous benefit and some instances of minimal benefit. From these points, it is clearly inappropriate to rely on a single study (Binford et al.) to conclude that a covered stockpile does not provide enhanced protection to groundwater and surface water. While covered piles do not necessarily eliminate or reduce leaching and runoff in every situation, they are highly likely to reduce runoff risk at large. For instance, during intense and unexpected rain or storm events a covered pile is at a reduced risk. An additional factor influencing the impact of these piles is their role in ammonia air emissions. Covered piles produce substantially lower ammonia emissions (and thus retain higher nitrogen content) than uncovered piles. Several peer-reviewed studies around the globe have recommended covering stockpiles to reduce ammonia emissions. Shah et al. 2013 suggested tarp treatment produced emission rates 45 percent lower than uncovered treatments. Sagoo et al. 2007 estimated plastic-covered treatments lost less than five percent, whereas other treatments had losses of 12 to 16 percent. They go on to say, “These measurements provide a good example of ‘N pollution swapping’ (i.e. an NH3 reduction strategy increasing NO3 leaching losses) and highlight the need to develop integrated manure management strategies that consider all N loss routes and forms.” Priekulis et al. 2018 suggested covering stockpiles with plastic ranked as the most effective manure storage measure for reducing ammonia emissions from poultry litter with up to a 60 percent reduction expected.38 Miles et al. 2012 suggested, “Practical applications to reduce NH3 emissions on the farm may include covering litter stockpiles to reduce wind flow over them.” There is ultimately some question as to what proportion of these emissions is lost even following spreading, but retaining nitrogen in litter for as long as possible provides the greatest chance for plant uptake. We consulted authors of some of these studies and used the literature values to make approximate comparisons between nitrogen losses from leachate, runoff and emissions. Further, we estimated the proportion of emissions which are likely to be delivered to the Chesapeake Bay by referencing a recent Chesapeake Bay Program modeling effort. Our results suggested that the potential loss from air emissions from a stockpile are 2-3 orders of magnitude greater than runoff and leaching losses. We requested DEQ reach out to these experts and we provided contact information; to our knowledge, however, DEQ never acted on that suggestion. An additional finding through this literature review was the recommendation that stockpiles kept in the same place year after year (regardless of cover) can lead to the build-up of contaminants in groundwater. Liu et al. 2015 specifically suggests, “New regulations should require that poultry litter stacks are relocated to a new area each year.” We encourage the agency to include protections to avoid site reuse that can lead to groundwater contamination. Finally, we note here that DEQ’s failure to holistically consider ammonia emissions’ impacts from poultry production litter as a part of its management strategy that would have led to decisions that ignore the largest potential source of pollution and, ultimately would have had significant implications that were not even considered. As of December 2020, DEQ had proposed to roll back the cover requirement without, apparently, even considering implications for ammonia emissions. In the future, DEQ should always consider implications of management decisions upon air impacts to

water, in addition to runoff and leaching. In conclusion, it would not be protective of groundwater or surface water (due to runoff, leaching, and emissions) to rollback the current 14-day requirement for covering temporary stockpiles. Further DEQ should consider 24-hour covering requirements and site rotation to minimize impacts to water resources.

COMMENTERS: Peggy Sanner, VA Executive Director, Chesapeake Bay Foundation
Joseph Wood, VA Senior Scientist, Chesapeake Bay Foundation
Phillip Musegaas, Vice President of Programs and Litigation, Potomac Riverkeeper Network

COMMENT: Require temporary stockpiles be covered as soon as possible and 24/7 to minimize runoff, leaching and emissions

COMMENTER: Frank Filipy

RESPONSE: The agency believes that the current 14-day cover requirement along with the existing siting conditions provides appropriate and sufficient protection to the environment. DEQ staff has reviewed numerous research papers related to covering waste piles; unfortunately, the vast majority of the research is deficient when it comes to typical field size piles. During the regulatory process, the Department sought assistance through Stakeholders participating on a Technical Advisory Committee (TAC). Several TAC members recommended that staff consider amending the waste storage requirements to provide more flexibility for the grower and end-user. The members of the TAC considered a staff drafted proposal that provided an additional option for the temporary storage of poultry waste. The additional option allowed for a slight extension of time without a cover so long as the specific management, siting requirements and compliance measures like visual inspections and recordkeeping were completed by the regulated entity. While the majority of the TAC members supported the amendments to include the additional inspections and recordkeeping, two members stated that they would support the draft temporary storage amendments only if DEQ required permitted poultry growers to report litter amendments. After much discussion and deliberation, the proposal does not include the additional option for the temporary storage of poultry waste because there is not enough information available to determine if changing the requirement would be more or less protective. There is a lack of research data related to typical field-size waste piles, and it is uncertain as to how safe it is to extend the length of time for poultry waste to be uncovered. ***No changes are being proposed based on these comments.***

GC-5 Subject: Permit Term Five Years Instead of Ten Years

COMMENT: Due to the slow progress in meeting these goals, and the significant growth of the poultry industry on the peninsula, I think the permit should not be granted for ten years. The revised permit should include a review and chance to make changes as more is learned about the significance of ammonia deposition from the poultry houses. The permit should be reopened in a minimum of five years, specifically for review on the impact of ammonia. As a precursor to reopening the permit in five years, the permit should also include the reporting on the type and amount of litter additives aimed at reducing ammonia.

COMMENTER: Joseph Valentine, Onancock, VA

RESPONSE: In accordance with 5a of Section 62.1-44.15 of the Code of Virginia, the term of a Virginia Pollution Abatement (VPA) permit shall not exceed 10 years, except that the term of a VPA permit for confined animal feeding operations shall be 10 years. Thus, the agency does not have the authority to reduce the term of this VPA permit through this regulatory action. ***No changes are being proposed based on this comment.***

GC-6 Subject: Permit Should Include Random Sampling of Runoff from Poultry Houses

COMMENT: The permit should also require random sampling of runoff from the poultry houses. As we experience climate change and have more and more storms that exceed the outdated 100 year benchmarks, this is an important step to make sure these regulations are truly effective. These random samplings should be done by the DEQ and be tied to exceptional storms

as well as ordinary rainfall events. The samples should be evaluated for nitrogen and phosphorus in a laboratory.

COMMENTER: Joseph Valentine, Onancock, VA

RESPONSE: The Virginia Pollution Abatement (VPA) permit program does not cover poultry operations that have point source discharges. The general permit contains specific conditions that address nutrient utilization and appropriate storage of poultry waste which, when implemented, prevent nutrient loss from the production area. It is extremely difficult to isolate the contributions of poultry waste management activities from other non-point sources (e.g. wildlife) through sampling that is not closely controlled in a research environment.

Further conditions were added to the general permit language during this regulatory action to address areas in the production area where nutrients could come into contact with storm water. The agency believes that these additional conditions will further clarify to the permittee how to properly manage the production area to prevent the loss of nutrients during storm events of any size.

The permit also addresses agricultural storm water. In accordance with 9VAC25-630-10 Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. DEQ conducts ambient water quality monitoring in watersheds around animal feeding operations (AFOs) across the state, and also conducts sampling associated with regulated entities when non-compliance is suspected. DEQ has also conducted focused water quality studies related to poultry farms. Anytime DEQ conducts water quality sampling, the sample is analyzed for Nitrogen and Phosphorus among other constituents. The permit regulation contains the requirements for the permitted and regulated entities. It does not specify requirements for the regulating authority. ***No changes are being proposed based on this comment.***

GC-7 Subject: Nutrient Management Plan (NMP)

COMMENT: As a taxpayer who is subsidizing the poultry industry by paying for the removal of excess waste, this permit should require that Nutrient Management Plans be submitted by all producers and users of the litter and that these plans should be made public. It is crucial knowing where and how the litter is being used and assuring that it is all accounted for. Currently, this data is kept under wraps by the departments that receive it. If the industry is going to be subsidized by the taxpayers, we should have access to this information. The permit should also define the specificity of the Nutrient Management Plans so it can be determined who received it, how much was received , where it was applied, and when it was plowed under. I have seen local farms that have applied the litter and not plowed it under for several weeks, all the while, the field was draining directly into the local creek.

COMMENTER: Joseph Valentine, Onancock, VA

COMMENT: Require NMPs for all poultry waste end-users. This would help to ensure that poultry waste is applied with sufficient attention to soil nutrient balances, and it would create a consistent poultry waste application framework for all land applications, whether they happen at the source or on offsite cropland.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE: In accordance with section 9VAC25-630-10 et. seq., all permitted entities are required to submit and implement a nutrient management plan (NMP). Other non-permitted poultry waste users (end-users) are required to follow the technical requirements found in section 70 and 80 of 9VAC25-630. These technical regulations specify the establishment of the land application rate, by one of four options which includes an NMP, soil test recommendations, a standard rate of 1.5 tons/ acre only once every three years, or by using the Phosphorus crop

removal method. In the majority of cases, the options alternative to an NMP would prescribe nutrient application rates that would be less than those that could be prescribed in an NMP. Each of these options are agronomically and environmentally sound options that ensure appropriate land application rates. ***No changes are being proposed based on this comment.***

COMMENT: Nutrient management plans should be required for all end users of poultry litter. Without this requirement it is unlikely that Virginia will ever meet the Chesapeake Bay Watershed implementation nutrient reduction requirements.

COMMENTER: Tad Williams

RESPONSE: DEQ is working with the EPA Chesapeake Bay Program office to receive credit for each of the current four options used to obtain the land application rate. DEQ will continue to pursue Bay model credit using the current options. ***No changes are being proposed based on this comment.***

COMMENT: One commenter suggested requiring all poultry waste end-users obtain a nutrient management plan. We entirely disagree with requiring end-users to obtain a nutrient management plan as a condition of utilizing poultry waste. Such a requirement is unnecessary and will severely hamper efforts to transport poultry waste and utilize off-site of poultry farms. Virginia's Poultry Litter Transport Program already requires a nutrient management plan as condition of applying for financial assistance. Some end-users forego requesting this assistance due to experienced delays in receiving nutrient management planning assistance. Virginia lacks the number of certified nutrient management planners necessary to meet the suggested plan requirement.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: I currently have a Nutrient management plan on my operation and this would cause unnecessary redundancy.

COMMENTER: Nicholas Moody, Dinwiddie County Farmer

RESPONSE: DEQ acknowledges that reporting the land application information will be redundant if an end-user has as NMP. DEQ will ensure that the agency does not report end-user NMP records to the Chesapeake Bay Program in a manner redundant of those accounted for in the DCR NMP data. ***No changes are being proposed based on this comment.***

COMMENT: Requiring all end users to have a nutrient management plan and annual reporting will discourage the use of litter application on a local basis, thus creating a huge transportation issue in an attempt to transport litter outside of the watershed area. Omitting the use of litter on crops and grasslands could result in thinner stands of grass and poorer crop growth, thus resulting in more water runoff in heavy rain events. I am also opposed to this proposal. Litter is expensive. A farm requires incredibly intensive good management practices to stay in production; therefore, the end user is not prone to apply litter at higher rates than needed for maintaining good soil and crop health.

COMMENTER: Junior Beachy, Staunton

RESPONSE: DEQ is not proposing to require all end-users to obtain and implement an NMP. Currently, the regulation requires that non-permitted poultry waste end-users are required to follow the technical requirements found in section 70 and 80 of 9VAC25-630. These technical regulations specify the establishment of the land application rate, by one of four options which includes an NMP, soil test recommendations, a standard rate of 1.5 tons/ acre only once every three years, or by using the Phosphorus crop removal method. Each of these options are agronomically and environmentally sound options that ensure appropriate land application rates. ***No changes are being proposed based on this comment.***

COMMENT: Prohibit the land application of poultry waste to soils above a certain threshold (e.g., 55 ppm) to ensure that poultry waste is not added to soils that already have sufficient nutrients to meet crop need.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE: The Department of Conservation and Recreation (DCR) has the authority over the regulations that govern nutrient management plan (NMP) requirements. The DEQ regulations covering Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs) require the owner of the AFOs and CAFOs to obtain and implement an NMP. The NMP regulations already establish an environmental threshold above which phosphorus may not be land applied. The requirements related to the use of the P-Index are not within the scope of § 62.1-44.17:1.1. of the Code of Virginia.

The end-users of poultry litter that land apply litter are governed by the technical requirements found in section 80 of 9VAC25-630. The technical regulations specify the establishment of the land application rate, by one of four options which includes an NMP, soil test recommendations, a standard rate of 1.5 tons/ acre only once every three years, or by using the Phosphorus crop removal. These technical regulations already specify the same environmental threshold found in the DCR regulations for Phosphorus when using the Phosphorus crop removal land application rate. Each of the four options are agronomically and environmentally sound options that ensure appropriate land application rates. ***No changes are being proposed based on this comment.***

GC-8 Subject: Industry Growth

COMMENT: I live in Accomack county where we have seen tremendous growth in poultry operations in the last few years. As a result, I am very concerned about the impact of the poultry business on the bay.

COMMENTER: Joseph Valentine, Onancock, VA

COMMENT: Myth of a Rapidly Expanding Poultry Industry in Virginia

Advocates of greater regulation of the poultry industry often state that such is needed because they say the industry is rapidly expanding in Virginia. We would like to provide some historical perspective and additional facts about the industry. Much of Virginia's poultry production is in the Shenandoah Valley, but Central and Southside Virginia and the Eastern Shore also have significant production. The top five poultry counties, according to VPF farm surveying, are Rockingham (508 farms), Augusta (141 farms), Page (115 farms), Accomack (87 farms), Shenandoah (69 farms), and Amelia (22 farms). According to the survey, Virginia has 1,075 poultry farms. Comparatively, our 2003 survey indicated a total of 1,242 farms and the following number of farms per the aforementioned counties: Rockingham (515), Page (173), Augusta (128), Accomack (85), Shenandoah (82), and Amelia (37). Only Augusta and Accomack saw any increase. Some have significantly decreased. Furthermore, bird production numbers are also noteworthy. According to the USDA National Agricultural Statistics Service, Virginia produced 271.5 million broiler chickens in 2001. That figure fell to 240.5 million in 2012 due to adverse economic conditions. Chicken production recovered nicely to 269.1 million by 2016 and to a record 281.3 million last year, which is probably approaching existing plant capacity and certainly not a substantial increase from 20 years ago. Turkey production in Virginia has declined from 24 million in 2001 to 16 million in 2019. Bird weights have generally increased somewhat over the years for both chickens and turkeys. Since 2001, Virginia broiler production by number of head has grown 3.6% compared to 9.4% growth nationally. Virginia and U.S. live-weight production has increased at 31% and 33%, respectively. In 2001, Virginia was ranked 8th in U.S. broiler production and now ranks 10th. Since 2001, Virginia turkey production by number of head raised has plummeted 33%, while U.S. production fell 16%. Virginia was ranked 4th in US turkey production in 2001 and now ranks 6th. Poultry farms have become fewer but somewhat larger as some remaining farms add poultry houses. Today's broiler chicken barns are typically 624X63 feet and house 40-60,000 birds. Twenty years ago the typical broiler house was 400X40 feet and house 25,000 birds. This trend of fewer participants but bigger operations is typical of most agricultural commodities, yet in most cases the operations remain family owned and operated. Today's operations are also designed and operated with more environmental controls to protect our natural resources. To summarize, Virginia is fortunate that some aspects of its poultry industry have grown, albeit modestly, over the past twenty some years. The growth in the past ten

years in broilers has basically brought the number of head raised in line with and slightly ahead of 20 years earlier. Turkey production has declined. The number of poultry farms has declined. Bird weights have increased over the years. Poultry house construction in recent years has largely replaced outdated facilities, and the new houses have better environmental controls than those built previously. The data over the past two decades do not indicate substantial growth, and plant capacity and economic conditions do not indicate significant expansion in coming years.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: DPI's last comments are centered around the myth that there has been and will continue to be a significant growth in the chicken industry during this 10-year permit. Since 1955, DPI has been collecting data directly from its chicken company members to better understand the impact of the chicken community within Delmarva. While this information is not specific to just Virginia, we believe it is a good representation of the industry as a whole. In 2019, there were 609 million chickens processed, which is only a .4% increase from 20 years ago and not the peak, which was 623 million birds in 1995, with a significant decline in 2010 to 559 million, when the cost of feed reached record highs and the country was in a recession. While the number of birds raised is seeing a slight increase, this is being done more efficiently with fewer farmers (47% fewer) and fewer chicken houses (12% fewer) than 20 years ago. And any new farms built within the past decade are being constructed to the highest levels of environmental standards. Due to technological advancements, such as better nutrition, better housing, better litter management, you are seeing an increase in the pounds produced as well. But much of that is also due to increased feed efficiency, which means that what the birds are eating directly equates to the amount of meat produced – and less waste coming out of the bird. One of the most important factors to the increase in number of birds that are raised on the Delmarva is the amount of birds that can be processed within the processing facilities. The newest processing facility on the Delmarva is in Accomack County, and was built nearly 45 years ago. While upgrades and automation can help increase the number of birds processed in a facility, it will never have substantial increases like a new facility. And currently DPI is not aware of any discussions in building a new facility on the Delmarva, which would likely take a minimum of five years to come online if there was.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: Proponents of increasing compliance requirements associated with this regulation and general permit have regularly overstated the growth of Virginia's poultry industry as one justification. Virginia's poultry industry is not rapidly expanding. During the implementation of 9VAC25-630, Virginia's broiler industry grew 3.6% from 271.5 million birds in 2001 to 281.3 million in 2019 compared to 9.4% growth nationally. In fact, Virginia's rank among US broiler producing states fell from 8th to 10th since 2001. Broiler production increased 12.3% during the last ten years after falling significantly to 240.8 million in 2009 due to the economic fallout of the Great Recession on sales and a Chinese ban on poultry imports from the US. Three quarters of this growth during the last decade was regrowth. Modern technology and more efficient production methods have resulted in new larger housing replacing smaller old production facilities. The COVID-19 pandemic is limiting broiler production in 2020 as a result of mitigation measures disrupting traditional wholesale and retail supply chains. It is unclear what long-term impacts will result for the broiler industry. Virginia and US turkey production have experienced significant decline over the last 20 years. Virginia's broiler industry fell 33% from 24 million birds in 2001 to 16 million in 2019 compared to a 16% decline nationally. Virginia's rank among US turkey producing states fell from 4th to 6th since 2001. DEQ estimates Virginia turkey production will total 16.15 million in 2025. If turkey production continues to decline, Virginia production could fall below 15 million by 2025. COVID-19 is also affecting turkey production and markets in 2020 adding further uncertainty to this industry's future.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation

Frank Baber, Cumberland County Poultry Grower

COMMENT: Proponents of such additional reporting requirements have vastly overstated the growth of the poultry industry to justify inclusion of such requirements. The poultry is not rapidly expanding as suggested by certain advocacy groups. The industry has experienced success in regaining losses experienced around 10 years ago. In 2001, Virginia produced 271.5 million broiler chickens. Last year, Virginia set a record of 281.3 million broilers, only a slight increase from 20 years ago. Turkey production has declined from 24 million turkeys in 2001 to 16 million in 2019. These numbers reflect an industry that is an economic success story for Virginia's agricultural sector. It does not reflect a need to increase the regulatory burden on sectors of the poultry supply chain unless there is a significant threat or environmental hazard. At this time, there is no evidence that such a threat exists.

COMMENTER: Kyle Shreve, Executive Director, Virginia Agribusiness Council

RESPONSE: DEQ acknowledges these comments. ***No changes are being proposed based on these comments.***

Gc-9 Subject: Bay Cleanup Progress & WIP III Goals

COMMENT: Over the last 20 years I have been observing the bay and I am disappointed in how slow the progress has been to meet the goals of the Clean Water Act. I believe that the poultry operations have been a significant detriment to these goals and we need better management of poultry litter.

COMMENTER: Joseph Valentine, Onancock, VA

COMMENT: Poultry production represents the largest sector of Virginia's largest industry, agriculture, and this sector has shown consistent growth over the past 30 years. USDA's National Agricultural Statistics Surveys indicates that from 1985 to 2019, Virginia's poultry production has steadily increased. There have been periods of slight decline and accelerated growth, but on average, animal units have increased by three percent per year since 1985. In 2017, Virginia produced over $700 million in poultry products. In the Shenandoah Valley alone, agriculture raises 159 million chickens and 16 million turkeys in just four counties. Manure from these chickens and turkeys is spread on surrounding farmland as fertilizer but contains far more phosphorus than crops need for growth. The proportional importance of poultry, relative to livestock also continues to grow, as poultry makes up approximately 75 percent of animal units in Virginia's portion of the Chesapeake Bay watershed, up substantially from 54 percent in 1985.1 Consequently, the number of animals covered by this VPA general permit has also been growing, as evident by the nearly 13 percent increase from 2010-2016. Poultry growth clearly plays a significant role in Virginia's agricultural businesses and economy, but it also presents challenges in meeting the Commonwealth's commitments to improve water quality and, specifically, to reduce nutrient and sediment delivered to the Chesapeake Bay. Keeping in mind the 2025 date for the achievement of the Chesapeake Bay TMDL and the Phase III Watershed Implementation Plan, our initial comments from October 2018 considered the implications of this growth on pollutant loading rates to the Chesapeake Bay. These results suggest that, while progress in reducing pollutant loads from poultry operations has been made since the initial issuance of this general permit approximately 20 years ago, much of this progress has been offset by growth. It should be noted that our estimates of pollutant loading to waterways from these facilities do not take into account nitrogen loadings from poultry-related ammonia emissions—a significant and wholly unaddressed source. These impacts are also directly relevant to local water quality in the Potomac River watershed, particularly the Shenandoah River, where nitrogen levels are elevated and recurring filamentous and benthic algal blooms are deleterious to recreational uses and the river's ecological health. Virginia's Agricultural Programs have made substantial progress towards addressing pollution reduction goals, but ultimately these reductions have not occurred at a pace that is consistent with the state's commitments. This is in part because some of the sector's progress has been offset by growth in animal units, which is primarily driven by poultry. According to CAST estimates, nutrient reductions from agriculture need to accelerate five-fold in

order to achieve our goals, and, if our current rate of implementation is maintained, these goals would not be achieved until 2046. Thus, there is a critical need to pursue additional nutrient reductions through this permit. Given the scale and continued growth of poultry production in Virginia, the Commonwealth must ensure it has and will enforce a clear plan that will effectively address pollutant loads from this sector. The reissuance of this 10-year permit should represent a significant step in restoring our waterways. The following comments set out our thoughts on how this permit should be amended to protect water quality in the Potomac River watershed, where the majority of poultry production in Virginia occurs, and also to ensure implementation of the pollution management steps Virginia and its neighboring states are committed to delivering by 2025.

COMMENTERS: Peggy Sanner, VA Executive Director, Chesapeake Bay Foundation
Joseph Wood, VA Senior Scientist, Chesapeake Bay Foundation
Phillip Musegaas, Vice President of Programs and Litigation, Potomac Riverkeeper Network

RESPONSE: DEQ believes that the proposed regulation and general permit is protective of State Waters, both surface and ground. The strict conditions that regulate storage and nutrient management ensure that the nutrients that are in poultry litter are managed and utilized to prevent runoff and leaching. DEQ accounts for growth of the industry in the WIP, based on actual animal numbers and industry information. Current analyses conducted for WIP development do not require changes to the general permit regulations to meet WIP goals. ***No changes are being proposed based on these comments.***

COMMENT: Another downside to regulating the end user is that the proposed regulation will hinder Va's ability to meet its goal for litter transport in the Chesapeake Bay cleanup plan. I am urging you to reconsider and not require the poultry litter end user to report litter applications. Farmers are not wasteful spenders and are conscious about using their resources in a responsible manner.

COMMENTER: Craig Bailey, Greenmount Heritage LLC

COMMENT: We are extremely disappointed that this end-user reporting requirement was added last minute to the proposed rule outside of the public participation process. This requirement is unnecessary for reporting water quality improvement progress to the Bay program as stated by DEQ staff during TAC meetings. This ill-conceived requirement is regressive and counterintuitive to other state efforts to promote the safe transportation and use of poultry litter away from poultry farms and will disrupt established poultry litter markets and infrastructure and strand poultry litter on poultry farms that rely on end-users. This requirement will roll back two decades of work by the state and industry to promote third party poultry litter utilization, obligating over $610,000 since FY2008. The poultry industry and state provided over $290,000 for transport incentives this year alone. Based on conversations with growers, brokers and end-users, the Commonwealth can expect to see poultry litter transport come to an essential halt in 2021. According to the Department of Conservation and Recreation (DCR), 90 percent of poultry waste generated by permitted poultry growers under current nutrient management plans is transferred off-site. Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan (August 23, 2019) (WIP 3) includes an initiative expanding poultry litter transport in the Chesapeake Bay with DCR's Poultry Litter Transport Program from 5,000 – 6,000 tons per year up to 89,000 tons per year. Program participants are required to obtain certified nutrient management plans as a condition of applying for the program's financial incentives, without any guarantee of financial assistance. The plan requirement already hinders program participation due to a lack of readily available certified planners and perceived administrative burden by first-time and infrequent poultry litter end-users. Under this program, will DCR or DEQ report any remaining nutrient management plan implementation? WIP 3 includes another initiative to improve poultry litter accounting where "DEQ will consider options with input from a TAC, to

provide more accurate accounting of progress towards WIP goals associated with poultry litter transport and utilization." As previously stated, various options were discussed and included (location data, report timing, record reporting). No other reporting options were discussed by the TAC beyond current data collection methods and a suggestion for mandatory end-user reporting. There is another WIP 3 initiative, enhance coordination among state agencies assisting farmers. This proposed requirement fails to recognize its anticipated negative impacts on farmers, other state agencies efforts and Chesapeake Bay clean-up efforts related to agriculture. The purpose of the WIP 3 initiative for improved litter transport accounting is "to provide more accurate accounting of progress towards WIP goals associated with poultry litter transport and utilization" and "may offer the opportunity to verify end-user implementation of NM practices." End-users are provided four progressively flexible options for determining poultry waste land application rates, a standard rate, phosphorus removal rate, soil test rate, or NMP rate. To our knowledge, a nutrient management plan is the only option recognized as a BMP by the Bay Program model. DCR already tracks and reports NMP data for the Bay Program model. How will Virginia track WIP implementation progress by collecting data on the three more restrictive land application rates that are not recognized as BMPs? How will Virginia track WIP implementation for poultry waste exported outside the state? Also, poultry waste production and poultry waste utilization will not occur in a 1:1 ratio during any 12 -month period. How will DEQ account for differences in balancing production with utilization?

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan (Phase III WIP) calls for the annual transfer of up to 89,000 tons of poultry litter from Rockingham, Page, and Accomack Counties to other localities that can appropriately utilize the litter. The proposed reporting holds back Virginia's Phase III WIP by hindering transfer of litter from surplus counties to localities that can utilize this product. And it does not support the efforts by the General Assembly in appropriating significant state funds for the Department of Conservation and Recreation's (DCR's) litter transport incentive program. The reporting requirement creates a disincentive to use litter and hinders fulfilment of WIP goals through the DCR program.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: One commenter suggested end-user reporting is in WIP3, DEQ must do it. It is crucial to note that in WIP 3, end-user reporting is simply offered as an option to consider, and even more importantly, the plan clarifies, "In its evaluation, DEQ will consider ways to reduce the possibility that regulatory requirements would discourage end-users from using poultry litter in areas that could benefit due to soil phosphorus needs or other factors". As previously mentioned, WIP 3 lays out an ambitious strategy to expand poultry litter transport in the Chesapeake Bay. The poultry industry is committed to being part of this solution, but it is extremely difficult to sell farmers on participation when the regulatory requirements continue to increase.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: Virginia's Phase III Watershed Implementation Plan (WIP) has made poultry litter transport a priority. In fact, the WIP specifically asked the TAC to consider the impact end-user requirements would have on the litter market. Since FY2008, the Poultry Litter Transport Program has spent over $600,000 to incentivize litter transport. The WIP calls for increasing litter transport to 89,000 tons per year. The General Assembly has emphasized this as well, setting aside $750,000 in this year's budget for poultry litter transport and resource management plans. This fiscal year, DCR has already obligated $292,000 between state and industry resources for a

total of 21,000 tons of litter being moved. End-user reporting risks erasing any gains we may have had with the program. These reasons are why a majority of TAC members decided not endorse this proposal and the Council is disappointed the Administration chose to include it in their recommendation. It was stated during the open hearings conducted by DEQ that the TAC process is not a voting body. However, it is an advisory body whose members are vetted for their knowledge and give their time and expertise to advise the Department as well as the Board as to the effects of the recommended policy. To completely disregard the vast majority of TAC participants' opinion undermines the TAC process, as well as the WIP.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. It is not the agency's intent for the end-user reporting requirements to negatively affect the DCR Poultry Litter Transport Program. After analyzing the comments and determining what information the department needs to ensure compliance with the regulation and what is necessary for receiving credit in the Bay model through the reporting of poultry waste transfer data to the Chesapeake Bay Office of the EPA. Staff determined that a better option to reporting all land application records and supporting documents (as previously required in the proposed language) would be to instead require the end-user to report (in a phased in reporting timeframe): poultry waste transfer records; the method they used to determine the land application rate; and the county where the waste is being utilized.

This alternative strikes a balance for obtaining the information related to poultry waste transactions and a subset of important land application information while reducing the reporting burden and the concerns related to the release of private and personally identifying information contained in the specific land application records and supporting documents. This option will provide the department with the necessary information in a timely manner while not compromising the privacy and personal identifying information that is protected by the Department of Conservation and Recreation through exemptions in the Freedom of Information Act, and protected by Federal branches of the United States Department of Agriculture. Furthermore, this revision makes the end-user reporting requirements more consistent with the proposed permitted grower and registered poultry waste broker reporting requirements. As with the permitted grower, the end-user land application records can be reviewed by DEQ staff to ensure compliance without taking custody of the records.

The following changes are being proposed based on these comments. Section 70, Tracking and Accounting Requirements for End-Users is being revised to report the following items to the Department in a phased in timeframe:

1. ***poultry waste transfer records,***
2. ***the method the end-user used to determine the land application rate, and***
3. ***the county where the waste is being utilized.***

GC-10 Subject: Soil Amendment and Recycling

COMMENT: For decades farmers in our District have improved their soils through the use of imported poultry litter as a soil amendment. In the past 15 years, the transfer of poultry litter to farmland even further from the Shenandoah watershed has increased noticeably. This trend has allowed farmers in these localities to economically improve the health and productivity of their soils while removing excess nutrients from localities where poultry production is intensive.

COMMENTER: Tom Stanley, Director, Natural Bridge Soil and Water Conservation District Board

COMMENT: I have a family farm located in Clarke County. I have been using poultry litter as a soil amendment successfully and responsibly for more than 20 years in both corn and grass production. I have always followed Va. Tech Extension's recommendations based on soil testing.

COMMENTER: Bryan Conrad

COMMENT: I have a family farm located in Warren County. As a Virginia farmer. I am not a large user of litter, but it needs to still be one of my options to maintain production.

COMMENT: Marvin Pence, Family Farm in Warren County

COMMENT: I have a family farm located in Washington County. While I do not personally use this program, my deceased father has in the far distant past and found it a worthwhile means of utilizing what is otherwise considered waste to make his land more productive.

COMMENTER: Joyce Millsap, Family Farm in Washington County

COMMENT: I have a family farm located in Brunswick County. From time to time I use chicken litter on my hay and pasture. I see this is being environmentally friendly because the nutrients are being used to grow food and the waste does not go into a landfill. They are being recycled.

COMMENTER: Ronald Wilson, Brunswick County Farmer

COMMENT: We have found chicken litter to be a very affordable fertilizer.

COMMENTER: Emily Edmondson, Tazewell County Farmer

COMMENT: In addition to nutrients, the organic matter of the litter needs to be used in areas to improve the soil.

COMMENTER: Paul Beyer, Fluvanna County

COMMENT: In addition to nutrients, the organic matter of the litter needs to be used in areas to improve the soil.

COMMENTER: Carol L. Turner, S&C Poultry Inc., Rockingham County

COMMENT: Poultry Waste is beneficial when used to enrich our soils in the mountain regions to make them productive for pasture and for growing hay.

COMMENTER: John Quantz, Alleghany County Farmer

COMMENT: My name is Richard Baltimore and I have a working family cattle farm located in Cumberland County. As a steward of my land and water resources, I regularly take soil/water samples and utilize litter for fertilization and soil amendment where it would be appropriate and beneficial, and can be safely applied.

COMMENTER: Richard Baltimore, Cumberland Cattle Farmer

COMMENT: I have a family farm located in Allegany County. I have used this product on fields that are not close to any water source in an effort to achieve the nutrient benefits but to also build up the soil.

COMMENTER: Wendell Jones, Allegany County Farmer

COMMENT: I have a family farm located in Rockingham County. We annually use poultry litter from neighboring farms as fertilizer on our fields.

COMMENTER: Paula Craun, Rockingham County Farmer

RESPONSE: DEQ acknowledges these comments and agrees that poultry litter can be a beneficial organic soil amendment when used in accordance with the regulations. ***No changes are being proposed based on these comments.***

GC-11 Subject: New Proposed Reporting Requirements-Add County - Supportive to Require

COMMENT: The TAC did reach consensus in adding a requirement that poultry waste transfer records include the destination locality for the waste. During the second TAC meeting, DEQ staff stated identification of the county or locality where poultry waste would be utilized by end-users would be beneficial to refining DEQ's existing data reporting to the Bay program. We support this new requirement.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation

Frank Baber, Cumberland County Poultry Grower

COMMENT: Proposed change: Add "county" as a new item to the poultry waste transfer data recordkeeping. VPF comment: During the TAC process, DEQ staff stated identification of the county or locality where poultry waste is utilized by end-users would be beneficial to refining DEQ's existing data reporting to the Bay program. We support this new requirement.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed based on these comments.***

GC-12 Subject: New Proposed Reporting Requirements-All - Not-Supportive to Require

COMMENT: In conclusion, we oppose the new annual reporting requirements proposed for poultry growers and poultry waste end-users. We also oppose any effort to require reporting of poultry litter amendment use.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: I, Mary Jane Martin, am a smaller scale commercial poultry grower from Weyers Cave, VA, where I have farmed responsibly for sixteen years. I have done my best to be a good steward of the environment, following all local, state, and federal regulations, as well as the laws of common decency. It is not easy to keep any type of agriculturally based business profitable, as there are numerous vulnerabilities, many of which are unpredictable and/or beyond our span of control. Government regulations, based and developed primarily on the "demands" of interest groups, should not be yet one more threat to our livelihood and existence.

Adopting this new regulation will take us from a situation in which poultry litter is an asset to the grower, the end-user, and the environment, to one in which litter is not worth the hassle to the end-user, a fiscal liability to the grower, and a dual threat to the environment. It makes special interest groups and government bodies feel good to be able to point to a new regulation and say, "Look, I did something to help the [fill in the blank]." But, if that "something" is lacking scientific evidence of efficacy, is superfluous, and totally useless, it is simply grandstanding and pandering. In this case, in addition to being all of those things, it will actually cause more of the damage it is trying to mitigate.

For the good of the citizens of the Commonwealth of Virginia and the environment, I respectfully request that the DEQ not adopt this new and damaging regulation as a VPA General Permit for Poultry Waste requirement.

COMMENTER: Mary Jane Martin, Augusta County Poultry Grower

COMMENT: Virginia Farm Bureau Federation (VFBF) takes this opportunity to submit comment pertaining to the Department of Environmental Quality's (DEQ) proposed changes to 9VAC25-630 the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management. VFBF is the largest farm membership organization in Virginia. We represent nearly 30,000 farmers across the entire state, many of whom are poultry growers, poultry litter brokers and poultry waste end-users. VFBF appreciates the opportunity to participate on the Technical Advisory Committee (TAC) DEQ named to provide input into its review of this regulation and general permit. As stated previously during the Notice of Intended Regulatory Action phase of this review, we believe no substantive changes to the regulation and general permit are necessary to maintain water quality improvements attributed to this program.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: I appreciate the opportunity to offer comments on the changes proposed to the Virginia Pollution Abatement Regulation on behalf of the Virginia Agribusiness Council, a trade association representing the agriculture and forestry industries. I was honored to have been asked to serve as a member of the Department of Environmental Quality's Technical Advisory Committee (TAC) on poultry litter waste management. While there are positive aspects of the proposed permit, the Council is opposed to new end-user reporting requirements contained in the submission by the Department. We are also opposed to any amendment to the permit requiring litter amendment reporting by growers.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

COMMENT: Farmers are committed to being strong environmental stewards, but imposing regulatory requirements without any real justification is not the way to achieve progress. I strongly urge you to reject these new proposed reporting requirements.

COMMENTERS: Respondents to Farm Bureau Action Alert (Table A)
Bruce Stanger, Montgomery County Cattle Farmer

COMMENT: Farmers are committed to being strong environmental stewards, common sense DEQ reporting requirements are essential to building the public trust. However reporting requirements should only cover the basics of the public's right to know.

COMMENTER: Tom Hall

COMMENT: The Shenandoah Valley Soil and Water Conservation District (SVSWCD) works closely with poultry producers in Rockingham and Page Counties to provide technical and financial support for best management practices including practices that help producers address waste management on their operations. Many of the producers we support are covered under the VPA General Permit. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. The SVSWCD is committed to supporting sound environmental stewardship that protects water quality in a practical and cost-effective manner. We are concerned that these requirements could be detrimental to our attempts to clean up the Chesapeake Bay and ask that the Department and State Water Control Board approve a regulation without these new burdensome requirements that upend the reasonable balance that has made this program a success for water quality protection.

COMMENTER: Kevin Craun, Chairman, Shenandoah Valley Soil and Water Conservation District Board

COMMENT: I am writing in response to the VPA General Permit for Poultry Waste proposal. My name is Kimberly Croft and I am President of Big Oak Farms in Stanley, VA. We, as poultry growers and farmers, are concerned about the environment. Our livelihood depends on it. We feel that the present reporting system is adequate and more would just be more cumbersome to the local farmer. Thanks for listening.

COMMENTER: Kimberly Croft, President, Big Oak Farms, Page County

COMMENT: I am opposed to adding more red tape to nutrient applications. It's almost to the point of needing a full time person to keep up with all the paperwork. Please keep in mind that nutrient are too valuable to over-apply.

COMMENTER: James Messick, Fauquier County Farmer

COMMENT: Our farm is committed to sound environment stewardship that protects water quality in a practical and cost-effective manner. We ask that the department and State Water Control Board approve a regulation without these new burdensome requirements that upend the reasonable balance that has made this program a success for water quality protection. Thank you.

COMMENTER: Rodney Wagner, Green Valley Poultry Farm, Washington County Poultry Grower

COMMENT: My farm is committed to sound environmental stewardship that protects water quality in a practical and cost-effective manner. We ask that the department and State Water Control Board approve a regulation without these new burdensome requirements that upend the reasonable balance that has made this program a success for water quality protection.

COMMENTERS: Wayne Merrill, Fox Creek Farm, Inc. Orange County Farmer
Ernest Ambler, Amber-rillo Farm Inc., Augusta County Poultry Grower
Jeffrey E. Thomas, Blue Rock Farm, Inc. Page County Poultry Grower
Rob Preston, Preston Hills Farm, Rockingham County Poultry Grower
JT Anderson, Pineview Farm, Goochland County Poultry Grower
Kate Anderson, Pineview Farm, Goochland County Poultry Grower
Thomas Thacker, Augusta County Poultry Grower
Vincent A. Wolford, Rockingham County Poultry Grower
Brett Washington, Washington Farms, Inc. Louisa County Poultry Grower

Chris Turner, Carlton Turner Poultry, Page County Poultry Grower
Sandra K. Rumer, Smokey Valley Farm, Inc. Rockingham County Poultry Grower
David Beery, Rockingham County Poultry Grower
Joseph Turner, Page County Poultry Grower
Forest N. Atwood, Pass Run, Page County Poultry Grower
Myron Reedy, Reedy Farms, LLC., Rockingham County Poultry Grower
Rex A. Sours, Rex Sours, LLC., Page County Poultry Grower
Anna Housden, Living Country Farm, LLC., Page County Poultry Grower
Michael Scott Housden, Page County Poultry Grower
Vicki Dinges, Page County Poultry Grower
Russel J. Wenger, Augusta County Poultry Grower
Kimviet Ngo, Accomack County Poultry Grower
Tri Nguyen, Accomack County Poultry Grower
Dustin Wenger, Rockingham County Poultry Grower
Kathy Kagey, V&K Farms, Shenandoah County Poultry Grower
VLD Kagey, V&K Farms, Shenandoah County Poultry Grower

COMMENT: I have a family farm located in (Fauquier). As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. We do not want additional regulations that do nothing but increase the cost of doing business.

COMMENTER: Lewis Ray, Fauquier County Farmer

COMMENT: Please allow us to continue to operate under the current regulations and permits and inspection requirements. Further government intrusions will not be helpful. Thank you for your consideration.

COMMENTER: Lareth L. May, May Poultry Farm, Rockingham County

COMMENT: As a Virginia resident, I am writing to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. Additional reporting requirements have the potential to set a precedent that could affect all Virginia producers utilizing crop nutrients in the future. Please reject these proposed reporting requirements.

COMMENTER: Richard Newell

COMMENT: We are committed to sound environmental stewardship that protects water quality in a practical manner. Please approve a regulation without these new burdensome requirements that could in fact create more water quality issues!!! Thank you.

COMMENTER: Gerald Wenger, Hillside Poultry, LLC, Rockingham County Poultry Grower

COMMENT: I am against any new regulations concerning poultry waste. We on the Delmarva are doing our part. Until New York and Pennsylvania do their part, I am not in favor of doing anything.

COMMENTER: Brantley T. Onley, Accomack County

COMMENT: I have a family farm located in Spotsylvania County. I am not a poultry farmer however I would not want to be required to adhere to these types of mandates if they were being imposed on me as a beef farmer.

COMMENTER: Nancy Biscoe, Spotsylvania County Cattle Farmer

COMMENT: I've raised poultry for over 30 years. I Give, No Charge my poultry litter to my neighbor, have for over 30 years! He's got four farms he can't even begin to cover all of his fields!! DEQ already know this information, Leave it alone!!! Keep fooling around and you are going to lose these END USERS!! Hell my Nitrogen level isn't but like 34%. So leave these people alone, For whatever its worth we're both in our late 60's so it would be pretty easy to sell to developer's! Thanks! Have a good day!

COMMENTER: Dennis Wilkins, Rockingham County Farmer

COMMENT: Even though 90% of my farming operation is located outside of the Chesapeake bay watershed, this regulation would greatly affect my operation with unnecessary burdens.

COMMENTER: Nicholas Moody, Dinwiddie County Farmer

COMMENT: I have a family farm located in Nottoway County. I'm sick and tired of extra regulations on this type of thing when it is already able to be captured elsewhere.

COMMENTER: Billy Borum, Nottaway County

COMMENT: Remember most of the farmers are mostly small operations often only the farmer himself. These added reporting requirements on a one operation are onerous at least.

COMMENTER: Wendell Jones, Allegany County Farmer

COMMENT: Tyson believes it is important that everyone works together to protect water quality in a practical and cost-effective manner. This is a part of being good stewards of the environment. Tyson would ask the department and State Water Control Board approve a regulation without these new burdensome requirements and impact the balance that has made this program a success for water quality protection. Thank you for your time and attention to our comments on this issue.

COMMENTER: Kendra Jones, Tyson Farms, Inc.

COMMENT: I have a family farm located in Powhatan as well as farmland in Buckingham. At this time, I have not utilized poultry litter, but I believe the proposed new regulations are onerous and without any proven benefit.

COMMENTER: Barbara Person, Family Farm in Powhatan and Buckingham, VA

COMMENT: I have a family farm located in Rockbridge COUNTY. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. I use poultry litter to improve my hay lands. I am concerned that additional regulations will decrease the application of litter. This will contribute towards more manufactured fertilization and greater water pollution potential (both chemical nutrient run-off and litter disposal problems)

COMMENTER: William Braford, Family Farm in Rockbridge County

COMMENT: I have a family farm located in Accomack County. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. We already supply this information on annual report.

COMMENTER: Fred Holland, Permitted Poultry Grower in Accomack County

COMMENT: As a producer, grower and concerned citizen of Virginia's beautiful and naturally rich Eastern Shore, I urge the DEQ to reject the proposed amendments.

COMMENTER: Chip Turlington, Turlington Farms Inc., Chancetown, on Virginia's Eastern Shore

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. § 62.1-44.17:1.1. of the Code of Virginia, mandates that DEQ track information related to poultry waste transfers. In addition, the poultry waste transfer data is reported to the Chesapeake Bay Program Office of EPA in order to receive credit each year for moving poultry waste out of the watershed. Unfortunately, DEQ does not have the staffing resources to acquire the transport data from permittees and end-users on a yearly basis via another method. The new reporting requirements will significantly improve the timing and receipt of the poultry transfer data from end-users and permitted growers and facilitate DEQ's reporting to EPA for credit in the Bay model. These improvements to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III.

After analyzing the comments and determining what information the department needs to ensure compliance with the regulation and what is necessary for receiving credit in the Bay model through the reporting of poultry waste transfer data to the Chesapeake Bay Office of the EPA.

Staff determined that a better option to reporting all land application records and supporting documents (as previously required in the proposed language) would be to instead require the end-user to report (in a phased in reporting timeframe): poultry waste transfer records; the method they used to determine the land application rate; and the county where the waste is being utilized.

This alternative strikes a balance for obtaining the information related to poultry waste transactions and a subset of important land application information while reducing the reporting burden and the concerns related to the release of private and personally identifying information contained in the specific land application records and supporting documents. This option will provide the department with the necessary information in a timely manner while not compromising the privacy and personal identifying information that is protected by the Department of Conservation and Recreation through exemptions in the Freedom of Information Act, and protected by Federal branches of the United States Department of Agriculture.
The following changes are being proposed based on these comments. Section 70, Tracking and Accounting Requirements for End-Users is being revised to report the following items to the Department in a phased in timeframe:

1. ***poultry waste transfer records,***
2. ***the method the end-user used to determine the land application rate, and***
3. ***the county where the waste is being utilized.***

GC-13 Subject: Water Quality

COMMENT: I am writing about the poultry VPA permit. I live in Rockingham County and my nearest neighbor has large turkey buildings. Both our properties border and run uphill from the Middle and North Rivers. Any fertilizer, including poultry litter, that sits on my neighbor's fields either seeps below ground into aquifers located in karst terrain or flows downhill to the river and on to the Chesapeake Bay. My water supply is from our well which taps into those aquifers. Water quality in Rockingham County is an ongoing problem. Thanks to the VA Tech Extension Service testing program, we are able to identify and quantify what's in our water that isn't safe. Currently we must use 4 filtering systems to have potable water.

COMMENTER: Joy Loving

COMMENT: I live on the South Fork of the Shenandoah River in Page County. I share the Shenandoah Valley with 175 million chickens and turkeys. I have been recreating on the South Fork of the Shenandoah River for over 50 years. In the last twenty years I have observed multiple smallmouth bass die offs and a significant decrease in water quality. The South Fork of the Shenandoah is experiencing excessive nutrient load, much of which is caused by current poultry waste management practices and as a result the South Fork of the Shenandoah is plagued with blue green algae. The blue green algae is always there visible, lurking on the river bottom. In the summertime as days lengthen and air and water temperatures increase the growth of blue green algae can be explosive. Long stringing masses of blue green algae interfering with recreational activities such as canoeing and fishing. Algal mats floating down the river and lodging on rocks, limbs and the riverbank. Sometimes the ammonia like odor is overwhelming. You can feel it in your eyes, smell it in your nose and taste is your mouth. The blue green algae chokes out desirable aquatic plants such as stargrass and wild celery which serve as habitat and nursery for many species of fish and aquatic insects. The current management of poultry litter in the Shenandoah Valley needs improvement.

COMMENTER: Frank Filipy

COMMENT: Stronger permits for poultry operations protect both air and water quality.

COMMENTER: Jan Dillard

COMMENT: I currently live in the Shenandoah Valley and also own property (a native) and live part time on Virginia's Eastern Shore. I have lived in and around poultry operations all of my life. I have seen firsthand the degradation of local waters by poultry producers.

COMMENTER: Jane Smith

COMMENT: The poultry industry has grown dramatically on the Eastern Shore of Virginia and in the Shenandoah Valley in the past decade as has the waste the birds produce This litter leads to increased pollution risks for waterways as well as ammonia air emissions that are overtaking both car emissions and power plants as the largest air source of nitrogen deposits to the Bay. The State Water Control Board must take steps necessary to protect Virginia's air and waterways with a stronger poultry permit. I support a stronger poultry permit to protect our air and water while still expanding the positive economic impact of poultry producers in our state.

COMMENTER: Catherine Lukaszewicz,

RESPONSE: DEQ believes that the proposed regulation and general permit is protective of State Waters, both surface and ground. The strict conditions that regulate storage and nutrient management ensure that the nutrients that are in poultry litter are managed and utilized to prevent runoff and leaching. ***No changes are being proposed based on these comments.***

GC-14 Subject: Technical Advisory Panel (TAC) Process

COMMENT: This was my first time participating on the Virginia Technical Advisory Committee (TAC) that was formed in February of 2019 to review this regulation. I appreciate that opportunity, but we are very concerned with the TAC process, several proposed changes, recommendations that were not added, recommendations that should not be added and the myth of substantial growth in the chicken community. In working in other states, I was very impressed by this method to solicit feedback from stakeholders. As I understand it, anyone could volunteer to be part of the TAC, and there was an internal process within DEQ to be sure that a representative mix of stakeholders was included, from farmers, growers, state agencies, NGOs and trade associations. I attended three out of four meetings, including the special meeting that was called after the members thought the TAC had been concluded, driving seven hours round trip to the Richmond area. The DEQ staff were very professional and prepared, taking detailed minutes and sharing information well ahead of time for review. The meetings were also well conducted, allowing all participants to be engaged and share thoughts and allowed DEQ to gauge the general recommendations from the participants. Therefore, I was extremely disappointed when the draft regulations were presented and the changes that the majority of TAC members agreed on were not included, and that new proposals were added by the Administration that were agreed were not needed. I have to question the purpose of having a TAC when the recommendations and suggestions by key stakeholders and were clearly noted in the minutes, were not accepted?

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: Thank you for the opportunity to be a TAC participant. We appreciate this opportunity to provide this and previous comments on the proposed regulation and general permit. We look forward to your consideration.

COMMENTER: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation

COMMENT: Problems with TAC Process - During this public comment period, it has been said that the TAC is simply an advisory committee, and the majority opinion does not guarantee an outcome; however, to ensure a high level of participation and productive discourse, stakeholders must have confidence in the TAC process. Candidates nominated from the both public and private sector for the TAC were vetted for their knowledge and expertise before being approved by DEQ staff and management for TAC membership. Ignoring TAC recommendations and responses disregards the public value of the TAC process.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Barber, Cumberland County Poultry Grower

COMMENT: While we are apprehensive about several aspects of the proposal, we have a major concern about the end-user reporting requirement. Our comments will address this and other

substantive changes as well as some issues not included in the proposal but discussed by the TAC. At the outset, we would like to express a concern about the TAC process. Overall, the Department of Environmental Quality (DEQ) staff managed the process professionally and efficiently. However, concerning an end-user reporting requirement, the vast majority of the TAC was opposed and it seemed during the TAC meetings that DEQ was going to pursue technological solutions to allow the capture of data through growers and poultry litter brokers rather than a method harmful to the transfer of litter and Chesapeake Bay restoration goals. Given the prevailing sentiment of the TAC and no apparent desire for end-user reporting among DEQ staff, we question the sudden appearance of an end-user reporting requirement.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

RESPONSE: DEQ appreciates the time and valuable input provided by the Technical Advisory Committee (TAC) during this process. The TAC was formed to assist the Department in the development of a proposed regulation while balancing the concerns of all those interested in this regulation. The role of a TAC is advisory only. The group's primary responsibility was to collaboratively contribute to a regulation that is in the best interests of the Commonwealth, as a whole. The group's goal was to reach a consensus on a proposed regulation and make recommendations to the Department and Board.

In this regulatory and public policy area, consensus is defined as a willingness of each member of a group to be able to say that he or she can live with the decisions reached and will not actively work against them outside of the process. This is not to say that everyone will be completely satisfied by the results of the process. It is necessary; however, that each participant comes prepared to negotiate in good faith around complex and sensitive issues. And because the group represents many different interests, all members should expect to compromise in order to accomplish the group's mission. Voting, per se, is contrary to a consensus-based process, but during this process members were asked to demonstrate their strength of feeling for or against a particular idea, and were asked to help set priorities during the course of the process.

There were multiple issues regarding which the TAC did not reach consensus, and in these cases the Department staff presented the differing opinions to Department management for a recommendation, and ultimately to the State Water Control Board for their consideration.

DEQ staff believes that while there may be frustration at the end of this process, the advisory groups are essential to the development process of proposed regulations. ***No changes are being proposed based on these comments.***

GC-15 Subject: Ammonia Monitoring

COMMENT: Require ammonia monitoring at large concentrated poultry operations to provide a better sense of how much ammonia is emitted by these sources. This would help characterize the nitrogen load attributable to the deposition of local ammonia emissions.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE: The State Water Control Law, specifically Section 62.1-44.17:1.1 of the Code of Virginia authorizes the State Water Control Board to develop a regulatory program known as the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management 9VAC25-630-10 et seq. Section 62.1-44.17:1.1 of the Code of Virginia requires the development and implementation of nutrient management plans for any person owning or operating a confined poultry feeding operation; provides for waste tracking and accounting; and ensures proper storage of waste consistent with the terms and provisions of a nutrient management plan. There are no provisions included in Section 62.1-44.17:1.1 of the Code of Virginia to authorize the State Water Control Board to include ammonia emission monitoring or other conditions related to ammonia air emissions in 9VAC25-630-10 et seq. ***No changes are being proposed based on this comment.***

GC-16 Subject: Miscellaneous

COMMENT: Chicken droppings = salmonella. Improper disposal safety means DANGEROUS water pollution!

COMMENTER: Elaine Fischer

COMMENT: We ALL need Clean Air and Clean Water!

COMMENTER: Elaine Becker

COMMENT: Regarding the poultry VPA permit, As the environment and natural resources deteriorate, per scientific reporting, we are realizing we have an obligation to actively and continuously exercise stewardship so environmental quality of the U.S., and the entire planet for that matter, is sustained for future generations. Let us employ all reasonable means toward comprehensive environmental stewardship.

COMMENTER: Alan Partin

COMMENT: I have a family farm located in Spotsylvania County. I am the second of four generations to farm our land. Dad started farming in the mid 40's. We started out as a dairy farm and have transitioned to an on farm market featuring produce that we grow on our farm.

COMMENTER: Wayne Miller, Family Farm in Spotsylvania County

COMMENT: Also would like to thank the local DEQ for their workability to this present time !!

COMMENTER: Gerald Wenger, Hillside Poultry, LLC, Rockingham County Poultry Grower

COMMENT: I live in Cartersville and grow for Hendrix ISA. After much thought I support Virginia Farm Bureau's response to the proposed rule changes. Their committee has put in a lot of time, effort and thought to the changes.

COMMENTER: Frank Baber, Cumberland County Poultry Grower

COMMENT: We are a small family farm in Rockingham County and have been raising poultry for 41 years. We raised our 4 children here and are now sharing farming responsibilities with our grandchildren. We value working the land and providing an excellent organic product to the public. Being responsible farmers, which includes caring for our environment, is our highest priority.

COMMENTER: Kerry Maloney, Rockingham County Farmer
Geri Maloney, Rockingham County Farmer

COMMENT: To protect and improve the environment for all Virginians' is the mission statement of Virginia's DEQ. It is hard, therefore, to understand what has been permitted on the Eastern Shore. We fear, not only for the Bay, but our ground water, air, property values, health and economic opportunities. I wrote our local Accomack County board in 2/14 of these concerns after doing some research and given some lay experience over decades with wetlands. So, I'll let the rest of this pre- crafted response play, but the only way i know of to 'handle' the excess amount of manure, is to produce less and to do away with industrialized meat production in favor of a sustainable method asap.

COMMENTER: Ann Violi

RESPONSE: DEQ acknowledges these comments. ***No changes are being proposed based on these comments.***

COMMENT: I am not a poultry producer. I have been a produce grower for 35 years. Regulations are the new normal in the farming food production community. In the produce business we have to keep records of everything we do right down to how many times we sanitize field knives during the day. We are required to have a USDA inspection of the farm and records annually and periodically through the season at about $900 per annual inspection. The impact of the poultry CAFOs on the Eastern Shore is great and to my understanding the Seaside of the Shore is not affected by the Chesapeake Bay program, hence it is more unregulated. I don't see any good reason why poultry manure handlers should not be required to keep the best possible records and inspections of the manure spreading process. Self regulation is not adequate.

COMMENTER: John Johnston, Pickpenny Produce, LLC, Accomack County

RESPONSE: This regulation and general permit contains strict conditions and requirements for all poultry operations across the state. These conditions and requirements do not change based on the location of the operation, poultry waste end-user or poultry waste broker, no matter if the

operation or entity is located in the Chesapeake Bay watershed or outside of it. Since 2000, the current regulations have included requirements for detailed recordkeeping related to poultry waste transfers and the land application of poultry waste and the recordkeeping and reporting of the detailed records by poultry waste brokers. The proposed regulation and general permit includes the reporting of the detailed records by the owners of permitted poultry operations and poultry waste end-users and poultry waste brokers. ***No changes are being proposed based on this comment.***

COMMENT: We are concerned about an ongoing lack of transparency with respect to the ultimate destination and application rate of most Virginia poultry waste, and we are also concerned about ongoing over-application of phosphorus. As you may know, our organization periodically writes reports on poultry waste management problems in Virginia. In 2017 we released a report entitled "Water Pollution from Livestock in the Shenandoah Valley" (hereinafter "2017 report," attached). Earlier this year we released a report entitled "Poultry and Manure Production on Virginia's Eastern Shore" (hereinafter "2020 report," attached). Our 2017 report included several observations and conclusions with direct bearing on the VPA permit:

Based on these observations, we recommended the following (among other things):

1. The state should require NMPs for all farms that spread poultry waste.
2. Soil nutrient concentrations should be sampled every year.
3. Phosphorus applications should be prohibited at a lower threshold; for example, manure and litter applications could be prohibited on soils with more than 55 ppm phosphorus.
4. The state should require annual reporting of manure applications and crop yields.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE:

1. In accordance with section 9VAC25-630-10 et. seq., all permitted entities are required to submit and implement a nutrient management plan (NMP). Other non-permitted poultry waste users (end-users) are required to follow the technical requirements found in section 70 and 80 of 9VAC25-630. These technical regulations specify the establishment of the land application rate, by one of four options which includes an NMP, soil test recommendations, a standard rate of 1.5 tons/ acre only once every three years, or by using the Phosphorus crop removal method. In the majority of cases, the options alternative to an NMP would prescribe nutrient application rates that would be less than those that could be prescribed in an NMP. Each of these options are agronomically and environmentally sound options that ensure appropriate land application rates.
2. The permit requires that soil sampling and analysis at land application sites be completed once every three years. The permit also provides for additional monitoring if the nutrient management plan requires a greater frequency of soils analysis. The frequency of once per three years is based on sound agronomic practices that are typical for land application of organic sources of nutrients. Organic sources provide a slow release of nutrients over time and typically, the nutrient content does not change dramatically between years one, two and three.
3. The Department of Conservation and Recreation (DCR) has the authority over the regulations that govern nutrient management plan (NMP) requirements. The DEQ regulations covering Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs) require the owner of the AFOs and CAFOs to obtain and implement an NMP. The NMP regulations already establish an environmental threshold above which phosphorus may not be land applied. The requirements related to the use of the P-Index are not within the scope of § 62.1-44.17:1.1. of the Code of Virginia.

   The end-users of poultry litter that land apply litter are governed by the technical requirements found in section 80 of 9VAC25-630. The technical regulations specify the establishment of the land application rate, by one of four options which includes an NMP, soil test recommendations, a standard rate of 1.5 tons/ acre only once every three years, or by using the Phosphorus crop removal. These technical regulations already specify the same environmental threshold found in

the DCR regulations for Phosphorus when using the Phosphorus crop removal land application rate. Each of the four options are agronomically and environmentally sound options that ensure appropriate land application rates.

4. The current permit requires the permitted entities to maintain recordkeeping related to land application and crop yields. DEQ inspectors inspect these records during each inspection. The proposed regulation requires that all poultry waste end-users report the land application records annually. Additionally, the regulation already provides that DEQ staff can request these records at any time.

No changes are being proposed based on these comments.

COMMENT: Our 2020 report focused on Virginia's Eastern Shore, and came to similar conclusions:

- Most poultry operations in Accomack County export their poultry waste.
- Most of the exported poultry waste stays in Accomack County.
- Accomack County poultry operations generate much more phosphorus than local crops – frequently growing on soils that are already saturated with phosphorus – can take up, meaning that phosphorus is being over-applied in Accomack County.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE:

- There are currently 84 permitted poultry operations in Accomack County and two (2) permitted poultry operations in Northampton County. In both counties, several of the registered farms are no longer raising birds and do not intend to in the future. There are no new DEQ permit applications for new facilities for either of the counties on the Eastern Shore.
  - EIP reported that there were 83 farms permitted in Accomack County.
  - EIP reported that there are another 19 houses permitted by the Accomack Planning Commission not yet built.
- In Accomack County, 79 of the 84 permitted operations transfer their poultry waste off-site and five (5) permitted poultry operations land apply more than 5,515 tons of their poultry waste on more than 12,578 acres.
  - EIP reported that only one farm applies manure to its own fields.
- The 86 permitted farms on the Eastern Shore generate approximately 133,017 tons of poultry waste. The NMPs are written as transfer plans which would mean that approximately 127,501 tons of waste is available to transport off-site. Changes in waste management over the last couple of years has led to more poultry waste being reconditioned and reused inside the poultry growing houses. This means that the poultry waste is used for longer periods of time in the growing houses and results in less poultry waste being produced and removed from the growing houses and less waste being transported off the farm of generation.
  - EIP reported that 137,000 tons is produced in Accomack County alone.
- According to DEQ records of poultry waste transfer records obtained during inspections, between January 1, 2017 and December 31, 2019 there was a total of 61,167 tons of poultry waste transferred from the permitted farms on Virginia's Eastern Shore. During this period, poultry waste has been transported to other farms in Accomack, Northampton, and out of state to Delaware, Maryland and Pennsylvania.

Receiving Location	Generation Location	Total	Percent of Total Waste Transferred
Accomack	Accomack	36,665	60.4
	Northampton	309	

Receiving Location	Generation Location	Total	Percent of Total Waste Transferred
Northampton	Accomack	4,679	8.4
	Northampton	510	
Maryland, Delaware, Pennsylvania	Accomack	19,004	31.1
Total Transferred – Eastern Shore Farms (January 1, 2017-December 31, 2019)		61,167	

- EIP states that the majority of the generated waste is moved to other farms in Accomack County.
- EIP states that less than half of one percent (about 600 tons) was exported to Northampton County. In fact, 4679 tons were exported from Accomack to Northampton.
- In contrast to the remarks made in the EIP report, poultry waste was not transferred to Fairfax, Virginia or North Carolina.

No changes are being proposed based on these comments.

COMMENT: Include more explicit enforcement mechanisms to incentivize compliance, level the playing field, and achieve the environmental protection goals of the permit.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE: The agency procedures for compliance and enforcement of permit requirements are outlined in agency guidance; these procedures are not included in permit regulations. ***No changes are being proposed based on this comment.***

Specific Section Comments (SC)

SC-1a Subject: Section 50-Part I - Permitted Poultry Grower Poultry Waste Transfer Reporting – Supportive to Require

COMMENT: Regarding the annual reporting by growers, I think that's actually a good idea. In all honesty the way it works now is that when Kevin, our local DEQ rep calls me and says it's inspection time I scramble and call the farmer who got my manure and he digs the info out of the pile on his desk of how many tons were spread where and when and we get together and fill out the paperwork usually a day or two before I have to meet with Kevin. We're in a constant state of triage on the farm, taking care of who or whatever is screaming the loudest at any given moment. If the reporting was due at a specific time each year it would force us to keep up with it better. I would suggest that the reporting date be around April 1st. Many farmers have to file taxes by March 1st so it would be extremely hard to get it done by March 1st but with taxes out of the way it wouldn't be too hard to get it done before April 1st and the beginning of planting season at which time the desk becomes something you just toss stuff on for a couple of months until the "real" work slows down enough to let you get back to it.

COMMENTER: Dave Lovell, Old Mill Farms, Accomack County Farmer

COMMENT: I am now just as I was during the meeting a big advocate of requiring we as growers to report yearly our litter application and transport records. The Covid crisis has shown it's not too difficult to relay that info to DEQ. Normally I have a yearly visit from my friendly neighborhood DEQ employee but this year we did it electronically with no issues. Unlike other comments I've heard we Poultry Farmers are a pretty intelligent bunch, we run houses that are controlled with computer systems so I believe we are very capable of reporting the actions we take. Yearly reporting would allow us to better report to the bay model the progress we as growers and the state are achieving.

COMMENTER: Kevin Dunn, Poultry Grower in Buckingham County

RESPONSE: DEQ acknowledges the support. ***No changes are being proposed based on this comment.***

SC-1b Subject: Section 50-Part I - Permitted Poultry Grower Poultry Waste Transfer Reporting – Not-Supportive to Require

COMMENT: I have a family farm located in Nottoway County. Our way of reporting has worked for many years. Changing it could lead to abuses. Leave it alone.

COMMENTER: Edward Mullins

COMMENT: I am also opposed to new reporting requirements for permitted poultry growers. DEQ already has the ability to capture this information during farm inspections.

COMMENTERS: Respondents to Farm Bureau Action Alert (Table A)
Bruce Stanger, Montgomery County Cattle Farmer

COMMENT: I am also opposed to new reporting requirements for permitted poultry growers. DEQ already has the ability to capture this information during farm inspections. There is no need to further burden producers with costs that could drive up the cost of food to the consumer.

COMMENTER: Richard Newell

COMMENT: Under Part I. C. Poultry waste transfer and utilization requirements, we oppose the following:

3. Transfer records reporting requirements. The grower shall submit the records required by Part I C 1 in accordance with the timing outlined in Part I C 3 a and b.

a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the grower shall submit the records in a format and method determined by the department.

b. Beginning (insert the date two years after the effective date of this permit), the grower shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

DEQ currently has authority to review records mentioned above and collect information from the records during inspection of permitted poultry grower operations. DEQ currently has authority to

request permitted poultry growers provide this information in a format and time period stipulated by DEQ and has had the ability to do so for the past 20 years. It is evident that this has been effective, as this request method has been used previously by DEQ during avian disease outbreaks to access the information while observing enhanced state and industry biosecurity measures. Contrarily, DEQ lacks the resources and mechanisms necessary to facilitate grower reporting, and we believe the agency can adjust its current data collection timeframe to improve its timeliness of data reporting to the Chesapeake Bay Program. For these reasons the TAC did not reach a consensus recommending poultry growers submit transfer records. As such, the TAC did not discuss data privacy concerns resulting from DEQ's mass collection of reported transfer information which represents poultry growers' private and proprietary customer lists. We are concerned that once DEQ has assembled this proprietary information it will not be protected from Freedom of Information Act (FOIA) and be available to the public, including both persons interested in disrupting poultry waste transfers or harassing end-users, as well as poultry litter brokers and other poultry growers competing for poultry waste end-user clients. The agricultural industry, law enforcement, national security and intelligence communities are increasingly concerned about terrorism and other attacks against agriculture, related biosecurity and cybersecurity, and associated risks to national security. Intentional and unintentional data releases and data theft threaten the privacy of confidential data which can and has been used against an individual or group of farms. Platforms already exist to collect and publish confidential information belonging to individual farms for sale or distribution for any third-party use. In addition, DEQ did not present the TAC any format or method for growers to report their information annually. In many rural communities, it is not so easy to simply hit send on an email or stick a stamp on an envelope. We are concerned the format and method eventually selected by DEQ may prove burdensome for individuals with limited internet access due to limited internet provider capacity, or no internet access due to religious beliefs, income level or comfort with technology. Mailing printed copies is a low-tech method of reporting the information but will prove time consuming for both growers without copier access and DEQ which will be required to enter the data into some digital framework yet to be designed and tested.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: I am currently a poultry farmer in Mecklenburg County, VA and a user of poultry litter. I believe that the proposed changes to the DEQ requirements and to the VPA General Permit for Poultry Waste and unnecessary and will be detrimental to me and to the poultry industry. Poultry growers already submit their records of litter removal and distribution to the DEQ during their annual visit and I feel that it is redundant to have to submit is again, We also have a nutrient management plan that we follow so we use our litter properly. This can all be tracked with information that is given to the DEQ now. I use my poultry litter and if I was not able to do so the cost of chemical fertilizer would put me out of business and with these new proposals I might also have a hard time getting rid of the litter from my poultry farm which would be another problem for me. I have been a farmer for many years and believe in doing what is right but having so many rules and impossible to follow regulations I believe it will be impossible for farmers to keep growing food for our people to eat. Thanks for your attention to this matter.

COMMENTER: Tracey Inge, Mecklenburg County Poultry Grower

COMMENT: The requirement of sending in additional paperwork to an agency that does not have the administrative staffing support to properly utilize the data, is not good for growers or DEQ. DPI opposes the additional reporting by growers of waste transfer records annually. DEQ currently collects that information during inspections and we would encourage the agency to continue this method.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: We also oppose the new litter transfer reporting requirements for permitted poultry growers as we feel that DEQ can more effectively capture this information during farm inspections as they have been doing.

COMMENTER: Kevin Craun, Chairman, Shenandoah Valley Soil and Water Conservation District Board

COMMENT: I also oppose the new litter transfer requirements for permitted poultry operations because DEQ can more effectively get this information during DEQ farm inspections.

COMMENTERS: Rodney Wagner, Green Valley Poultry Farm, Washington County Poultry Grower
Wayne Merrill, Fox Creek Farm, Inc. Orange County Farmer
Ernest Ambler, Amber-rillo Farm Inc., Augusta County Poultry Grower
Jeffrey E. Thomas, Blue Rock Farm, Inc. Page County Poultry Grower
Rob Preston, Preston Hills Farm, Rockingham County Poultry Grower
JT Anderson, Pineview Farm, Goochland County Poultry Grower
Kate Anderson, Pineview Farm, Goochland County Poultry Grower
Thomas Thacker, Augusta County Poultry Grower
Vincent A. Wolford, Rockingham County Poultry Grower
Brett Washington, Washington Farms, Inc. Louisa County Poultry Grower
Chris Turner, Carlton Turner Poultry, Page County Poultry Grower
Sandra K. Rumer, Smokey Valley Farm, Inc. Rockingham County Poultry Grower
David Beery, Rockingham County Poultry Grower
Joseph Turner, Page County Poultry Grower
Forest N. Atwood, Pass Run, Page County Poultry Grower
Myron Reedy, Reedy Farms, LLC., Rockingham County Poultry Grower
Rex A. Sours, Rex Sours, LLC., Page County Poultry Grower
Anna Housden, Living Country Farm, LLC., Page County Poultry Grower
Michael Scott Housden, Page County Poultry Grower
Vicki Dinges, Page County Poultry Grower
Russel J. Wenger, Augusta County Poultry Grower
Tri Nguyen, Accomack County Poultry Grower
Kimviet Ngo, Accomack County Poultry Grower
Dustin Wenger, Rockingham County Poultry Grower
Kathy Kagey, V&K Farms, Shenandoah County Poultry Grower
VLD Kagey, V&K Farms, Shenandoah County Poultry Grower

COMMENT: Tyson also opposes the new litter transfer reporting requirements for permitted poultry growers. There are many more effective was for DEQ to capture this information. One such way would be for DEQ to seek this information during farm inspections.

COMMENTER: Kendra Jones, Tyson Farms, Inc.

COMMENT: Reporting is already done for our farms. There is no logical reason for additional reporting or fines for not meeting new unnecessary requirements.

COMMENTER: Bud Schultz, Rockingham County Poultry Grower

COMMENT: Asking every permitted poultry grower to submit their transfer records annually to DEQ relates to more work for DEQ. Someone will need to receive, tally, and verify the documents. It is also one more due date for farmers to remember. The current method of collecting these records during inspections is working and should continue. Farmers know what is needed for the inspection and have it ready at that time.

COMMENTER: Gloria Long, George's Inc.

COMMENT: I also oppose the new reporting requirements for permitted poultry growers as they are duplicative. This information is already captured by DEQ during farm inspections.

COMMENTER: Chip Turlington, Turlington Farms Inc., Chancetown, on Virginia's Eastern Shore

COMMENT: Just wanted to drop a brief comment regarding the proposal for the VPA General Permit for Poultry Waste: I would urge anyone involved in moving the proposal forward to consider that most, if not all of the reporting requirements are already being obtained during a DEQ inspection of a given farm. Putting additional reporting requirements on the farmer and/or litter-end use would

not only add further paperwork, but could also have negative effects on an already-struggling litter market. Thanks for your time and consideration.

COMMENTER: Daryn Martin, Rockingham County

COMMENT: Second, I oppose new reporting requirements for permitted poultry growers. We are already required to provide DEQ with detailed information yearly as to the tons of litter spread, the farm to whom it was sold, and the watershed that surrounds it.

COMMENTER: Glen Landis, Cumberland Poultry Grower

COMMENT: I am also opposed to new reporting requirements for permitted poultry growers. DEQ already has the ability to capture this information during farm [inspections].

COMMENTER: Harry Miller, Brunswick County Farmer

COMMENT: We also feel that increased unnecessary regulations would hinder our ability to get rid of our litter and for our end-users to be able to use it as an affordable and safe fertilizer for their needs. Poultry litter is already analyzed and tested so users can only put down a certain amount on their land and more regulations would just make it that more difficult for everyone. Farmers need affordable fertilizers and poultry litter is a good option for them. They do not use it needlessly and are concerned about keeping our water clean and our land in good shape. If we didn't have a market for our litter how would we be able to raise poultry for everyone to have food. Poultry litter is a by-product of a much need food industry and must be used responsibly the way farmers are currently using it. All the farmers I know that use it are much more responsible about it than some that use chemicals and chemical fertilizers on their land. Thank you for your attention on this matter.

COMMENTERS: Roxie Johnson, Poultry Grower, Lunenburg County
Trent Johnson, Poultry Grower, Lunenburg County

COMMENT: I am against new reporting requirements for permitted poultry growers. DEQ already captures this information during their inspections of my farm.

COMMENTER: Ronnie Matthews, Accomack County Poultry Grower

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. § 62.1-44.17:1.1. of the Code of Virginia, mandates that DEQ track information related to poultry waste transfers. In addition, the poultry waste transfer data is reported to the Chesapeake Bay Program Office of EPA in order to receive credit each year for moving poultry waste out of the watershed. Unfortunately, DEQ does not have the staffing resources to acquire the transport data from 957 permitted growers during site inspections on a yearly basis to ensure credit can be received in the Bay model each year. The new reporting requirements will significantly improve the timing and receipt of the poultry transfer data from the permitted grower and facilitate DEQ's reporting to EPA for credit in the Bay model. These improvements to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III. ***No changes are being proposed based on these comments.***

SC-1c Subject: Section 50-Part I - Permitted Poultry Grower Poultry Waste Transfer Reporting – Not-Supportive as Written – Purpose Change

COMMENT: Proposed change: Adds a new requirement for poultry growers to report waste transfer records annually to DEQ. Specifically, in the first year after the effective date of the general permit (2021), growers must report transfer records upon request by DEQ in a format and method determined by the agency. Beginning in the second year (2022), growers must report transfer records for the prior state fiscal year (July-June) by September 15 annually. Currently, DEQ collects transfer records from growers during inspections.

VPF comment: VPF opposes the new reporting requirement as proposed because it could be burdensome for growers to compile and submit these records by a set date annually. We prefer the current method of DEQ collecting the information during inspections and encourage the agency to continue this method or, at most, to consider the following language:

b. Beginning the second year after the effective date of this permit, the grower shall submit to the department, annually, <u>if requested by the department by August 1</u>, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

This modest amendment to the DEQ-proposed language would at least ensure that the department provides growers with a reminder of the annual deadline. If the farmers, who do not have a lot of, if any, administrative staffing support, are expected to comply with an annual reporting deadline, the department should not have a problem with having its own annual deadline to remind the farmers of theirs.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: Additionally, we do not support the new annual reporting requirement for permitted poultry growers as written. DEQ already has the ability to request this information whenever they conduct an inspection of the farm. However, we would support amended language previously submitted by the Virginia Poultry Federation that allows for proper notification from the Department to growers that an annual deadline is forthcoming.

COMMENTERS: Kurt H. Fuchs, Senior Vice President, Government Affairs, MidAtlantic Farm Credit
Katie Frazier, Chief External Affairs and Marketing Officer, Farm Credit of the Virginias
Jim Belfield, Chief Information Officer, Colonial Farm Credit

COMMENT: The Council also opposes annual reporting requirements as proposed because it adds unnecessary and untimely requirements that will burden growers. DEQ currently has the authority to request the information during inspections which sufficiently allows the Department to fulfill their obligations without a change in the language. If the Board wishes to move forward with such a change, the Council supports the amendment submitted by the Virginia Poultry Federation to allow proper notification from the Department to growers that the annual deadline is approaching:

b. Beginning the second year after the effective date of this permit, the grower shall submit to the department, annually, if requested by the department by August 1, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. § 62.1-44.17:1.1. of the Code of Virginia, mandates that DEQ track information related to poultry waste transfers. In addition, the poultry waste transfer data is reported to the Chesapeake Bay Program Office of EPA in order to receive credit each year for moving poultry waste out of the watershed. Unfortunately, DEQ does not have the staffing resources to acquire the transport data from 957 permittees during site inspections on a yearly basis to ensure credit can be received in the Bay model each year. The new reporting requirements will significantly improve the timing and receipt of the poultry transfer data from the permitted grower and facilitate DEQ's reporting to EPA for credit in the Bay model. These improvements to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III. The permit regulation contains the requirements for the permitted and regulated entities not the regulating authority. DEQ intends to educate all the permittees of the new requirements to include the new reporting deadlines; we also plan to remind the permittees of the deadline closer to the date. **No changes are being proposed based on this comment.**

SC-2 Subject: Section 50-Part I – Contents of General Permit – Permittee Storage Requirements

COMMENT: Under Part I. B. and Part III. B. Site design, storage and operation requirements, we acknowledge the new requirement that storage sites where poultry waste not stored under a roof must be located at least 200 feet from any occupied dwellings not on the permittee's property, unless the occupant of the dwelling signs a waiver of the storage site. This new requirement conforms with the long-standing requirement prohibiting the land application of poultry waste within 200 feet of occupied dwellings not on the permittee's property.

Also, under Part I. B. and Part III. B., we support the clarification of floodplain identification and delineation provided by this addition, For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

Under Part I. C. 9. and Part III. C. 11., we support the emergency procedures clarification in the following: In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the grower's NMP. If this occurs, the poultry grower shall document the land application information in accordance with Part I C 11 and notify the department in accordance with Part II H.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: Proposed change: Adds a restriction for poultry waste that is not stored under roof, that the storage site must be 200 feet from any occupied dwellings not on the permittee's or end-user's property (unless the occupant of the dwelling signs a waiver of the storage site.) VPF comment: VPF does not object to this new restriction.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: In conclusion, we believe there are aspects of the updates to the permit proposed by the Department that the Council believes is beneficial. We do not oppose broker reporting requirements, a new restriction on storage sites being 200 feet from occupied dwellings or the clarification of floodplain identification and delineation included in Part I.B and Part III.B.

COMMENTER: Kyle Shreve, Executive Director, Virginia Agribusiness Council

RESPONSE: DEQ appreciates your support. ***No changes are being proposed based on these comments.***

SC-3 Subject: Section 50-Part III – Permitted Poultry Waste Broker and End-Users Poultry Waste Transfer Reporting – Not-Supportive to Require

COMMENT: Under Part III. C. Poultry waste transfer and utilization requirements, we oppose the following: 5. Transfer records reporting requirements. The end-users and brokers shall submit the records required by Part III C 3 in accordance with the timing outlined in Part III C 5 a and 5 b.
a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the end-users and brokers shall submit the records in a format and method determined by the department.
b. Beginning (insert the date two years after the effective date of this permit), the end-users and brokers shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.
We oppose this new requirement for the reasons stated above relative to Part I. C. 3.
DEQ currently has authority to review records mentioned above and collect information from the records during inspection of permitted poultry grower operations. DEQ currently has authority to request permitted poultry growers provide this information in a format and time period stipulated by DEQ and has had the ability to do so for the past 20 years. It is evident that this has been effective, as this request method has been used previously by DEQ during avian disease outbreaks to access the information while observing enhanced state and industry biosecurity measures. Contrarily, DEQ lacks the resources and mechanisms necessary to facilitate grower reporting, and we believe the agency can adjust its current data collection timeframe to improve its timeliness of data reporting to the Chesapeake Bay Program. For these reasons the TAC did not reach a consensus recommending poultry growers submit transfer records. As such, the TAC did not discuss data privacy concerns resulting from DEQ's mass collection of reported transfer information which represents poultry growers' private and proprietary customer lists. We are concerned that once DEQ has assembled this proprietary information it will not be protected from Freedom of Information Act (FOIA) and be available to the public, including both persons interested in disrupting poultry waste transfers or harassing end-users, as well as poultry litter brokers and other poultry growers competing for poultry waste end-user clients. The agricultural industry, law enforcement, national security and intelligence communities are increasingly concerned about terrorism and other attacks against agriculture, related biosecurity and cybersecurity, and associated risks to national security. Intentional and unintentional data releases and data theft threaten the privacy of confidential data which can and has been used

against an individual or group of farms. Platforms already exist to collect and publish confidential information belonging to individual farms for sale or distribution for any third-party use. In addition, DEQ did not present the TAC any format or method for growers to report their information annually. In many rural communities, it is not so easy to simply hit send on an email or stick a stamp on an envelope. We are concerned the format and method eventually selected by DEQ may prove burdensome for individuals with limited internet access due to limited internet provider capacity, or no internet access due to religious beliefs, income level or comfort with technology. Mailing printed copies is a low-tech method of reporting the information but will prove time consuming for both growers without copier access and DEQ which will be required to enter the data into some digital framework yet to be designed and tested.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. § 62.1-44.17:1.1. of the Code of Virginia, mandates that DEQ track information related to poultry waste transfers. In addition, the poultry waste transfer data is reported to the Chesapeake Bay Program Office of EPA in order to receive credit each year for moving poultry waste out of the watershed. Unfortunately, DEQ does not have the staffing resources to acquire the transport data from all permittees during site inspections on a yearly basis to ensure credit can be received in the Bay model each year. The new reporting requirements will significantly improve the timing and receipt of the poultry transfer data from the permittee and facilitate DEQ's reporting to EPA for credit in the Bay model. This addition also makes the permitted entity reporting requirements consistent throughout the permit. These improvements to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III. ***No changes are being proposed based on these comments.***

SC-4a Subject: Section 60 - Tracking and Accounting Requirements for Poultry Waste Brokers - Supportive

COMMENT: Under D, we support the recommendation changing the annual deadline for existing record reporting from February 15 to September 15. Based on Bay program reporting information presented by DEQ, this change should increase the accuracy of data reported by DEQ for credit in the Bay program model with no significant impact on brokers.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

RESPONSE: DEQ appreciates your support. ***No changes are being proposed based on this comment.***

SC-4b Subject: Section 60 - Tracking and Accounting Requirements for Poultry Waste Brokers – Supportive with Changes

COMMENT: Proposed change: Changes the poultry waste broker reporting deadline from February 15 to September 15 annually.
VPF comment: VPF has no objection to this change. However, we would recommend the same language as in our prior comment giving DEQ a deadline to remind brokers of their annual report.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: The Council believes there is more litter moving than what is being tracked and we heard during the TAC process that changing what is reported by brokers can help with this problem. This is why we support the requirement in Part III, Section C to add the County of origin and destination to the Broker forms and reporting to accomplish that task. This should help solve the problem of under reporting of litter for the Bay model without overly burdening producers or harming the litter market. The Council does support similar notification language for the Department to notify brokers of the upcoming deadline consistent with the above suggested amendment.

COMMENTER: Kyle Shreve, Executive Director, Virginia Agribusiness Council

RESPONSE: DEQ acknowledges these comments. The reporting requirements have always been a part of the regulation. While the deadline and timeframe is changing, the brokers have always had a requirement to report these records to DEQ. DEQ intends to educate the brokers of the new requirements once the regulation is finalized which will include the new reporting timeframe and deadline; we also plan to remind the brokers of the deadline closer to the date. ***No changes are being proposed based on this comment.***

SC-5a Subject: Section 70 - Poultry Waste End-User Reporting - Supportive

COMMENT: Thank you for including reporting requirement for end users. Ensuring this data is being provided to DEQ is essential to improving our ability to sustainably manage poultry waste across the Commonwealth.

COMMENTER: Respondents to Chesapeake Bay Foundation Action Alert (names listed in Table B and Table D)

COMMENT: Require end user records to be reported to DEQ

COMMENTER: Frank Filipy

COMMENT: I am an agronomist and I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management. I support the proposed end-user reporting requirements I believe they are essential to Virginia's Chesapeake Bay restoration plan. The public needs assurance that farmers are handling poultry waste responsibly

COMMENTER: Tom Hall

COMMENT: Require poultry litter end-users to report poultry waste implementation records to DEQ so that DEQ can better track compliance and landscape-scale nutrient balances.

COMMENTER: Abel Russ, Senior Attorney, Environmental Integrity Project

RESPONSE: DEQ acknowledges the support. No changes are being proposed based on this comment.

COMMENT: End-user records should be required to be reported to the agency

In August 2019, Virginia issued its Final Phase III Watershed Implementation Plan to achieve nutrient reductions to restore the Chesapeake Bay by 2025. In this plan, the agency committed to improving poultry litter transport accounting through its Initiative 30, specifically citing the need to verify end-user implementation of nutrient management practices. Currently, these records are required to be maintained by the end user but are not required to be reported to the agency, although the agency currently has the authority in the permit to ask for them. Further, our understanding is that DEQ has not requested this information in any comprehensive or regular manner. DEQ explained in the TAC process that it intends to collect this information using a tool that has been under development since 2007. It is unclear why it has taken so long to develop this tool and why the tool should even be considered necessary, given that records could be sent via regular mail or even email. In the absence of required reporting by end-users of litter, there are serious questions as to whether DEQ can verify that end-users are following the regulatory requirements of this permit and indeed, whether or not there are additional obligations under the Clean Water Act.35

Access to this data for the agency and aggregate access to the public and external agencies has significant value on many levels, beginning with improving the ability to verify that end users are following the current requirements (e.g. litter application and stockpile covering requirements) and improving understanding of trends in litter transport.

Some stakeholders have suggested that this requirement would be overly burdensome and would be 'detrimental' to the poultry industry. Given that these records are currently required to be kept under the current regulation and that DEQ already has the authority to request these records at any time, we strongly disagree that any meaningful burden could be found beyond sending an email or a letter by mail on an annual basis.

We acknowledge there are likely end users receiving litter who do not understand their responsibility to comply with the permit— including the requirement to provide data to DEQ upon request. We further acknowledge that this change could potentially be perceived as a disincentive for those end users to receive litter. Surely, however, the answer to this situation is for the agency to do a more

thorough job of educating regulated entities of the regulation, not allowing those who don't know to remain unaware of the current regulation. We fully support Watershed Implementation Plan initiatives to move poultry litter out of high-concentrated areas of Virginia but achieving these efforts shouldn't come at the expense of enforcing the requirements of this permit.
It has also been suggested that this reporting requirement will encourage the use of commercial fertilizer instead of poultry litter, the latter of which has substantive benefits over commercial fertilizer when sustainably applied. In our view the diversion to commercial fertilizer is highly unlikely because the low cost of poultry litter relative to commercial fertilizer will ultimately be the most important driver. Further, if some producers do refrain from using poultry litter, that could subsequently result in its decreased cost, which will incentivize use by other end users. Agricultural producers are historically very savvy at pursuing low-cost alternatives. Thus, in our view, the market rates and access to poultry litter are going to dominate incentives with or without reporting requirements, and DEQ should avoid making management decisions based upon the illusion that this policy will significantly influence the litter market. Finally, poultry litter represents a waste-product generated by the poultry industry. It is not the state's responsibility to hold the market value of this waste product unharmed; rather, it is the industry's responsibility to ensure there is a sustainable—and water quality protective—outlet for that waste. In conclusion, Virginia DEQ should follow through on Virginia's Phase III Watershed Implementation Plan commitment to require end users to report records on a regular basis.

COMMENTERS: Peggy Sanner, VA Executive Director, Chesapeake Bay Foundation
Joseph Wood, VA Senior Scientist, Chesapeake Bay Foundation
Phillip Musegaas, Vice President of Programs and Litigation, Potomac Riverkeeper Network

RESPONSE: DEQ acknowledges the support. It is noted that the commitment made by the agency in the WIP III was to consider options during the regulatory process; the WIP did not prescribe which option(s) would be included in the regulation. As stated in the WIP III under initiative 30, which is specifically titled Improving Poultry Waste Transport Accounting.

"During the regulatory process to reissue the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management, DEQ will consider options with input from a TAC, to provide more accurate accounting of progress towards WIP goals associated with poultry litter transport and utilization. Options include using existing or modified regulatory requirements to obtain certain records from growers, brokers, and/or end users on at least an annual basis. Additional access to poultry litter transfer data would bolster accuracy of modeled effects of litter applications, and may offer the opportunity to verify end-user implementation of NM practices. In its evaluation, DEQ will consider ways to reduce the possibility that regulatory requirements would discourage end-users from using poultry litter in areas that could benefit due to soil phosphorus needs or other factors.

No changes are being proposed based on this comment.

SC-5b Subject: Section 70 - Poultry Waste End-User Reporting - Not-Supportive

COMMENT: I just want to put my two cents worth in on the new VPA Permit. I think the end user reporting requirement is simply redundant. What's the point? Since we growers already report who gets our manure, how much they get, when they got it, the nutrient analysis, the town nearest to where it was spread and the nearest body of water, what is gained by having the end user report the same information? We farmers despise paperwork with a passion and would rather work for ten hours outside in the blistering heat or the freezing cold doing what we, (somewhat arrogantly), call "real" work than spend one hour at a desk in climate controlled comfort filling out forms. It's just the way we're wired. But as a result of our wiring many of us who otherwise would be willing to start using manure or continue to use it will simply look at the fact that another pile of paperwork has to be filled out and without even really looking to see how involved it is just throw in the towel and say to heck with it and just use commercial fertilizer.
I believe that this will more than totally negate what the state has done in encouraging manure transpor t and use, effectively shooting ourselves in the foot.

COMMENTER: Dave Lovell, Old Mill Farms, Accomack County Farmer

COMMENT: We strongly oppose the following proposed requirement and sincerely urge its removal: 4. Reporting requirements. End-users shall submit the records required by subdivisions A 1, A 2, and A 3 of this section in accordance with the timing outlined in subdivisions 4 a and 4 b of this subsection.

a. Beginning (insert the date one year after the effective date of this regulation) and continuing through (insert the date two years after the effective date of this regulation), upon request by the department, the end-user shall submit the records in a format and method determined by the department; and

b. Beginning (insert the date three years after the effective date of this regulation), the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15. The TAC discussed during two or more of its meetings a suggestion to require poultry waste end-users to report their records annually to DEQ. The agency did not publicly initiate or endorse the suggestion or include draft language incorporating the suggestion in a regulatory proposal during any TAC meeting. An overwhelming majority of the TAC, consisting of both private sector and state agency personnel, did not support adding an end-user reporting requirement.

We are extremely disappointed that this end-user reporting requirement was added last minute to the proposed rule outside of the public participation process. This requirement is unnecessary for reporting water quality improvement progress to the Bay program as stated by DEQ staff during TAC meetings. This ill-conceived requirement is regressive and counterintuitive to other state efforts to promote the safe transportation and use of poultry litter away from poultry farms and will disrupt established poultry litter markets and infrastructure and strand poultry litter on poultry farms that rely on end-users. This requirement will roll back two decades of work by the state and industry to promote third party poultry litter utilization, obligating over $610,000 since FY2008. The poultry industry and state provided over $290,000 for transport incentives this year alone. Based on conversations with growers, brokers and end-users, the Commonwealth can expect to see poultry litter transport come to an essential halt in 2021.

According to the Department of Conservation and Recreation (DCR), 90 percent of poultry waste generated by permitted poultry growers under current nutrient management plans is transferred off-site. Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan (August 23, 2019) (WIP 3) includes an initiative expanding poultry litter transport in the Chesapeake Bay with DCR's Poultry Litter Transport Program from 5,000 – 6,000 tons per year up to 89,000 tons per year. Program participants are required to obtain certified nutrient management plans as a condition of applying for the program's financial incentives, without any guarantee of financial assistance. The plan requirement already hinders program participation due to a lack of readily available certified planners and perceived administrative burden by first-time and infrequent poultry litter end-users. Under this program, will DCR or DEQ report any remaining nutrient management plan implementation? WIP 3 includes another initiative to improve poultry litter accounting where "DEQ will consider options with input from a TAC, to provide more accurate accounting of progress towards WIP goals associated with poultry litter transport and utilization." As previously stated, various options were discussed and included (location data, report timing, record reporting). No other reporting options were discussed by the TAC beyond current data collection methods and a suggestion for mandatory end-user reporting. There is another WIP 3 initiative, enhance coordination among state agencies assisting farmers. This proposed requirement fails to recognize its anticipated negative impacts on farmers, other state agencies efforts and Chesapeake Bay clean-up efforts related to agriculture. The purpose of the WIP 3 initiative for improved litter transport accounting is "to provide more accurate accounting of progress towards WIP goals associated with poultry litter transport and utilization" and "may offer the opportunity to verify end-user implementation of NM practices." End-users are provided four progressively flexible options for determining poultry waste land application rates, a standard rate, phosphorus removal rate, soil test rate, or NMP rate. To our knowledge, a nutrient management plan is the only option recognized as a BMP by the Bay Program

model. DCR already tracks and reports NMP data for the Bay Program model. How will Virginia track WIP implementation progress by collecting data on the three more restrictive land application rates that are not recognized as BMPs? How will Virginia track WIP implementation for poultry waste exported outside the state? Also, poultry waste production and poultry waste utilization will not occur in a 1:1 ratio during any 12 -month period. How will DEQ account for differences in balancing production with utilization?

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

COMMENT: I am writing on behalf of the Delmarva Poultry Industry, Inc. (DPI), the 1,700-member trade association representing the meat-chicken growers, companies and allied businesses working in Delaware, the Eastern Shore of Maryland and Eastern Shore of Virginia. According to the 2018 Economic Impact Study conducted by John Dunham & Associates, Virginia's meat-chicken industry has an economic impact of more than $9 billion, employing more than 13,000 people and contributing more than $294 million in state and local taxes. On the Eastern Shore of Virginia, the two chicken processing companies are the leading employers in Accomack county and the economic impact to the Eastern Shore alone is $1.8 billion. DPI strongly opposes the annual end-user reporting requirements. This is a contradiction to incentivizing farmers to utilize litter as an organic fertilizer; threatens the marketplace for litter, when other fertilizers do not require reporting; and is a policy conflict with the Department of Conservation and Recreation (DCR) litter transport program that received additional funding in order to help meet the Chesapeake Bay Program WIP goals. A commenter during the public hearing said it best – the more difficult you make it for farmers to use litter, the less likely they will use it. Since a large percentage of growers do not use litter on their own farms, this could result in litter not being used in the fields that need it the most. Keep in mind litter is not a waste product, but a valuable local, organic, slow-release fertilizer. What DEQ now proposes could significantly reduce demand and, consequently, the price growers can get for their litter. It could even risk causing them to give it away or paying to have it removed from their farm. Many growers are already suffering economically due to the impact of the COVID-19 pandemic on agricultural supply chains and distribution channels, and the last thing they need now is a new and unnecessary regulatory mandate that will further reduce their farm income. This is just one of the examples where discussions and recommendations at the TAC meetings did not seem to be taken into consideration with the proposed regulations. During the 2019-20 TAC meetings, DEQ indicated it has authority under the existing regulation to obtain transfer records through growers and brokers, and that these records are sufficient to verify the destination of litter in order to report the transport data to the Bay Program. As a matter of fact, it was specifically mentioned that "in general, a regulatory requirement to provide data is a disincentive to falsify data, thus the regulatory requirement assists in verifying the validity of data." End-user reporting was discussed at length during the July meeting and DEQ staff also pointed out that the transport data and the nutrient management practices are two separate BMPs in the Bay model. DCR tracks nutrient management practices for the model. Until a new online data collection tool is complete to allow for any data gathered to be easily summarized and utilized for both regulatory purposes as well as the Chesapeake Bay program, then farmers will be doing extra paperwork for no benefit. DEQ already has the authority it needs to collect any data and end-user reporting is not a viable solution.DPI would again like to thank DEQ for the opportunity to participate on the TAC as well as to make comments on the proposed changes to the regulations. While we support several of the proposed changes, we have major concerns with the end-user reporting which threatens the work that has been done for numerous years to incentivize the use of this valuable resource as a fertilizer and may actually put the protection of water quality in danger.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: Proposed change: Adds a new requirement for end-users of poultry waste to report transfer and land application records annually to DEQ. VPF comment: VPF vehemently opposes an end-user reporting requirement, which could devastate poultry farmers economically without

providing any meaningful water quality benefit. In 2010, the TAC grappled with the desire to regulate end-users without causing them to stop using poultry litter in favor of commercial fertilizer, which is unregulated and easier to procure than litter. The concern was that over-regulating end-users would strand litter on poultry farms and create big problems – both economic and environmental. In 2010, DEQ and Water Board struck a reasonable balance that has allowed for the economical distribution of litter through market demand, governed by environmentally protective regulatory criteria. Imposing an end-user reporting requirement threatens to upend the sensible balance struck in 2010 by jeopardizing market demand for litter. Most poultry growers sell at least a portion of their litter to brokers or end-users. According to the Department of Conservation and Recreation (DCR), 90 percent of poultry litter generated by permitted poultry growers under current nutrient management plans is transferred off-site. Sale of this product provides an important revenue stream and income to the poultry farm. The price growers receive varies from about $8 to $20 per ton depending on a number of factors, including those influencing market demand, such as the price of commercial fertilizer. What DEQ now proposes could significantly reduce demand and, consequently, the price growers can get for their litter. It could even risk causing them to give it away or pay to have it removed from their farm. Many growers are already suffering economically due to the impact of the Coronavirus pandemic on agricultural supply chains and distribution channels, and the last thing they need now is a new and unnecessary regulatory mandate that will further reduce their farm income. During the public hearings on this regulation, testimony from some environmental groups seemed to dismiss as silly the notion that farmers would have any problem filing an annual report with DEQ. They obviously have not walked in farmers' shoes. A member of VPF, who is a veteran litter broker, surveyed his customers, and only one said they would continue to use litter with such a requirement. Farmers tend to consider agronomic inputs as proprietary, and thankfully nutrient management plan information held by DCR is exempt from the Freedom of Information Act (FOIA). Unfortunately, such protections are not afforded to plans in possession of DEQ that are associated with VPA regulations. In conclusion, we want to reiterate that the end-user reporting requirement threatens to change a program that is economically balanced and protective of water quality into one that could profoundly and harmfully alter the economics of poultry production without a compelling corresponding environmental benefit. This provision turns what – throughout our industry's history – has been an asset that generates farm income, into a liability that could saddle poultry farmers with crushing costs. We implore you, on behalf of Virginia's poultry farmers, who work hard every day to make a living, produce healthy food that everyone needs during a pandemic, and protect the environment, to please remove this devastating and unnecessary mandate.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

COMMENT: The Council opposes the new end-user reporting requirements as an unnecessary burden on producers that will harm the transport market. During the TAC process, we heard from the Department of Environmental Quality that end-user reporting was not necessary for Chesapeake Bay Model tracking. There is negligible benefit to having DEQ collect this information. DEQ staff even acknowledged that the Chesapeake Bay Model tracks poultry litter transport and nutrient management separately. The Department of Conservation and Recreation already tracks nutrient management planning through the VACS program and agreements with private nutrient management planners. Given the lack of benefit, the requirement was discussed and all but two members of the TAC voiced concern and opposition, believing that end-user reporting posed too big a threat to the poultry litter market. Producers can choose other forms of fertilizer, especially given prices of commercial fertilizer continue to be low. Commercial nitrogen-based fertilizer prices are down 10% this year compared with last. This brings commercial fertilizer prices to 10-year lows.1 (1 https://www.agriculture.com/news/crops/fertilizer-prices-fall-to-lowest-levels-in-a-decade-economist-says. April 2020.) The inclusion of additional requirements only adds a disincentive to using poultry litter and encourages producers to choose other forms of fertilizer which are already cheaper for them to use. This has the potential to strand litter on site at growers' facilities, the exact opposite of what the Commonwealth should be encouraging. We vehemently oppose the end-user reporting requirements as a threat to the litter market and achieving the Commonwealth's WIP III

goals. The TAC process is designed to give the Department and the Board access to technical expertise so that the litter market is allowed to operate while mitigating any serious threat to water quality. These end-user requirements do not provide such threat mitigation and pose a serious obstacle in the transport of poultry litter.

COMMENTER: Kyle Shreve - Virginia Agribusiness Council

COMMENT: Tyson is opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be an economic hardship on independent farmers and provide little to no environmental benefit. As well the added regulatory burden of year-end reporting does not exist for commercial fertilizer and could strand poultry litter which would otherwise be put to beneficial use. The Virginia litter transport program was established, in part, to incentivize and facilitate the transfer of litter from high density, nutrient rich counties to nutrient deficient counties within the Chesapeake Bay Watershed. Additional regulatory hurdles do not need to be established to hinder the transfer of poultry litter within the watershed.

COMMENTER: Kendra Jones, Tyson Farms, Inc.

COMMENT: The Natural Bridge Soil and Water Conservation District is concerned about a proposed amendment to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management (9VAC25-630) that requires all poultry litter end-users to annually report all of their acquisitions and applications of poultry litter to the Virginia Department of Environmental Quality (DEQ). While we promote and support the goals of the Phase III Watershed Implementation Plan (WIP iii), as a Board we believe this amendment will be costly, redundant, and detrimental to good nutrient management in the Chesapeake watershed.

The Natural Bridge Soil and Water Conservation District (NBSWCD) Board believes the proposed amendment creates a disincentive for farmers to utilize poultry litter. Most end-users of poultry litter are farmers with no prior experience of reporting their farming practices to a regulatory agency and will be highly resistant to submitting poultry litter end use records. If confronted with a reporting requirement, the NBSWCD Directors are concerned these poultry litter end-users will choose to use commercial fertilizer rather than poultry litter even though poultry litter would remain a more economical choice. Some who advocate for this change to the regulations have expressed concern that poultry litter end-users are land applying poultry litter without adequate oversight. The financial costs of acquisition, transport, and land application of poultry litter provides ample economic incentive for the end-user to use poultry litter judiciously. Poultry litter end-users for whom the reporting requirement is too onerous will suffer higher costs and/or diminished soil health and productivity. Disincentivizing the transfer of poultry litter jeopardizes the viability of independent litter brokerage and land application service providers who have made the transfer and wise utilization of poultry litter a viable business. Further costs of the proposed amendment come in the form of time required of already limited DEQ staff to collect and catalog data. The NBSWCD Directors see negligible benefit and significant redundancy to imposing a reporting requirement on end users since virtually all the end use information is already reported to DEQ by growers and brokers. Further, the data submitted by growers and brokers is sufficient for nutrient accounting in the Chesapeake Bay model according to DEQ. We are grateful to the Technical Advisory Committee, the Chesapeake Bay Foundation, and DEQ personnel for their joint effort to forge a unified vision for a healthy and vibrant environment for all Virginians. Our SWCD pledges its support to attain the WIP iii goals and advocates programs that incentivize conservation work by our farmers. Mandatory end user reporting though, creates a disincentive for beneficial nutrient transfers and we urge it be struck from the proposed regulation update.

COMMENTER: Tom Stanley, Director, Natural Bridge Soil and Water Conservation District Board

COMMENT: While we support much of the proposal, we are strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's

Chesapeake Bay restoration plan. Such a mandate could be economically harmful to many local farms without any environmental benefit. We are afraid that the proposed new requirements will be counter-productive, in that end users will be less likely to take poultry litter from our Valley farmers if regulations include this reporting requirement. DCR and the Virginia Poultry Federation have been working hard to incentivize litter transport through the Transport Program and already requires participants (end users) to have a NMP and report litter usage.

COMMENTER: Kevin Craun, Chairman, Shenandoah Valley Soil and Water Conservation District Board

COMMENT: I have a beef cattle farm located in Montgomery county. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. While I don't currently use poultry litter on my operation I may in the future. We have used solids from a local waste water plant, using BMP's. I am opposed to the proposed end-user reporting requirements, as they are unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan.

COMMENTER: Bruce Stanger, Montgomery County Cattle Farmer

COMMENT: We are opposed to the end-user reporting requirements as unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Reporting is already handled by DEQ during the annual inspection of our poultry operation.

COMMENTERS: Kerry Maloney, Rockingham County Farmer
Geri Maloney, Rockingham County Farmer

COMMENT: I am strongly opposed to the new end-user reporting requirement. It will be harmful to the litter marker and counter-productive to the litter transport goals in the VA. Chesapeake Bay restoration plan. I'm writing you concerning the new requirement being considered for poultry litter end-users to report transfer and land applications records annually. I believe that this could negatively affect the poultry industry in this region. It could create an even larger problem pertaining to moving litter out of areas already battling high nutrient levels and into areas with a greater need !!

COMMENTER: Gerald Wenger, Hillside Poultry, LLC, Rockingham County Poultry Grower

COMMENT: While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Wayne Merrill, Fox Creek Farm, Inc., Unionville, VA

COMMENT: Good afternoon my name is Roger Reynolds I'm a poultry grower in Crewe Va. In Nottoway County permit no. Vpg270098 I'm writing you regarding opposing the end user of poultry litter being required to track the litter they are using i have already kept records and provided them to deq. With the amount of litter they received and the nearest water way i produce a lot of litter with 6 breeder houses and 4 broilers i need the end user to continue buying my litter farmer's are investing way too much money and time in their land and crops to no. 1 waste litter and no.2 apply when and where it's not needed please help me to continue to move my litter without more regulation. Thank You

COMMENTER: Roger Reynolds, Permitted Poultry Grower in Nottoway County

COMMENT: I have a family farms located in Westmoreland and King William Counties. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. Our soils can use both the nutrients and the soil amendment qualities of poultry litter which over time would actually decrease nutrient run off. In particular, the King William farm would greatly benefit from using organic fertilizer as opposed to conventional fertilizer. However, I'm also realistic

enough to know that I don't have time to be filling out more forms, tracking more requests for information and generally adding to the paperwork burden that I already have.

COMMENTER: William Latane, Family Farms in Westmoreland and King William Counties

COMMENT: My name is Jeffery S Dinges and I live in Stanley VA, I oppose the end-user reporting requirements for the purpose of tracking poultry litter it is unnecessary and would be harmful to the litter market and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. These regulations could negatively affect our ability to manage our poultry waste. This information is already collected when DEQ inspects Poultry farm. I believe a better approach to understanding the potential water quality benefits of these products is for the Chesapeake Bay Program to investigate this in collaboration with university researchers, industry, and the environmental community.

COMMENTER: Jeffery S. Dinges, Page County Farmer

COMMENT: Litter end user regulation power grab. I have been in the litter business for 35 yrs. I have never had one customer that would abide by these proposed rules. Farmers can barely afford to apply what they need much less enough to worry about runoff. If the leftists go ahead with this power grab that has no useful benefit, they will kill the litter business overnight and create a multitude of new problems which seems to always be their goal. Chaos leads to more government. America is fed up. Tread carefully. Remember you work for the peoples interest.

COMMENTER: Scott Haney

COMMENT: On behalf of the three Farm Credit Associations serving Virgina (Farm Credit of the Virginias, Colonial Farm Credit, and MidAtlantic Farm Credit), we appreciate the opportunity to provide the Department with comments on the proposed changes to the Virginia Pollution Abatement Regulation. Together, Farm Credit serves over 12,414 member-owners across the Commonwealth that represent over $2.2 billion in loans outstanding to the wide range of agricultural sectors found throughout Virginia. As cooperative lenders, we seek opportunities to support and advocate on behalf of our members, including providing constructive input on regulatory proposals that are cause for concern among our borrowers and other agricultural stakeholders.
We are opposed to newly requiring end-users of poultry litter to report their transfer and applications to DEQ. This provision appears unnecessary for purposes of tracking poultry litter, would likely damage the market for litter, and seems counter-productive to litter transport goals in Virginia’s latest plans for Chesapeake Bay restoration. • The additional paperwork will cost producers time and money while providing no actual environmental benefit; • It’s our understanding that this proposal was firmly dismissed by an overwhelming majority of TAC members due to fears its implementation would threaten the market for litter. There have been significant gains in litter transport as a result of increased funding and its inclusion in the sector’s WIP goals, but that progress could be undone if producers choose to avoid poultry litter for their nutrient needs. Farm Credit believes that a successful, thriving poultry industry and a healthy, productive environment aren’t mutually exclusive. Both can be accomplished by ensuring all stakeholders have a seat at the table and whose concerns are considered thoughtfully from varying perspectives. We appreciate the opportunity to provide insight from ours and our customers perspectives regarding the VPA proposals and its impact on their businesses.

COMMENTERS: Kurt H. Fuchs, Senior Vice President, Government Affairs, MidAtlantic Farm Credit
Katie Frazier, Chief External Affairs and Marketing Officer, Farm Credit of the Virginias
Jim Belfield, Chief Information Officer, Colonial Farm Credit

COMMENT: I have a family farm located in Nelson County. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. I use poultry litter as an organic fertilizer for my pastures and hay fields. I am pleased to be able to use an organic source of nutrients.

The proposed end user reporting is unnecessary and redundant as the poultry growers already have to report where and to whom they sold the litter to.

COMMENTER: Mark Campbell, Nelson County Farmer

COMMENT: My family owns and operates an Egg Layer Farm in Washington, County and is under the VPA General Permit for Poultry Waste Management. We want to thank you for the opportunity to comment on the proposal to renew the program for another 10 years. While we support much of the proposal, I am strongly opposed to the new end-user reporting requirement. With the cost of trucking layer manure increasing we are finding fewer end-users. Many of our past end users are just not willing to pay for the hauling of the manure. We feel that additional regs on the end user will be just another reason for that user to pick up the phone and order custom fertilizer instead of using our manure for there crops because it is simply easier and sometimes a shorter distance to haul. The requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. This mandate could be economically devastating to our farm and without environmental benefits

COMMENTER: Rodney Wagner, Green Valley Poultry Farm, Washington County Poultry Grower

COMMENT: There seems to be a miss conception that poultry litter has no value. Litter is a valuable nutrient. However, everything has a price. Endless regulations and paper work deter from the value. Farmers have been called stewards of the land by most. No one has the resources to over-apply litter nor waste money. As a poultry farmer, I am responsible to track litter off my farm. As a broker, I am responsible for tracking the litter we move. So now it is proposed to make the end user track that same litter! We must love paper and doing the same thing multiple times! I however can go to my ag store and purchase as much fertilizer I wish or can afford and no one cares no tracks it! As some point, end users are going to decide it is not worth the time and hassle. Then what will happen? Where is it proposed the litter will go? The current regulations already make it difficult to store and manage.

COMMENTER: Jacquelin P. Easter, Amelia County Permitted Poultry Grower, Registered Litter Broker, Litter End-User

COMMENT: I write as a farmer, broker, custom applicator and one who applies common sense to decision making! I ask that the requirement for end user annual reporting to DEQ be eliminated from the revisions. Reasons supporting my thoughts follow;

1)Info is already in place noting end user receiving litter.

2) Farmers are private about their business and what govt. knows about their operation. I have spoken with only one of my customers who would continue to use litter and submit the report, the others would switch to commercial fertilizer, costing more, lowering their "bottom line" and perhaps less yield.

3) Brokers business would probably cease, causing drivers job loss ,machinery (walking floor and belt bottom trailers ,spreader trucks) would not be needed. Jobs would be lost and economically impact people, and growers who sell litter.

4) litter will accumulate on growers farms causing a disastrous problem!!!

5) the wisest use of POULTRY LITTER is for plant growth stimulation of ag crops and grasslands' therefore strengthening plant roots, reducing runoff, erosion, and sediment to the bay.

6) Other venues (pelletizing, converting to oil)have been tried to use litter but have proven wise land application is the best use of this valuable resource.

7) Regulation are in place for wise use of POULTRY LITTER and no further regs are necessary.

Please do not include end user reporting to DEQ in the revised regulations or prepare for a huge problem?? WHAT TO DO WITH POULTRY LITTER?????

COMMENTER: Reid Mackey, Litter & Lime, LLC., Farmer, Registered Litter Broker, Custom Applicator - working in Alleghany, Augusta, Albemarle, Bath,

Botetourt, Craig, Campbell, Franklin, Halifax, Nelson, Rockbridge, Roanoke, Rockingham, and Monroe, WV

COMMENT: I am opposed to the proposed end-user reporting requirements, as they are unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan.

COMMENTER: Respondents to Farm Bureau Action Alert (Table A)

COMMENT: My family farm raises turkeys in Augusta County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Ernest Ambler, Amber-rillo Farm Inc., Augusta County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Chris Turner, Carlton Turner Poultry, Page County Poultry Grower

COMMENT: My family farm raises poultry in Rockingham County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Sandra K. Rumer, Smokey Valley Farm, Inc. Rockingham County Poultry Grower

COMMENT: My family farm raises poultry in Rockingham County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: David Beery, Rockingham County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Joseph Turner, Page County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of

tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Forest N. Atwood, Pass Run, Page County Poultry Grower

COMMENT: My family farm raises poultry in Rockingham County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Myron Reedy, Reedy Farms, LLC., Rockingham County Poultry Grower

COMMENT: First, I am against the end-user reporting requirements as unnecessary for purposes of tracking poultry litter harmful to the litter market, counter-productive to the litter transport goals in Virginia’s Chesapeake Bay restoration plan. I feel strongly that this requirement could negatively affect my ability to manage poultry waste.

COMMENTER: Ronnie Matthews, Accomack County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Rex A. Sours, Rex Sours, LLC., Page County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Anna Housden, Living Country Farm, LLC., Page County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Michael Scott Housden, Page County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Vicki Dinges, Page County Poultry Grower

COMMENT: My family farm raises poultry in Augusta County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Russel J. Wenger, Augusta County Poultry Grower

COMMENT: My family farm raises poultry in Accomack County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Kimviet Ngo, Accomack County Poultry Grower

COMMENT: My family farm raises poultry in Accomack County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Tri Nguyen, Accomack County Poultry Grower

COMMENT: My family farm raises poultry in Rockingham County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Dustin Wenger, Rockingham County Poultry Grower

COMMENT: My family farm raises poultry in Shenandoah County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTERS: Kathy Kagey, V&K Farms, Shenandoah County Poultry Grower
VLD Kagey, V&K Farms, Shenandoah County Poultry Grower

COMMENT: My wife and I have raised turkeys for Rocco/Cargill for 30 years. We follow a litter management plan. Most of our litter is utilized by another farmer who has more land than we do. We live near Bridgewater, Virginia and most of our litter is used by a farmer near New Hope, Virginia. He also closely follows a nutrient management plan. All farmers that we know have a strong desire to use our poultry litter in a safe and useful manner. We follow all of the guidelines to prevent poultry litter run-off and pollution of streams. Without additional end users of poultry litter it could be stockpiled on many farms and really create a hazard for the environment from run-off. Adding unnecessary regulations to end users could create problems and cost to both producers and other end users with no benefit to the environment. We feel no additional burdensome regulations are needed for handling poultry waste. This could cause detrimental harm if farmers are not able to have their

litter used where it is needed and applied in the approved manner. What is to be done if a farmer cannot get rid of his excess litter?

COMMENTER: Bud Schultz, Rockingham County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Thomas Thacker, Augusta County Poultry Grower

COMMENT: My family farm raises poultry in Louisa County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Brett Washington, Washington Farms, Inc. Louisa County Poultry grower

COMMENT: There seems to be a miss conception that poultry litter has no value. Litter is a valuable nutrient. Litter is already tracked by the grower and broker it does not need to be tracked again. This would further restrict the transfer of litter.

COMMENTER: Howard J. Easter III, Amelia County Permitted Poultry Grower, Registered Litter Broker, Litter End-User

COMMENT: I am writing concerning the proposed amendments VPA General Permit for Poultry Waste. I am both a poultry grower and a poultry litter end-user growing corn, wheat and soybeans. I oppose the proposed end-user reporting requirements as they are unnecessary and counter-productive to the litter transport goals in Virginia’s Chesapeake Bay restoration plan. Not only would the requirements be detrimental to achieving the transport goal, but also harmful to the litter market and to agriculture in general by adding cumbersome reporting constraints to an industry already overburdened with regulations and struggling to survive. And the regulation would de-incentivize growers to responsibly manage a valuable resource. The requirements could negatively affect poultry growers’ ability to manage poultry waste and hinder end-users ability to access nutrients in an economically, agronomically and environmentally sound manner. The requirements could additionally negatively impact growers’ willingness to utilize poultry litter with or without incentive payments.

COMMENTER: Chip Turlington, Turlington Farms Inc., Chancetown, on Virginia’s Eastern Shore

COMMENT: I have a family farm located in Campbell County. I am a recipient of cost share program and using my NMP to spread poultry liter and other nutrients to my farmland and rented. I am already reporting to one agency and I feel that multiple reports are not needed.

COMMENTER: David Cardwell, Campbell County Farmer

COMMENT: We have a family farm here in Va and am very concerned about the effect of the requirement of end users to report to DEQ. It will certainly affect being able to sell our poultry litter it is to easy to get commercial fertilizer. What will happen if we cant sell it or worse yet cant give it away? We have been decimated by covid (lack of demand) and now this? It will push commercial fertilizer, farmers will not want to deal with the extra burden of reporting. Another thing about Chicken litter it is close by where the farms are less wear and tear on the roads and less fuel consumed!

COMMENTER: Michael Nolt, VA Farmer

COMMENT: My family farm raises poultry in Rockingham County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Rob Preston, Preston Hills Farm, Rockingham County Poultry Grower

COMMENT: My family farm raises poultry in Page County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Jeffrey E. Thomas, Blue Rock Farm, Inc. Page County Poultry Grower

COMMENT: As the president of the Rockingham Farm Bureau Association Board of Directors, we are opposed to the proposed end-user reporting requirements.

COMMENTER: Lareth L. May, President, Rockingham County Farm Bureau Board

COMMENT: My family farm raises poultry and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years.
While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Vincent A. Wolford, Rockingham County Poultry Grower

COMMENT: I am opposed to the proposed end-user reporting requirements, as they are unnecessary for purposes of tracking poultry litter and harmful to the litter market.

COMMENTER: Richard Newell

COMMENT: I am writing in opposition of the end- user reporting requirements. This requirement will kill the litter market.

COMMENTER: Michael E. Easter, Amelia County Permitted Poultry Grower, Registered Litter Broker, Litter End-User

COMMENT: I am a contract turkey producer for Cargill Turkeys. My farm is located near Timberville, VA in Rockingham Co. I am covered under the general permit and I have an approved nutrient management plan. I have been subject to numerous inspections and have always been in compliance. Under my plan, I am unable to utilize much of the poultry litter produced. I do not grow crops other than hay and pasture. Therefore, I sell (or give away) 90-95% of the litter produced. Most is moved out of Rockingham Co. to other parts of VA through poultry litter brokers to crop producers who can use it. Some has been hauled 150-200 miles. During the last 30 years the market and demand for litter has been up and down. To make matters worse, my litter broker-Mr. Mark Deavers was killed in a trucking accident on I-81 in March. He moved thousands of tons out of Rockingham Co, to other parts of VA. His loss will make it more difficult to move litter. I fear that the proposed reporting requirement by end-users will cause those producers to move away from litter to commercial fertilizer. I stand opposed to the proposal. The proposal provides little benefit to the clean-up of the Bay and in the end could cause problems by hindering the transfer and demand for litter.

COMMENTER: Lareth L. May, May Poultry Farm, Rockingham County

COMMENT: My family farm raises poultry in Goochland County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTERS: JT Anderson, Pineview Farm, Goochland County Poultry Growers
Kate Anderson, Pineview Farm, Goochland County Poultry Growers

COMMENT: My name is Craig Bailey and I am the owner of Greenmount Heritage LLC, a turkey operation on contract with Virginia Poultry Growers Cooperative, Inc. I have been raising poultry on my farm for over 33 years and have seen numerous changes in the poultry industry in Va. I am opposed to the new reporting requirements for poultry litter end users. These requirements will bring harm to the poultry litter market and thus hurt the poultry farmer economically by lowering the demand for litter.

COMMENTER: Craig Bailey, Greenmount Heritage LLC

COMMENT: I am writing to voice my opposition to the new reporting requirement for poultry end-users because it will harm the market for poultry litter, hurt poultry growers economically, and hinder Virginia's ability to meet its goals for litter transport in the Commonwealth's Chesapeake Bay cleanup plan.

COMMENTER: Grant Martin

COMMENT: My family farm raises poultry in Augusta County and is covered under the VPA General Permit for Poultry Waste Management. Thank you for the opportunity to comment on the proposal to renew the program for another ten years. While we can support much of the proposal, I am strongly opposed to the new end-user reporting requirement. This requirement is unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. Such a mandate could be economically devastating to my farm without any environmental benefit.

COMMENTER: Thomas Thacker, Augusta County Poultry Grower

COMMENT: I am writing to voice my opposition to the new reporting requirement for poultry end-users because it will harm the market for poultry litter, hurt poultry growers economically, and hinder Virginia's ability to meet its goals for litter transport in the Commonwealth's Chesapeake Bay cleanup plan.

COMMENTER: Patrick Evick

COMMENT: Just wanted to drop a brief comment regarding the proposal for the VPA General Permit for Poultry Waste: I would urge anyone involved in moving the proposal forward to consider that most, if not all of the reporting requirements are already being obtained during a DEQ inspection of a given farm. Putting additional reporting requirements on the farmer and/or litter-end use would not only add further paperwork, but could also have negative effects on an already-struggling litter market. Thanks for your time and consideration.

COMMENTER: Daryn Martin, Rockingham County

COMMENT: I am an end user of chicken litter, although I only use a small amount I don't want to have to fill out any reports. What I use only goes on hay land that does not have any creeks or streams. This land is fairly flat, not any run-off. Would like to continue using litter to fertilize land which I feel is a whole lot safer than regular fertilizer and a lot better. If I and other users can't get this litter without problems then it will just pile up on poultry farms cause they will not be able to get rid of this litter then it will just pile up on farms and then you will have run off to who knows where!

COMMENTER: Ronald Reynolds, Farmer Crewe, VA

COMMENT: I wish to express opposition to this proposal to require litter end-users to report transfer/application records annually. We poultry growers make reports, the brokers make reports. An increase of paperwork on the end-users could decrease the appeal of using litter as fertilizer and

drive down the price of litter. Our family depends on income from litter sold as a part of our total income. Every bit is important to us. Thanks for your consideration.

COMMENTER: Chadwick McMurray, Rockingham County Farmer

COMMENT: I am opposed to the new reporting requirement for poultry litter end-users because it will harm the market for poultry litter, hurt poultry growers economically, and hinder Virginia's ability to meet its goals for litter transport in the Commonwealth's Chesapeake Bay cleanup plan.

COMMENTER: Clay Miller, Shenandoah Valley Organic

COMMENT: First, I am opposed to end-user reporting requirements. This could greatly affect our ability to transport litter according to the goals in the Virginia Chesapeake Bay restoration plan. Many of our end users could easily buy commercial fertilizer, leaving us the grower trying to safely store tons of litter on the farm. That would quickly turn into a large problem.

COMMENTER: Glen Landis, Cumberland Poultry Grower

COMMENT: I raise broilers in Shenandoah County and operate under the VPA General Permit. I would prefer to have the regulation renewed as is, without the additional reporting suggested. I currently transfer all my litter. Additional reporting by end users will likely inhibit some of those end users from utilizing litter simply by not wanting to be saddled with the reporting requirement.

COMMENTER: Philip Bowman, Shenandoah County Poultry Grower

COMMENT: I have a family farm located in Rockingham County and as a farmer. I would find end user reports to be a detriment to my use of litter. Just too much work and bureaucracy. The added bureaucratic expense would be harmful and counterproductive as chicken litter needs to be widely used across the state rather than concentrated near producing areas.

COMMENTER: Carol L. Turner, S&C Poultry Inc., Rockingham County

COMMENT: As a farmer, I would find end user reports to be a detriment to my use of litter. Just too much work and bureaucracy. The added bureaucratic expense would be harmful and counterproductive, as chicken litter needs to be widely used across the state rather than concentrated near producing areas.

COMMENTER: Paul Beyer, Fluvanna County

COMMENT: The proposed requirement for end-user reporting would be an additional time and expense punishment imposed on farmers like myself who are serious about environmental issues and manage their most important resources (land, water and air) responsibly. In addition, this requirement appears to a duplication of reporting already required or available by other means.

COMMENTER: Richard Baltimore, Cumberland Cattle Farmer

COMMENT: I have a family farm located in Accomack County. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. These new proposals will create an additional and unnecessary burden of record keeping during an already busy time of year for farmers. This information is already being recorded by the poultry growers so the data will be redundant if it is also recorded by the end user.

COMMENTER: Matthew Hickman, Accomack County Farmer

COMMENT: I am opposed to the proposed end-user reporting requirements, as they are unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan.

COMMENTER: Harry Miller, Brunswick County Farmer

COMMENT: With this section of the new Permit I am in the belief that less is more. We as producers are required now to report the end users and their information. With their signature and receipt of our litter they are now bound to one of three requirements to utilize this litter. DEQ already has the information through the producers and the ability to spot check any end user it likes. I understand the idea behind the request for information from the end user but I don't see where duplicating the information would improve the outcome. Knowing the watersheds where the litter is applied and the amounts gives us a strong handle on bacterial and nutrient loads in these watersheds and in the Bay as a whole. An unfortunate consequence that I see from this is change would be the concentration of litter in certain areas, especially in my area of central Virginia, due to the drop in

end users. I and many other producers would be forced to use more of our litter than we would like and ask our NMP writers to start using the P =Index so we would be able to use our stranded litter. This might not sound that dire but in the end it would be. We know that more pollution would occur if we stockpile more litter and have to use NMP Practices that allow us to use more litter. The more litter is spread out across the Commonwealth the less the likelihood of that litter causing water quality problems. 90% of our water quality problems occur during 10% of our rainfall events. With this being said the more litter utilized in fewer places greatly increases the probability of water quality problems. These events will happen if litter is more centralized and with the increasing occurrences of 25 year and greater storm events litter may cause irreversible problems that are out of the producers control. In the end I think more of the reporting burden should be shouldered by the permit holders and not the end users. Correct usage of litter is vital to solving the water quality problems of the state, so I believe it is up to the producers and DEQ to work with end users to educate them on the facts and by doing so increase the usage of litter in environmentally appropriate ways.

COMMENTER: Kevin Dunn, Poultry Grower in Buckingham County

COMMENT: I have a family farm In Augusta County Virginia. I would like to comment on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. I am a small end-user of poultry waste as fertilizer for hay fields. Government management and new reporting requirements for small end-users is not appropriate. It increases burden for the small end user, who already operates a marginal business.

COMMENTER: Kenneth Miller, Augusta County Farmer

COMMENT: I am opposed to the proposed end-user reporting requirements, as they are unnecessary for purposes of tracking poultry litter, harmful to the litter market, and counter-productive to the litter transport goals in Virginia's Chesapeake Bay restoration plan. We are working 365 days a year providing a safe food supply.

COMMENTER: Marty Potts, Purcellville

COMMENT: I have a family farm located in Pittsylvania county. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. Just more burdensome regulations on the end user producer. You already have regulation and rules in place you do not need additional in user rules, it's becoming duplicative.

COMMENTER: James Calhoun, Pittsylvania County Farmer

COMMENT: I have a family farm located in Augusta County. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. I am a beef cattle farmer and not a poultry grower. I use poultry litter for fertilizer when it is available and I can find it. Although there are many poultry growers in the Shenandoah Valley, an adequate supply of litter is nearly always difficult to find. Please do not make the regulations more difficult. If you do, I will have to go back to using commercial fertilizers.

COMMENTER: Charles Curry, Augusta County Farmer

COMMENT: I have a family farm located in Augusta County. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. We have 1600 A of crops and open land to graze our 1200 head of cattle. We spread many Tons of Poultry waste to keep our hay and pasture fields in great condition. To apply fertilizer would greatly increase our expenses! And not be as beneficial!

COMMENTER: Charles Obaugh, Augusta County Farmer

COMMENT: Requiring all end users to have a nutrient management plan and annual reporting will discourage the use of litter application on a local basis, thus creating a huge transportation issue in an attempt to transport litter outside of the watershed area. Omitting the use of litter on crops and grasslands could result in thinner stands of grass and poorer crop growth, thus resulting in more water runoff in heavy rain events. I am also opposed to this proposal.

COMMENTER: Junior Beachy, Staunton

COMMENT: My farm is located in Hanover county and we farm 300 acres of row crops (soybeans) and have 40 acres of grass hay and pasture. We sold our dairy cows in 2019 after 60 years in dairy business. We have a small number of young stock left but will continue to grow crops and likely add beef cattle. I'm concerned with potentially adding a new requirement for end-users of poultry litter to report transfer and land application record annually to DEQ when the Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630 is up for renewal. We have not used poultry waste in the past because we've had our own manure from the dairy cows to use as fertilizer but as we move forward we will look to all options for the best way to sustainably grow our crops and protect our precious land. We are already using a certified nutrient management plan and this additional requirement is an unnecessary burden.

COMMENTER: Matthew Nuckols, Hanover County Farmer

COMMENT: My name is David Wine and I am a permitted poultry litter broker from Bridgewater, VA. I am writing this email is regards to the VPA General Permit for Poultry Waste. My personal opinion after working in this industry for over 6 years is that the end-user reporting requirements are unnecessary for purposes of tracking poultry litter and could potentially cause harm to the litter market itself. It could also work against the transport goals in Virginia's Chesapeake Bay restoration plan. My fear is that this requirement could have a negative impact on my ability to market and transfer poultry waste.

COMMENTER: David Wine, Registered Poultry Waste Broker, Rockingham County

COMMENT: Creamfield Farm is based out of Mechanicsville Va and operates in 9 county's of VA. We utilize poultry Litter to offset the commercial fertilizer because of its added benefits. It is crucial to our operation that we are able to continue accessing it as is without any extra requirements than already in place. We strongly oppose 9VAC25-630

COMMENTER: Grayson W. Kirby, Creamfield Farm, Hanover County Farm

COMMENT: We are located near Stuarts Draft and are a poultry litter end-user which has really improved our soil. We have a closely monitored Nutrient Management Plan and do not see any purpose in the repetition of reporting our use. Poultry litter is an excellent product to enhance the soil and it would be a large expense and problem to just pile it up or put it in a landfill. We want to keep our nutrient input costs down while paying close attention to our effect on the environment. Our use is based on the recommendation of our Nutrient Management Plan. We have no interest in incentive payments because time that could be spent farming will be spent in repetitious bookkeeping.

COMMENTERS: Lloyd McPherson, Christians Creek Holsteins, Inc., Staunton, VA
Dora McPherson, Christians Creek Holsteins, Inc., Staunton, VA

COMMENT: I have a family farm located in Rockingham COUNTY. As a Virginia farmer, I write to submit comments on the proposed changes to Virginia Pollution Abatement (VPA) Regulation and General Permit for Poultry Waste Management, 9VAC25-630. We use most of our poultry litter but also sell some as an added income. I report what I produce so I don't think the end user should also have to report as this is redundancy and the end user does not have a poultry operation therefore is not familiar with reporting requirements.

COMMENTER: Lee Biller, Rockingham County Farmer

COMMENT: We also feel that increased unnecessary regulations would hinder our ability to get rid of our litter and for our end-users to be able to use it as an affordable and safe fertilizer for their needs. Poultry litter is already analyzed and tested so users can only put down a certain amount on their land and more regulations would just make it that more difficult for everyone. Farmers need affordable fertilizers and poultry litter is a good option for them. They do not use it needlessly and are concerned about keeping our water clean and our land in good shape. If we didn't have a market for our litter how would we be able to raise poultry for everyone to have food. Poultry litter is a by-product of a much need food industry and must be used responsibly the way farmers are currently using it. All the farmers I know that use it are much more responsible about it than some that use chemicals and chemical fertilizers on their land. Thank you for your attention on this matter.

COMMENTERS: Trent Johnson, Poultry Grower, Lunenburg County

Roxie Johnson, Poultry Grower, Lunenburg County

COMMENT: I understand that the DEQ is considering adding annual reporting of the transportation and application of poultry litter by end-users to the VPA General Permit for Poultry Waste regulations list. Adding this requirement would have no positive impacts, but it would certainly be fraught with negative consequences. This information is already provided within other reporting structures, and adding an additional and unnecessary burden to the end-user is counterproductive.

When it becomes cheaper, easier, and less annoying to buy and utilize commercial fertilizer, that is what the end-user will do, (because they are not stupid). At that point the bottom will drop out of the litter market, and the poultry growers will not only become more fiscally insecure, but they will be stuck with massive amounts of litter. The domino effect will greatly increase the risk of environmental damage, due to the double jeopardy situation of poultry growers being unable to properly dispose of litter, and end-users returning to commercial fertilizer.

COMMENTER: Mary Jane Martin, Augusta County Poultry Grower

RESPONSE: DEQ acknowledges these comments and understands that there is opposition to the new proposed reporting requirements. § 62.1-44.17:1.1. of the Code of Virginia, mandates that DEQ track information related to poultry waste transfers. In addition, the poultry waste transfer data is reported to the Chesapeake Bay Program Office of EPA in order to receive credit each year for moving poultry waste out of the watershed. Unfortunately, DEQ does not have the staffing resources to acquire the transport data from end-users on a yearly basis via another method. The new reporting requirements will significantly improve the timing and receipt of the poultry transfer data from the end-user and facilitate DEQ's reporting to EPA for credit in the Bay model. These improvements to the regulations demonstrate Virginia's commitment to improving the recordkeeping and reporting related to Poultry Waste Transport as stated in the Watershed Implementation Plan III.

After analyzing the comments and determining what information the department needs to ensure compliance with the regulation and what is necessary for receiving credit in the Bay model through the reporting of poultry waste transfer data to the Chesapeake Bay Office of the EPA. Staff determined that a better option to reporting all land application records and supporting documents (as previously required in the proposed language) would be to instead require the end-user to report (in a phased in reporting timeframe): poultry waste transfer records; the method they used to determine the land application rate; and the county where the waste is being utilized.

This alternative strikes a balance for obtaining the information related to poultry waste transactions and a subset of important land application information while reducing the reporting burden and the concerns related to the release of private and personally identifying information contained in the specific land application records and supporting documents. This option will provide the department with the necessary information in a timely manner while not compromising the privacy and personal identifying information that is protected by the Department of Conservation and Recreation through exemptions in the Freedom of Information Act, and protected by Federal branches of the United States Department of Agriculture.

The following changes are being proposed based on these comments. Section 70, Tracking and Accounting Requirements for End-Users is being revised to report the following items to the Department in a phased in timeframe:

1. ***poultry waste transfer records,***
2. ***the method the end-user used to determine the land application rate, and***
3. ***the county where the waste is being utilized.***

COMMENT: I would like to express my opposition to several proposed changes being made to the VPA General Permit for Poultry Waste. The permitting process was originally set up as part of the Chesapeake Bay Restoration Process. It was used to help manage poultry litter in the Shenandoah Valley and encourage its movement out of this poultry dense area. End-User reporting requirements will be a burden to this process. I feel that imposing reporting requirements on the end-user will

hamper the removal of the poultry waste from the Valley. End users will use the easiest source for their nutrient needs. Another form that needs to be filled out may be all it takes for them to look elsewhere. It will be counter-productive to the original goal for the Chesapeake Bay and should not be added to the permit requirements.

COMMENTER: Gloria Long, George's Inc.

RESPONSE: This regulation and general permit contains strict conditions and requirements for all poultry operations across the state. These conditions and requirements do not change based on the location of the operation, poultry waste end-user or poultry waste broker, no matter if the operation or entity is located in the Chesapeake Bay watershed or outside of it. Since 2000, the current regulations have included requirements for detailed recordkeeping related to poultry waste transfers and the land application of poultry waste and the recordkeeping and reporting of the detailed records by poultry waste brokers. The proposed regulation and general permit includes the reporting of the detailed records by the owners of permitted poultry operations and poultry waste end-users and poultry waste brokers. ***No changes are being proposed based on this comment.***

SC-6 Subject: Section 80 – Utilization and Storage Requirements for Transferred Poultry Waste – Supportive

COMMENT: We support proposed changes to 9VAC25-630-80. B.1.d.2, B.2. and C.4. for the reasons cited above under 9VAC25-630-50.

COMMENTERS: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

RESPONSE: DEQ appreciates your support. ***No changes are being proposed based on this comment.***

SC-7a Subject: Section 90 – Commercial Poultry Processor Activities – Supportive

COMMENT: We support the proposed commercial poultry processor activities requirement as an aide in assisting permitted poultry growers in complying with 9VAC25-630 and the General Permit. While we believe most processors already implement standard practices in line with spirit of the proposed regulation, we are aware of occurrences where permitted commercial growers' efforts to comply have been made more difficult by the actions of commercial poultry processor employees and their agents at grower farms. In some instances, the results of these actions, for example spilled feed, have been cited during regulatory inspections by DEQ and other agencies.

COMMENTER: Tony Banks, Senior Assistant Director, Agriculture, Development & Innovation, Virginia Farm Bureau Federation
Frank Baber, Cumberland County Poultry Grower

RESPONSE: DEQ appreciates your support. ***No changes are being proposed based on this comment.***

SC-7b Subject: Section 90 – Commercial Poultry Processor Activities - Not-Supportive

COMMENT: DPI believes that the new section to regulate certain typical farming activities on the contract growers' farms, including delivery of chickens, catching chickens for harvest and delivering feed to the farms is not necessary. Chicken companies are already responsible for cleaning up any incidental spills or issues and work closely with the grower to assure that. Requiring an additional operational and maintenance manual outlining proper procedures for compliance and sharing that with DEQ will be additional time and paperwork for the poultry processors.

COMMENTER: Holly Porter, Executive Director, Delmarva Poultry Industry, Inc.

COMMENT: Proposed change: Adds a new section to regulate certain "typical farming activities" performed by commercial poultry processors on contract growers' farms, including delivery of poultry, catching poultry for transport, and filling feed bins. The section prohibits introduction of water into the process of the typical farming activities, except when cooling birds and cleaning and disinfection of vehicles and equipment prior to entering and leaving the farm when there is a disease outbreak or poultry health risk. The section requires processors to clean up and properly dispose of any poultry waste, feed, and hydraulic fluids, fuels, and oils which processors deposit or release. Farming activities must, where available, be conducted on impervious surfaces to facilitate cleanup

efforts. The processor must submit an operation and maintenance manual outlining proper procedures for compliance with the section.

VPF comment: VPF believes these new requirements are unnecessary because poultry processors take measures to prevent spillages during these farming activities, and work with the grower on any incidental spillages that can occur from time to time.

COMMENTER: Hobey Bauhan, President, Virginia Poultry Federation

RESPONSE: We understand that some believe that this section is not necessary; however, DEQ staff have observed occasions where activities performed by the commercial poultry processor at a permitted poultry farm were not conducted to the same standard required of the permitted grower by the poultry waste general permit. Additionally, staff have observed subpar clean-up from the typical activities that the commercial poultry processor performed on the permittee's farm. These type of conditions leave the permittee in a situation where they are not considered in compliance with the general permit through no fault of their own. The inclusion of this new section will help DEQ hold the appropriate entity responsible for implementing best management practices and cleanup. ***No changes are being proposed based on these comments.***

Regulatory Text:
Project 5666 - Proposed

STATE WATER CONTROL BOARD

Reissue and amend, if necessary, the Virginia Pollution Abatement Regulation and General Permit for

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Commercial poultry processor" or "processor" means any animal food manufacturer, as defined in § 3.2-5400 of the Code of Virginia, that contracts with poultry growers for the raising of poultry.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys, regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or ~~his~~ the director's designee.

"Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.

"General permit" means 9VAC25-630-50.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit, the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

B. The Director of the Department of Environmental Quality, or ~~his~~ the director's designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on [~~December 1~~,] ~~2010~~ [~~2020~~ insert effective date]. This general permit will expire 10 years from the effective date.

9VAC25-630-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-630 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from a confined poultry feeding operation, the poultry grower shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The poultry grower shall comply with the requirements of this chapter and the permit.

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

D. Any poultry waste end-user or poultry waste broker who is required by the board to obtain coverage under the Virginia Pollution Abatement general permit shall obtain coverage and comply with the requirements of this chapter.

E. Any commercial poultry processor shall comply with the requirements outlined in 9VAC25-630-90.

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

1. The poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The poultry grower shall obtain Department of Conservation and Recreation approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. Prior to filing a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry ~~which~~ that will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit

coverage. All permitted poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 or the general permit as applicable.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The poultry waste end-user or poultry waste broker shall obtain Department of Conservation and Recreation approval of a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan that was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. [In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, the following applies:

a.] Any owner that was authorized to manage pollutants under the general permit ~~issued in 2000,~~ and that submits a complete registration statement [in accordance with 9VAC25-630-40] on or before ~~November 30, 2010~~ the expiration date [of the expiring general permit coverage], is authorized to continue to manage pollutants under the terms of the ~~2000~~ [previously issued] general permit [~~until such time as the board either:~~. The conditions of the expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and until such time as the board either:]

[~~a~~b]. Issues coverage to the owner under [~~this~~ the next consecutive] general permit; or

[~~b~~c]. Notifies the owner that coverage under [~~this~~ the next consecutive general] permit is denied.

2. When the permittee that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the existing or expired general permit;

b. Issue a notice of intent to deny coverage under the ~~amended~~ reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the ~~continued~~ existing or expired general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

9VAC25-630-40. Registration statement.

A. Poultry growers. In order to be covered under the general permit, the poultry grower shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry grower's name, mailing address, email address ~~(if available)~~, and telephone number;

2. The farm name (if applicable) and location of the confined poultry feeding operation;

3. The name, email address ~~(if available)~~, and telephone number of a contact person or operator other than the poultry grower, if necessary;

4 The best time of day and day of the week to contact the poultry grower or contact person;

5. If the facility has an existing VPA permit, the permit number;

6. Indicate whether the poultry are grown under contract with a commercial poultry processor or poultry integrator and give the name of the processor or integrator (if applicable);

7. The types of poultry and the maximum numbers of each type to be grown at the facility at any one time;

8. Identification of the method of dead bird disposal;

9. An indication of whether new poultry growing houses are under construction or planned for construction;

10. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

11. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

12. The following certification: "I certify that for any confined poultry feeding operation that proposes construction of new poultry growing houses, notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the confined poultry feeding operation will be located. This notice included the types and numbers of poultry which will be grown at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. Poultry waste end-users or poultry waste brokers. In order to be covered under the general permit, the poultry waste end-user or poultry waste broker shall file a complete VPA General Permit Registration Statement. The registration statement shall contain the following information:

1. The poultry waste end-user's or poultry waste broker's name, mailing address, email address ~~(if available)~~, and telephone number;

2. The location of the operation where the poultry waste will be utilized, stored, or managed;

3. The best time of day and day of the week to contact the poultry waste end-user or poultry waste broker;

4. If the facility has an existing VPA permit, the permit number;

5. If confined poultry are located at the facility, indicate the number of confined poultry and give the name of the processor or integrator (if applicable);

6. A copy of the nutrient management plan approved by the Department of Conservation and Recreation;

7. A copy of the Department of Conservation and Recreation nutrient management plan approval letter that also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia; and

8. The following certification: "I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with [~~9VAC25-32-50~~ 9VAC25-32-70] .

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: [~~December 1,~~] ~~2010~~ [~~2020~~ insert effective date]

Expiration Date: [~~November 30,~~] ~~2020~~ [~~2030~~ insert date 10 years from the effective date]

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia) and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified ~~below~~ in the following table. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite *
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite *
Potash	NL	ppm or lbs/ac	1/3 years	Composite *

Calcium	NL	ppm or lbs/ac	1/3 years	Composite *
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite *

NL = No limit, this is a monitoring requirement only.
SU = Standard Units
*Specific sampling requirements are found in the facility's approved nutrient management plan.

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.
*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions~~.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property, unless the occupant of the dwelling signs a waiver of the storage site.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded, or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. ~~Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:~~

~~a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:~~

~~(1) Grower name, address, and permit number;~~

~~(2) A copy of the most recent nutrient analysis of the poultry waste; and~~

~~(3) A fact sheet.~~

~~b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:~~

~~(1) The recipient name and address;~~

~~(2) The amount of poultry waste received by the person;~~

~~(3) The date of the transaction;~~

~~(4) The nutrient analysis of the waste; and~~

~~(5) The signed waste transfer records form acknowledging the receipt of the following:~~

~~(a) The waste;~~

~~(b) The nutrient analysis of the waste; and~~

~~(c) A fact sheet.~~

~~c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:~~

~~(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and~~

~~(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.~~

~~d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.~~

~~e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.~~

The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. ~~Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~ When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent

necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

1. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

(1) Grower name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the poultry waste; and

(3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the waste; and

(5) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code); and

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

2. Poultry growers shall maintain the records required by Part I C 1 for at least three years after the transaction and shall make them available to department personnel upon request.

3. Transfer records reporting requirements. The grower shall submit the records required by Part I C 1 in accordance with the timing outlined in Part I C 3 a and b.

a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the grower shall submit the records in a format and method determined by the department.

b. Beginning (insert the date two years after the effective date of this permit), the grower shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

4. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

~~6.~~ 5. The poultry grower shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The location of fields as identified in ~~Part I B 4 e~~ Part I C 4 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the grower's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~8.~~ 6. Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~9.~~ 7. Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~10.~~ 8. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

9. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the grower's NMP. If this occurs, the poultry grower shall document the land application information in accordance with Part I C 11 and notify the department in accordance with Part II H.

~~11.~~ 10. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~12.~~ 11. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

~~13.~~ 1. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

2. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Part II

Conditions Applicable to all VPA Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless ~~other procedures have been~~ otherwise specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The name of the ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates analyses were performed;

d. The name of the ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results. If reporting is required by Part I or Part III of this general permit, the permittee shall follow the requirements of this subsection.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as requested by the director prior to commencing construction.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II F, or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in ~~Parts~~ Part II F, G, and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar ~~policy-~~ policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency~~,~~ or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this general permit and 9VAC25-630. Any noncompliance with the general permit or 9VAC25-630 constitutes a violation of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 30 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities ~~which~~ that causes them to become inoperable, or substantial and permanent

loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in ~~paragraphs~~ Part II U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any ~~permittee's~~ public or private property~~, public or private~~ on which the pollutant management activities that are governed by this permit are located and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If the board notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified ~~below~~ in the following table. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite *
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite *
Potash	NL	ppm or lbs/ac	1/3 years	Composite *
Calcium	NL	ppm or lbs/ac	1/3 years	Composite *
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite *

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

*Specific sampling requirements are outlined in the permittee's approved nutrient management plan.

4. Poultry waste shall be monitored as specified ~~below~~ in the following table. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions~~.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the permittee's property (unless the occupant of the dwelling signs a waiver of the storage site).

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. The permittee shall operate and manage the facility so that impervious surfaces such as concrete end pads or load-out pads and surrounding areas and ventilation outlets are kept clean of poultry waste.

5. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

C. Poultry waste transfer and utilization requirements.

~~4.~~ 1. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

a. The end-user or broker name, address, and permit number;

b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

~~5.~~ 2. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

~~6.~~ 3. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient content of the waste;

(5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);

(6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

~~7.~~ 4. End-users or brokers shall maintain the records required by ~~Part III B 6~~ Part III C 3 for at least three years after the transaction and make them available to department personnel upon request.

5. Transfer records reporting requirements. The end-users and brokers shall submit the records required by Part III C 3 in accordance with the timing outlined in Part III C 5 a and 5 b.

a. Beginning (insert the date one year after the effective date of this permit), upon request by the department, the end-users and brokers shall submit the records in a format and method determined by the department.

b. Beginning (insert the date two years after the effective date of this permit), the end-users and brokers shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.

~~8.~~ 6. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

~~9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the~~

~~emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~

~~10.~~ 7. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in ~~Part III B 8~~ Part III C 6 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the permittee's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

~~11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.~~

~~12.~~ 8. Nitrogen application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

~~13.~~ 9. Phosphorus application rates contained in the NMP shall be established in accordance with ~~4VAC5-15-150 A 2~~ 4VAC50-85-140 A 2. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

~~14.~~ 10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the permittee's NMP. If this occurs, the permittee shall document the land application information in accordance with Part III C 13 and notify the department in accordance with Part II H.

~~15.~~ 12. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

~~16.~~ 13. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

D. Other special conditions.

~~17.~~ 1. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry waste end-users or permitted poultry waste brokers shall complete a training program at least once every five years.

2. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

9VAC25-630-60. Tracking and accounting requirements for poultry waste brokers.

A. Poultry waste brokers shall register with the department by providing their name and address on a form ~~approved~~ provided by the department prior to transferring poultry waste.

B. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall provide information regarding the transfer of poultry waste to both the source and recipient of the waste.

1. The broker name and address shall be provided to the source of the transferred poultry waste:

2. The following items shall be provided to the recipient of the transferred poultry waste:

a. The broker name and address;

b. The most recent nutrient analysis of the poultry waste; and

c. A fact sheet.

C. When a poultry waste broker transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry waste broker shall keep records regarding the transferred poultry waste.

1. The following items shall be recorded regarding the source of the transferred poultry waste:

a. The source name and address;

b. The amount of the poultry waste received from the source; and

c. The date the poultry waste was acquired.

2. The following items shall be recorded regarding the recipient of the transferred poultry waste:

a. The recipient name and address;

b. The amount of poultry waste received by the person;

c. The date of the transaction;

d. The nutrient content of the waste;

e. The locality in which the recipient intends to utilize the waste (i.e., nearest town or city, county, and zip code);

f. The name of the stream ~~of~~ or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

g. The signed waste transfer records form acknowledging the receipt of the following:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

D. Poultry waste brokers shall submit ~~copies of~~ the records required by subsection C of this section, to the department annually ~~using a form approved~~ in a format and method determined by the department. Records for the preceding ~~calendar~~ state fiscal year (July 1 through June 30) shall be submitted to the department ~~not~~ no later than ~~February 15~~ September 15. Poultry waste brokers shall maintain the records required by ~~subsection~~ subsections C and E of this section for at least three years and make them available to department personnel upon request.

E. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste. The original sources of the waste shall also be recorded and provided to the department with the annual transfer records submittal.

F. If the poultry waste broker land applies the poultry waste for the end-user then the broker shall provide the end-user with the records regarding land application as required by 9VAC25-630-70.

G. Poultry waste brokers shall complete a training program offered or approved by the department within one year of registering with the department. Poultry waste brokers shall complete a training program at least once every five years.

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-70. Tracking and accounting requirements for poultry waste end-users.

A. When a poultry waste end-user is the recipient of more than 10 tons of poultry waste in any 365-day period, the end-user shall maintain records regarding the transfer and land application of poultry waste.

1. The poultry waste end-user shall provide the permitted poultry grower or poultry waste broker with the following items:

a. End-user name and address;

b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or city, county, and zip code);

c. The name of the stream or waterbody if known to the end-user that is nearest to the waste utilization or storage site; and

d. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) A fact sheet.

2. The poultry waste end-user shall record the following items regarding the waste transfer:

a. The source name, address, and permit number (if applicable);

b. The amount of poultry waste that was received;

c. The date of the transaction;

d. The final use of the poultry waste;

e. The locality in which the waste was utilized (i.e., nearest town or city, county, and zip code); [~~and~~]

f. The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site [~~.~~; and

g. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan).]

~~Records regarding poultry waste transfers~~ End-users shall ~~be maintained~~ maintain the records required by subdivisions A 1 and A 2 of this section on site for a period of three years after the transaction. All records shall be made available to department personnel upon request.

[3. Reporting requirements. End-users shall submit the records required by subdivisions A 1 and A 2 of this section in accordance with the timing outlined in subdivisions 3 a and 3 b of this subsection.

a. Beginning (insert the date one year after the effective date of this regulation) and continuing through (insert the date two years after the effective date of this regulation), upon request by the department, the end-user shall submit the records in a format and method determined by the department; and

b. Beginning (insert the date three years after the effective date of this regulation), the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.]

[~~3~~ 4]. If waste is land applied, the poultry waste end-user shall keep a record of the following items regarding the land application of the waste:

a. The nutrient analysis of the waste;

b. Maps indicating the poultry waste land application fields and storage sites;

c. The land application rate;

d. The land application dates;

e. What crops were planted;

f. Soil test results, if obtained; [and]

g. NMP, if applicable [~~; and~~

~~h. The method used to determine the land application rates (i.e., phosphorus crop removal, standard rate, soil test recommendations, or a nutrient management plan)~~] .

~~Records regarding land application of poultry waste~~ End-users shall ~~be maintained~~ maintain the records required by this subdivision [~~3~~4] on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

[~~4. Reporting requirements. End-users shall submit the records required by subdivisions A 1 [, and A 2, and A 3] of this section in accordance with the timing outlined in subdivisions 4 a and 4 b of this subsection.~~

~~a. Beginning (insert the date one year after the effective date of this regulation) and continuing through (insert the date two years after the effective date of this regulation), upon request by the department, the end-user shall submit the records in a format and method determined by the department; and~~

~~b. Beginning (insert the date three years after the effective date of this regulation), the end-user shall submit to the department, annually, the records for the preceding state fiscal year (July 1 through June 30) no later than September 15.~~]

B. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet of separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot of separation between the seasonal high water table and the impermeable barrier. ~~"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.~~ Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least:

(1) 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs; and

(2) 200 feet from any occupied dwellings not on the end-user's or broker's property, unless the occupant of the dwelling signs a waiver of the storage site.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives ~~five~~ 10 or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the following table ~~below~~:

Region	Soil test P (ppm) VPI & SU Soil test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) The analytical results are from procedures in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops. The recommendations shall be in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 2 a.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with ~~4VAC5-15-150~~ 4VAC50-85-140 A 4, except that no waste may be applied to ice covered or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

4. In cases where poultry waste storage is threatened by emergencies such as fire or flood or where these conditions are imminent, poultry waste can be land applied outside of the spreading schedule outlined in the Fact Sheet. If this occurs, the end-user or broker shall document the land application information in accordance with 9VAC25-630-70 A 3.

D. Poultry waste end-users and poultry waste brokers shall maintain the records demonstrating compliance with the requirements of subsections B and C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards (9VAC25-260), as ~~amended and~~ adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

9VAC25-630-90. Commercial poultry processor activities.

A. Any commercial poultry processor who contracts with a poultry grower shall comply with the requirements outlined in this section.

B. For the purpose of this section, the commercial poultry processor's hired staff, contract or company employed haulers, poultry catching crews, and feed truck operators are also considered the commercial poultry processor.

C. A commercial poultry processor that conducts typical farming activities on the contract poultry grower's farm shall be responsible for cleaning up after such farming activities.

1. Typical farming activities include the following:

a. Releasing poultry into the poultry growing houses;

b. Catching poultry for transport; and

c. Filling feed bins.

2. Typical farming activities do not include the routine washing of trucks owned, operated, or contracted by the commercial poultry processor.

3. The introduction of water into the process of the typical farming activities is prohibited, except in the following cases:

a. When used for cooling the birds during the releasing and catching process; and

b. When there is a disease outbreak or poultry health risk that requires clean up and disinfection of the vehicles and catching equipment prior to entering and leaving the farm.

When water is introduced into the process, it should be done in a manner that does not produce process wastewater.

D. The commercial poultry processor shall clean up and properly dispose of, in a prompt and efficient manner, any of the following materials that have been deposited or released by the commercial poultry processor:

1. Poultry waste;

2. Feed; and

3. Hydraulic fluids, fuels, and oils used in machinery.

E. Farming activities such as those listed in subsection C of this section shall be conducted on impervious surfaces, where available, to facilitate the cleanup efforts.

F. The commercial poultry processor shall submit an operation and maintenance manual that outlines proper procedures to be used by the commercial poultry processor while commencing with typical farming activities, as listed in subsection C of this section, on the contract grower's farm.

1. The manual shall at a minimum cover the following items:

a. The processor's procedures to carry out the typical farming activities;

b. Proper clean up and disposal of materials deposited or released during such activities; and

c. Any additional information to ensure compliance with this section or determined to be relevant by the department.

2. The manual shall be submitted to the department for approval by (insert date 60 days after the effective date of this section).

3. Subsequent revisions to the manual shall be submitted to the department for approval 30 days prior to making changes to the procedures outlined in the manual.

4. An individual commercial poultry processor may submit one manual to cover multiple processing plants or complexes, where all procedures used are identical.

G. The activities of the commercial poultry processor shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

H. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

FORMS (9VAC25-630)

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (rev. 07/10)~~

~~Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (rev. 07/10)~~

~~Fact Sheet, Requirements for Poultry Litter Use and Storage (rev. 12/10)~~

Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Growers, RS VPG2 (eff. 12/2020)

Virginia DEQ Registration Statement for VPA General Permit for Poultry Waste Management for Poultry Waste End-Users and Poultry Waste Brokers, RS End Users/Brokers VPG2 (eff. 12/2020)

Fact Sheet, Requirements for Poultry Litter Use and Storage (eff. 12/2020)

TAB F - Water Quality Standards - 9VAC25-260 - Fast-Track Amendments to Designate Four Public Water Supplies

Staff intends to ask the Board at their December 9, 2020 meeting for approval to initiate a rulemaking to amend the Water Quality Standards regulation to designate four waterbody segments as Public Water Supplies (PWS). The staff proposal will be for a fast track rulemaking as the amendment is expected to be non-controversial. Three of the four PWS are proposed and withdrawal structures are either currently in construction or are planned to be in the immediate future. One is active and all withdrawal structures and appurtenances have been constructed and are currently in use.

A PWS designation may require more stringent effluent limits for discharges from permitted facilities within a 5-mile distance beyond the locality that controls the PWS intake. However, Department staff have determined there are no permitted facilities within that 5-mile distance for any of the four facility intakes for which a PWS designation is proposed. Also, a PWS designation protects source water that is used for human consumption. Given the above mentioned factors, the rulemaking is assumed to be noncontroversial.

The Department has concluded that the proposed amendments to the regulation are essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality of source water for public water supplies.

The respective river basin sections (named in the subject line of this memo) will have the notation "PWS" placed in the Special Standards column to indicate the described waters are afforded Public Water Supply protections. Water quality criteria in the Public Water Supply column at table 9VAC25-260-140.B apply to waters designated as "PWS".

The proposed revisions to **9 VAC 25-260-400; 420; 440; and 510** are:

In 9 VAC 25-260-400:

3	IV	PWS	South Fork Shenandoah River and its tributaries from the City of Harrisonburg water supply intake near the confluence of Big Run to points 5 miles upstream.

In 9 VAC 25-260-420:

10t	III	PWS	Cobbs Creek (Cumberland County) and its tributaries from the public water supply intake on Cobbs Creek Reservoir upstream to their headwaters.

In 9 VAC 25-260-440:

4n	III	PWS	From the dam of the White Run pumped storage reservoir on an unnamed tributary to White Run upstream to its headwaters.

In 9 VAC 25-260-510:

6b	IV	PWS	South Fork Holston River and its tributaries from Washington County Service Authority intake near the confluence of the Middle and South Fork Holston Rivers to points 5 miles upstream.

The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

TAB G - Chesapeake Bay Preservation Area Designation and Management Regulation - 9VAC25-830 - Proposed Amendment - Coastal Resilience and Adaptation to Sea-level Rise and Climate Change Criteria

At the December 9, 2020, meeting of the State Water Control Board (Board), staff will ask the Board for approval to proceed to public notice with proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830). The proposed amendments were developed pursuant to Chapter 1207 of the 2020 Acts of Assembly, which required that a provision of "coastal resilience and adaptation to sea-level rise and climate change" be added to the criteria requirements in 9 VAC 25-830 as established by the Board. This memorandum provides a brief background on the Chesapeake Bay Preservation Act, the implementing regulations and the proposed amendments, as well as the General Assembly action authorizing this regulatory action.

BACKGROUND

The Chesapeake Bay Preservation Act (§ 62.1-44.15:72 of the Code of Virginia) provides that the State Water Control Board shall promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas include Resource Protection Areas, Resource Management Areas and Intensely Developed Areas.

Chapter 1207 of the 2020 Acts of Assembly amended § 62.1-44.15:72 and added a provision of "coastal resilience and adaptation to sea-level rise and climate change" to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act. Chapter 1207 also included a clause requiring the State Water Control Board to adopt regulations to implement the change, and a clause that initial adoption of applicable regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia, but shall be subject to a public comment period of at least 60 days prior to final adoption by the Board.

Consistent with this provision, a Notice of Intended Regulatory Action and a Regulatory Advisory Panel were not utilized. However, staff did engage in individual discussions with state agencies and stakeholders and held a public input session to receive information and feedback on potential considerations.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

PROPOSED AMENDMENT TO THE CHESAPEAKE BAY PRESERVATION AREA DESIGNATION AND MANAGEMENT REGULATIONS (9VAC25-830)

The proposed regulatory amendment provides clarity that climate change adaptation and resilience measures are a permitted activity within Chesapeake Bay Preservation Areas. This ensures these activities are specifically recognized consistent with identification of other allowable activities, particularly within the Resource Protection Area (RPA).

Consistent with the language in the statutory change, the proposed regulatory amendment provides that climate change impacts are considered for land development within the RPA. Given the primary nature of impacts, particularly sea-level rise, and that the RPA consists of water bodies and adjacent buffers, the amendment ensures consideration of these impacts when localities are reviewing projects. Moreover, it allows localities to incorporate or require conditions based upon a consideration of these impacts, including the use of best management practices. In considering these impacts, localities would utilize a model or forecast (2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High

scenario projection curve) specifically recognized by the Commonwealth, while having the option to consider other models or forecasts that are generally recognized and appropriate.

Additionally, the regulatory amendment proposes limitation on the granting of exceptions to activities in the RPA to ensure consideration of these impacts, avoid allowance of fill as a sole measure, and to provide for preservation and maximization of natural and nature-based features.

To allow for activities that are necessary to adapt or address climate change impacts, the regulatory amendment provides an allowance for these activities with certain requirements. These requirements apply in lieu of the performance criteria found in 9 VAC 25-830-130 and 9 VAC 25-830-140. For most activities, given the current site conditions and options in terms of adaptation measures, the regulatory amendment distinguishes between previously developed RPAs and vegetated or undeveloped RPAs.

The regulatory amendment maintains the requirement for a Water Quality Impact Assessment (WQIA) for these projects within the RPA. Given the nature of the projects and the recognition of certain activities by other DEQ programs including the Nonpoint Source Pollution control programs, the amendment also provides an exemption from the WQIA where the project is a best management practice recognized or approved by a state or federal agency to reduce runoff, prevent erosion, and filter nonpoint source pollution.

Additionally, in recognition of a common practice under regulatory oversight by the Virginia Marine Resources Commission (VMRC) and supported by commonwealth policy, the regulatory amendment provides an exemption for living shorelines where the locality has otherwise approved it, buffers and vegetation are addressed, and the project obtained necessary approval from VMRC.

Consistent with other performance criteria, local governments much include these provisions in their ordinances and incorporate the requirements into their programs. Additionally, given the timeframe necessary for ordinance changes and in recognition of the need for additional training and implementation tools such as guidance, localities would have three years from the effective date to adopt these changes.

Regulatory Text:

9 VAC 25-830-155 Climate Change Resilience and Adaptation Criteria

A. This Section applies in addition to 9 VAC 25-830-130 and 9 VAC 25-830-140. Local governments shall incorporate these provisions into all relevant ordinances and ensure their enforcement through implementation of appropriate processes and documentation for oversight and enforcement. Localities shall update and amend their ordinances to adopt and incorporate these performance criteria by [insert date 3 years after effective date of the regulation amendment].

B. Land development, adaption measures or activities including buffer modifications or encroachments necessary to install adaptation measures, mitigation measures, or other actions necessary to address the impacts of climate change, including but not limited to sea-level rise, recurrent flooding and storm surge, may be allowed in a Chesapeake Bay Preservation area provided the activity complies with all other applicable provisions of these regulations. Nothing in these provisions shall preclude a locality from adopting requirements or criteria in addition to the requirements of these provisions to address the impacts of climate change and sea-level rise in Chesapeake Bay Preservation areas in the locality including extension of the Resource Protection Areas, further restrictions on development, or further preservation of existing vegetation.

C. Local governments shall consider the impacts of climate change or sea level rise on any proposed land development in the Resource Protection Area. Based upon this consideration, local governments may require the installation of additional measures or design features as part of the proposed land development consistent with the requirements of the Act and these regulations. In considering the future impact, local governments shall:

    1. Consider a potential impact range of no less than 30 years; AND

2. Utilize an appropriate model or forecast to aid in the consideration of impacts through use of:
    i. The most updated 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve;
    ii. A model or forecast that incorporates or utilizes the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve; OR
    iii. A peer-reviewed model or forecast that includes NOAA 2017 projections, including the Intermediate – High curve and has been developed, utilized, or recognized by a state or federal agency and is not based solely upon extrapolation of historical data.
3. Include the consideration of future floodplain, water level, storm surge, or other impacts in altering the Resource Protection Area or diminishing the protection of water quality due to the proposed development from these impacts.
4. Identify measures, conditions, or alterations to the proposed land development to address these impacts as necessary and appropriate based upon site conditions, type of proposed land development, and projected potential impacts. This includes measures such as state or federally recognized or approved best management practices appropriate for the site conditions and land development to address such impacts.

D. Local governments shall not grant exceptions to the requirements of 9 VAC 25-830-130, or 9 VAC 250-830-140, or 9 VAC 20-830-155 where:
    1. The impact of climate change including sea level rise on the land development is not considered as outlined in Section C for exceptions in the Resource Protection Area;
    2. The exception consists of approval solely for the use of fill or other material to the Resource Protection Area or within 100 feet of the Resource Protection Area; OR
    3. The exception permits encroachment into seaward 50 feet of the buffer area of the Resource Protection Area notwithstanding permitted modifications and adaptive measures.

E. Local governments may allow adaption measures or activities within the Resource Protection Area to address climate change including sea level rise subject to the following criteria. These criteria and requirements shall apply to such adaptation measure or activity in lieu of the criteria in 9 VAC 25-830-130 and 140:
    1. Where the adaptation measure or activity is within a Resource Protection Area that has been previously developed, including IDAs, and is not naturally vegetated, the adaptation measure or activity shall:
        a. Be designed, implemented, and maintained in accordance with best management practices applicable to the adaptation measure or activity as recognized or approved by a state or federal agency;
        b. Not consist solely of the use of fill or other materials to raise the elevation of a Resource Protection Area;
        c. Incorporate natural features or measures such as the planting of vegetation or trees, maximize preservation of existing natural vegetation and trees particularly mature trees, and minimize land disturbance and impervious cover to the maximum extent practicable consistent with the applicable best management practices; AND
        d. Where applicable, obtain any applicable federal, state, and local permits and comply with any applicable federal, state and local requirements.

    2. Where the adaptation measure or activity is within a Resource Protection Area that is naturally vegetated or has not been previously developed, the measure or activity shall:
        a. Be designed and implemented in accordance with best management practices applicable to the adaptation measure or activity as recognized or approved by state or federal agencies;
        b. Preserve to the maximum extent practicable any existing vegetation in the additional 50 feet landward from the RPA;

c. Not consist solely of the use of fill or other materials to raise the elevation of a Resource Protection Area;
d. Maximize the preservation of existing vegetation and trees particularly mature trees, incorporate the planting and establishment of vegetation particularly trees, and minimize land disturbance and impervious cover to the maximum extent practicable consistent with the applicable best management practices; AND
e. Where applicable, obtain any applicable federal, state, and local permits and comply with any applicable federal, state and local requirements.

3. Where the adaptation measure or activity is a best management practice recognized or approved by a state or federal agency to reduce runoff, prevent erosion, and filter nonpoint source pollution, a Water Quality Impact Assessment in accordance with 9 VAC25-830-140(6) shall not be required. All other measures or activities shall require a Water Quality Impact Assessment in accordance with subdivision 6 of 9 VAC 25-830-140.

4. Where the proposed adaptation measure is a living shoreline project or related activity, the locality otherwise approves of the project, the projects maintains or establishes a vegetative buffer inland of the living shoreline to the maximum extent practicable, minimizes land disturbance to the maximum extent practicable, and the project receives approval from the Virginia Marine Resources Commission, including a permit as applicable, and any other necessary permits or approvals, the adaptation measure shall be exempt from additional requirements or criteria including a Water Quality Impact Assessment.

TAB H - Chesapeake Bay Preservation Area Designation and Management Regulation - 9VAC25-830 - Proposed Amendment - Preservation of Mature Trees and Replanting of Trees

At the December 9, 2020, meeting of the State Water Control Board (Board), staff will ask the Board for approval to proceed to public notice with proposed amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830). The proposed amendments were developed pursuant to Chapter 1207 of the 2020 Acts of Assembly, which required that a provision for "preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits" be added to the criteria requirements in 9 VAC 25-830 as established by the Board. This memorandum provides a brief background on the Chesapeake Bay Preservation Act, the implementing regulations and the proposed amendments, as well as the General Assembly action authorizing this regulatory action.

BACKGROUND

The Chesapeake Bay Preservation Act (§ 62.1-44.15:72 of the Code of Virginia) provides that the State Water Control Board shall promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas include Resource Protection Areas, Resource Management Areas and Intensely Developed Areas.

Chapter 1207 of the 2020 Acts of Assembly amended § 62.1-44.15:72 of the Code of Virginia and added a provision of "preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits" to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act. Chapter 1207 also included a clause requiring the State Water Control Board to adopt regulations to implement the change and a clause that initial adoption of applicable regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia, but shall be subject to a public comment period of at least 60 days prior to final adoption by the Board. Consistent with this provision, a Notice of Intended Regulatory Action and a Regulatory Advisory Panel were not utilized.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

PROPOSED AMENDMENT TO THE CHESAPEAKE BAY PRESERVATION AREA DESIGNATION AND MANAGEMENT REGULATIONS (9VAC25-830)

Overall, this proposed regulatory amendment includes requirements to preserve and protect mature trees and where existing vegetation is removed that includes a tree, a tree is utilized in reestablishing vegetation. It also provides that where vegetation or buffers must be established, the planting of trees should be utilized where practicable.

The proposed regulatory amendment includes additional language to existing performance criteria related to vegetation and trees. Specifically, the general performance criteria under 9 VAC 25-830-130 already include a requirement for the preservation of indigenous vegetation. The proposed language underscores that mature trees should be preserved to the maximum extent practicable and protected during development. This is consistent with the benefits identified in the statutory language.

Additionally, most existing performance criteria provisions related to vegetation and tress are found in the criteria for Resource Protection Areas (9 VAC 25-830-140). For existing provisions related to tree removal such as for sight lines, vistas, driveways, roads, and erosion projects, the amendment clarifies that mature trees should be preserved and not removed as practicable. Where replanting or vegetation is to be

established or reestablished, it should include the planting of trees. This includes previous agricultural lands converted to other uses, Intensely Developed Areas, and where a buffer does not currently exist.

Regulatory Text

9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations and enforcement mechanisms, local governments shall require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.

2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Mature trees shall only be removed where determined to be necessary to provide for the proposed use or development and protected during development to the maximum extent practicable.

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.

4. Land development shall minimize impervious cover consistent with the proposed use or development.

5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of onsite sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system that operates under a permit issued by the board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments

may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

(a) Sand mounds;

(b) Low-pressure distribution systems;

(c) Repair situations when installation of a valve is not feasible; and

(d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.

(4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).

(5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

(6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

(7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.

(8) The local government shall require that the owner(s) alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.

(9) The local government shall ensure that the owner(s) are notified annually of the requirement to switch the valve to the opposite drainfield.

8. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.

(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other onsite activities to begin.

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

(1) It does not conflict with the comprehensive plan;

(2) It complies with the performance criteria set forth in 9VAC25-830-130;

(3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

(4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of imperious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable

erosion and sediment control and stormwater management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

(1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

(2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area ~~and~~ (ii) adverse effects on water quality, and (iii) removal of mature trees;

(3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and

(4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and pathways; and (iii) historic preservation and archaeological activities:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees should be utilized to the maximum extent practicable and appropriate to site conditions.

a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Such measures should include to the maximum extent practicable and appropriate to site conditions the planting of trees in reestablishing the buffer.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established should include the planting of trees to the maximum extent practicable.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees should be preserved and not removed to the maximum extent practicable under this provision. When trees are removed, the other vegetation to replace the trees should be a trees as well to maximum extent practicable.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees should be preserved to the maximum extent practicable consistent with the best available technical advice and permit conditions or requirements and trees should be utilized in the projects to the maximum extent practicable.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent

noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or his agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact

assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, the local government should consider the planting of trees as a part of any such measures.

TAB I - General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia - 9VAC25-820 - Proposed Amendment/Reissuance:

The current VPDES Watershed Nutrient Trading General Permit will expire on December 31, 2021 and the regulation establishing this general permit is being amended to reissue another term. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. The proposed regulation takes into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. A list of the TAC membership is attached.

Draft amendments showing proposed changes to the current regulation and the Agency Town Hall background document are also attached. Substantive changes to the existing regulation are:

- Removed compliance dates that have since passed (9VAC25-820-40.A and 9VAC25-820-70 Parts I.C.1 and C.2);
- Updated the permit effective and expiration dates, as well as the date of timely Registration Statement submittal for continuation of permit coverage (9VAC25-820-70 and -70.Part I.A);
- Clarified the determination of transferred waste load allocations for consolidating facilities assigned different delivery factors, or where delivery factors may change at different consolidating facilities in different increments in future years (9VAC25-820-70 Part I.B.3);
- Clarified monitoring sample type and collection frequencies for industrial facilities whose authorized equivalent loads exceed the upper ranges (350,000 lbs/yr Total Nitrogen and 35,000 lbs/yr Total Phosphorus) previously listed (9VAC25-820-70 Part I.E.1);
- Revised the criteria for facilities treating domestic sewage > 1,000 gallons per day (GPD) and ≤ 39,999 GPD to submit a registration statement with the department to more closely conform to criteria established in statute (9VA25-820-70 Part I.G.1.c);
- Updated prices of Total Nitrogen and Total Phosphorus credit purchases from the Nutrient Offset Fund (9VAC25-820-70 Part I.J.3); and
- Updated DEQ contact information for submitting reports of unauthorized, unusual or extraordinary discharges, or noncompliance required by Parts III G, H and I (9VAC25-820-70 Part III.I).

A Notice of Intended Regulatory Action (NOIRA) for the amendment was published on February 2, 2020. A summary of the public comments received in response to the NOIRA is included in the attached Agency Background Document (Form TH-08).

The Office of the Attorney General will be sent the proposed regulation for certification of statutory authority. The U.S. Environmental Protection Agency will also need to review and approve the general permit prior to final adoption.

Please note that DEQ is also in the process of amending the Water Quality Management Planning Regulation (9VAC25-720) to include three new provisions: (1) establishing Total Phosphorus (TP) wasteload allocations to meet water quality criteria for Chlorophyll-a in the James River Basin, (2) reserving unneeded allocations from several significant industrial dischargers registered under this general permit for future use in

accordance with § 62.1-44.19:14.D and (3) implementing floating wasteload allocations for 37 municipal treatment plants in accordance with Initiative #52 of Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP). This proposed amendment is proceeding on a separate, parallel track to this general permit reissuance. Should amendments to the Water Quality Management Planning Regulation be approved, additional modifications to the watershed general permit will also be necessary to implement any new requirements. These additional general permit modifications will be presented to you separately under the Water Quality Management Planning Regulation rulemaking.

Regulatory Text:

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.144.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a facility, as determined by the specific geographic location of the facility, to account for attenuation that occurs during riverine transport between the facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

"Department" or "DEQ" means the Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Eastern Shore trading ratio" means the ratio of pounds of point source credits from another tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin for every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.5 million gallons per day.

"Existing facility" means a facility (i) subject to a current individual VPDES permit from which a discharge has commenced or for which its owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, not subject to an individual VPDES permit, for which its owner holds a separate wasteload allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus above the wasteload allocation.

"Facility" means a point source from which a discharge or proposed discharge of total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.

"New discharge" means any discharge from a facility that did not commence prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or

equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual wasteload allocation of total nitrogen or total phosphorus for a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger and that does not have a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or for which an owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the owner of the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the owner of the facility must acquire credits at the end of a calendar year. For the purpose of this chapter, owners of facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility whose owner is authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-

45 , Certification for Noncommercial Environmental Laboratories, or 1VAC30-46 , Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that are registered for coverage under this general permit, by tributary, including their wasteload allocations, permitted design capacities, and delivery factors as appropriate.

"Significant discharger" means the owner of (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that was expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins and the Eastern Shore Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"Wasteload allocation" means the most limiting of (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus wasteload allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-15. Applicability of Incorporated References Based on the Dates That They Became Effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference that regulation shall be as it exists and has been published as of July 1, 2014.

9VAC25-820-20. Purpose, Applicability, Delegation of Authority.

A. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake Bay watershed issued by

the board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and § 62.1-44.19:14 of the Code of Virginia.

B. This general permit regulation governs owners of facilities holding individual VPDES permits or otherwise meeting the definition of "existing facility" that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

C. The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-820-30. Relation to Existing VPDES Permits Issued in Accordance with 9VAC25-31.

A. This general permit shall control in lieu of conflicting or duplicative mass loading effluent limitations, monitoring or reporting requirements for total nitrogen and total phosphorus contained in individual VPDES permits for facilities covered by this general permit where these requirements are based upon standards, criteria, wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This general permit shall not control in lieu of more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality, or more stringent technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade.

C. The compliance schedule in this general permit shall control in lieu of conflicting or duplicative schedule requirements contained in individual VPDES permits for facilities covered by this general permit where those requirements address mass loading of total nitrogen or total phosphorus and are based upon standards, criteria, wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-40. Compliance Plans.

Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of the general permit.

9VAC25-820-50. Transfer of Permit Coverage.

A. Coverage under the general permit shall be transferred by the current permittee to a new owner concurrently with the transfer of the individual permit or permits in accordance with 9VAC25-31-380. If the current permittee holds an aggregated wasteload allocation for multiple facilities in accordance with Part I B 2 of the general permit, the current permittee shall submit a revised registration statement for any facilities retained and the new owner shall submit a registration statement for the facilities transferred.

B. All conditions of the general permit, including, but not limited to, the submittal of a registration statement, annual nutrient allocation compliance and reporting requirements, shall apply to the new owner immediately upon the transfer date.

9VAC25-820-60. Termination of Permit Coverage.

The owner shall terminate coverage under this general permit concurrently with any request for termination of the individual permit or permits in accordance with 9VAC25-31-370.

9VAC25-820-70. General Permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000
Effective Date: January 1, 2022
Expiration Date: December 31, 2026

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner of a facility required to submit a registration statement to the department by November 1, 2021, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a VPDES permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, 2026, in accordance with Part III M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that the discharge is not eligible for coverage under this general permit.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

(1) Initiate enforcement action based upon the 2017 general permit,

(2) Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage under the terms of the 2017 general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. Wasteload allocations.

1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the wasteload allocations assigned to any of the affected facilities.

c. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner that consolidates two or more facilities discharging to the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for total nitrogen and an aggregated mass load limit for total phosphorus, subject to the following conditions:

a. Aggregate mass limits will be calculated accounting for delivery factors in effect at the time of the consolidation

b. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the wasteload allocations of the affected facilities. The regional facility shall be eligible to generate credits.

c. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) Wasteload allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following formulae:

Nitrogen Load (lbs/year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year
Phosphorus Load (lbs/year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

d. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities.

e. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

f. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned wasteload allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the Chesapeake Bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned wasteload allocation.

C. Schedule of compliance.

The significant dischargers in the James River Basin shall meet aggregate discharged wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.

D. Annual update of compliance plan. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund, to achieve compliance with the individual and combined wasteload allocations in each tributary. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a nonrepresentative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal

flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency				
STP design flow	≥20.0 MGD	1.0 – 19.999 MGD	0.5-0.999 MGD	0.040 - 0.499 MGD	<0.040 MGD
Effluent TN load limit for industrial facilities		>100,000 lb/yr	50,000 - 99,999 lb/yr	487 - 49,999 lb/yr	<487 lb/yr
Effluent TP load limit for industrial facilities		>10,000 lb/yr	5,000 - 9,999 lb/yr	37 - 4,999 lb/yr	<37 lb/yr
Flow	Totalizing, Indicating, and Recording				1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO_{2-} (as N) + NO_{3-} (as N))	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week *	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week *	8 HC 2/Month, > 7 days apart	1/Month Grab
*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement					

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed in subdivision 1 of Part I E; however, the permittee shall report all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant figures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data

point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.

F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

1. The following owners are required to register for coverage under this general permit:

a. Every owner of an existing facility authorized by a VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into nontidal waters shall submit a registration statement to the department by November 1, 2016, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner upon approval of a registration statement.

b. Any owner of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70 , and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner beginning January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011 and is subject to offset requirements in accordance with Part II A 1 c of this general permit, shall submit a registration statement with the department at the time he makes application for an individual permit with the department or prior to commencing a discharge, whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III M.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, email address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, email address and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of wasteload allocation acquired. Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e. registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with the section and 9VAC25-31-1020. There shall be at least 3 months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a facility's wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new wasteload allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion or (ii) delivery factor shall be published once a week for two consecutive weeks in a local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of wasteload allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1);

f. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner and persons who may be affected by the discharge from the facility;

g. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's representative who can be contacted by the interested persons to answer questions;

h. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

i. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its wasteload allocation if:

a. The annual mass load is less than or equal to the applicable wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility; or

c. In the event he is unable to meet the individual wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Nutrient Offset Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in the amount of $5.08 for each pound of nitrogen and $11.15 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year.

b. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from owners of facilities that discharge to a Rappahannock tributary by the owners of an Eastern Shore Basin facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II
SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner of a facility authorized by a VPDES permit first issued before July 1, 2005, that expands the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner of a facility authorized by a VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner of multiple facilities that discharge into the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities shall be required to acquire wasteload allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of wasteload allocations. wasteload allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

(5) Generated in accordance with conditions of the facility's individual VPDES permit; and

(6) In the case of credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

b. The allocations or credits shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

f. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

PART III
CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance
The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at https://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action, permit coverage termination or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.144.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage. Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9VAC25-820-80. Facilities Subject to Reduced Individual Total Nitrogen and Total Phosphorus Wasteload Allocations.

The James River facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus wasteload allocations as indicated.

Facility	VPDES No.	Phase 1 Total Nitrogen (lbs/yr)	Phase 2 Total Nitrogen (lbs/yr)	Phase 2 Total Phosphorus (lbs/yr)
Buena Vista STP	VA0020991	N/A	N/A	2,778
Covington STP	VA0025542	N/A	N/A	3,705
GP Big Island LLC	VA0003026	N/A	N/A	40,273
Mohawk Industries, Inc.	VA0004677	N/A	N/A	9,880
Lexington - Rockbridge Regional WQCF	VA0088161	N/A	N/A	3,705
Alleghany County - Low Moor STP	VA0027979	N/A	N/A	617
Lower Jackson River STP	VA0090671	N/A	N/A	1,852
Clifton Forge STP	VA0022772	N/A	N/A	2,470
MeadWestvaco	VA0003646	N/A	N/A	96,771
Amherst - Rutledge Creek WWTP	VA0031321	N/A	N/A	741
BWX Technologies Inc.	VA0003697	N/A	N/A	1,235
Greif Inc.	VA0006408	N/A	N/A	24,082
Lake Monticello STP	VA0024945	N/A	N/A	1,229
Lynchburg STP (DWF only)	VA0024970	N/A	N/A	27,169
RWSA - Moores Creek Regional STP	VA0025518	N/A	N/A	18,525
Powhatan CC STP	VA0020699	N/A	N/A	581
Crewe WWTP	VA0020303	N/A	N/A	617

Farmville WWTP	VA0083135	N/A	N/A	2,964
Richmond WWTP (DWF only)	VA0063177	N/A	N/A	55,574
E. I. DuPont - Spruance	VA0004669	N/A	N/A	6,339
Chesterfield County - Falling Creek WWTP	VA0024996	N/A	N/A	12,473
Chesterfield County - Proctors Creek WWTP	VA0060194	N/A	N/A	33,344
Dominion - Chesterfield (Net)	VA0004146	N/A	N/A	170
Henrico County WWTP	VA0063690	N/A	N/A	92,623
The Sustainability Park LLC	VA0002780	N/A	N/A	1,556
Philip Morris USA - Park 500	VA0026557	N/A	N/A	2,149
Honeywell - Hopewell	VA0005291	N/A	N/A	41,841
Hopewell Regional WTF	VA0066630	N/A	N/A	61,749
South Central WW Authority WWTF	VA0025437	N/A	N/A	28,404
Tyson Foods - Glen Allen	VA0004031	N/A	N/A	409
Chickahominy WWTP	VA0088480	N/A	N/A	123
HRSD - Boat Harbor STP	VA0081256	N/A	N/A	43,177
HRSD - James River STP	VA0081272	N/A	N/A	34,541
HRSD - Williamsburg STP	VA0081302	N/A	N/A	38,859
HRSD - Nansemond STP	VA0081299	N/A	N/A	51,812
HRSD - Army Base STP	VA0081230	N/A	N/A	31,087
HRSD - Virginia Initiative Plant WWTP	VA0081281	N/A	N/A	69,083
HRSD - Chesapeake - Elizabeth STP	VA0081264	N/A	N/A	41,450
HRSD Aggregate Nutrient Discharge*	N/A	4,400,000	3,400,000	310,010
JH Miles and Company	VA0003263	N/A	N/A	17,437
*HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake - Elizabeth STP (VA0081264).				

Forms (9VAC25-820)

Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (rev. 10/11).

TAB J - Water Quality Management Planning Regulation - 9VAC25-720 - Proposed Amendment

The Water Quality Management Planning Regulation (**9VAC25-720**) includes wasteload allocations (WLAs) for dischargers of pollutants to various river basins throughout the Commonwealth of Virginia including Total Nitrogen (TN) and Total Phosphorus (TP) WLAs necessary for the restoration of water quality in Chesapeake Bay and its tidal tributaries. The staff is bringing proposed regulation amendments before the Board to request authorization to hold a public comment period and a public hearing.

A Notice of Intended Regulatory Action (NOIRA) for this action was published on November 25, 2019. A summary of the public comments received in response to the NOIRA is attached along with a list of the members of the regulatory advisory panel (RAP) formed for this regulatory action. The proposed amendments take into consideration the input received from the RAP. Draft amendments showing proposed changes to the current regulation and the Agency Town Hall background document are also attached. DEQ proposes to amend Sections 50.C (Potomac-Shenandoah River Basin), 60.C (James River Basin), 70.C (Rappahannock River Basin) and 120.C (York River Basin) to accomplish three goals:

1. To establish TP wasteload allocations necessary to meet water quality criteria for Chlorophyll-a in the James River Basin. For James River facilities not receiving new Chlorophyll-a based TP WLAs, their existing TP WLAs will be moved from 9VAC25-820-80 to 9VAC27-720.C.
2. To reallocate unneeded significant industrial discharger allocations to the Nutrient Offset Fund in order to accommodate future growth in accordance with § 62.1-44.19:14.D of the Code of Virginia.
3. To establish floating WLAs for 36 significant municipal dischargers based on the flow treated by the facility in a given year and nutrient concentrations of 4.0 mg/l TN and 0.30 mg/l TP. Existing "primary" wasteload allocations will remain and in any given year the facility will be required to meet the lesser of the primary or floating allocations. DEQ proposes to assign alternative floating WLAs to a subset of facilities with special circumstances. The floating WLAs are being implemented in accordance with Initiative #52 of Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP).

TN and TP WLAs necessary for the protection of Chesapeake Bay are implemented through the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). Reissuance of the general permit is proceeding concurrently however any approval of proposed amendments to the Water Quality Management Planning Regulation will require additional amendments to the general permit. Additional general permit provisions include new registration and reporting requirements, compliance schedule requirements for the new WLAs, and the elimination James River TN and TP WLAs currently contained in 9VAC25-820-80. These WLAs will have be replaced by new Chlorophyll-a based WLAs or otherwise moved to the Water Quality Management Planning Regulation 9VAC27-720.C. These proposed amendments were drafted taking into consideration the recommendations of a technical advisory committee (TAC) formed for the reissuance of the watershed general permit. A list of the TAC membership is attached along with proposed amendments to watershed general permit regulation

and an agency background document for the proposed amendments. Sections of the watershed general permit (9VAC25-820) proposed to be amended in response to the Water Quality Management Planning Regulation amendments have been highlighted in yellow to facilitate your review.

Regulatory Text:

9VAC25-720-50. Potomac-Shenandoah River Basin.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
B37R	C~~oors Brewing Company~~Molson Coors – Shenandoah Brewery	VA0073245	54,820	4,112
B14R	ACSA - Fishersville Regional ~~STP~~WWTP	VA0025291	48,729	3,655
B32R	I~~NVISTA – Waynesboro~~The Lycra Company (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray ~~STP~~WWTP	VA0062642	19,492	1,462
B35R	Massanutten ~~PSA STP~~Public Service Corporation STP	VA0024732	18,273	1,371
B37R	Merck Sharp & Dohme Corp. – Elkton Plant~~- Stonewall WWTP~~ (Outfall 101)[4]	VA0002178	43,835	4,384
B12R	ACSA - Middle River Regional ~~STP~~WWTP	VA0064793	82,839[1]	6,213[2]
B23R	North River WWTF[3]	VA0060640	2~~53,391~~260,226[1]	1~~9,004~~19,574[2]
B22R	VPGC, LLC~~VA Poultry Growers~~ - Hinton	VA0002313	27,410	1,371
B38R	P~~ilgrims Pride - Alma~~Nutrient Offset Fund	Formerly VA0001961	18,273	914

B31R	ACSA - Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro ~~STP~~WWTP	VA0025151	48,729[1]	3,655[2]
B23R	ACSA - Weyers Cave ~~STP~~WWTP	VA0022349	6,091	457
B58R	Berryville ~~STP~~WWTP	VA0020532	8,528	640
B55R	Front Royal ~~STP~~WWTP	VA0062812	48,729[1]	3,655[2]
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP	VA0026441	8,528	640
B45R	Broadway Regional WWTF	VA0090263	29,481	2,211
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF	VA0022802	18,273	1,371
A09R	Broad Run WRF	VA0091383	134,005[1]	3,350[2]
A08R	Leesburg WPCF	VA0092282	121,822[1]	9,137[2]
A06R	Round Hill Town WWTP~~F~~	VA0026212	9,137	685
A25R	D~~SC~~ VA American Water Prince William- Section 1 WWTF	VA0024724	42,029[1]	2,522[2]
A25R	D~~SC~~VA American Water Prince William - Section 8 WWTF	VA0024678	42,029[1]	2,522[2]
A25E	H L Mooney WWTF	VA0025101	219,280[1]	13,157[2]
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTP~~F~~	VA0020460	11,573	868
B08R	Opequon WRF[24]	VA0065552	121,851[1]	11,512[2]
B08R	Parkins Mill~~s~~ ~~STP~~WWTF~~P~~	VA0075191	60,911[1]	4,568[2]
A13E	Alexandria Renew Enterprises WWTP[35]	VA0025160	493,381[1]	29,603[2]
A12E	Arlington County Water PCF	VA0025143	365,467[1]	21,928[2]

A16R	Noman M Cole Jr PCP~~F~~	VA0025364	612,158[1]	36,729[2]
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	USMC Quantico Mainside STP~~WWTF~~	VA0028363	20,101	1,206
A28R	Aquia WWTP~~F~~	VA0060968	73,093[1]	4,386[2]
A31E	Colonial Beach WWTP~~STP~~	VA0026409	18,273	1,827
A30E	KGCSA - Dahlgren District WWTP~~F~~	VA0026514	9,137	914
A29E	KGCSA~~King George County Service Authority~~ - Fairview Beach WWTP	VA0092134	1,827	183
A30E	U~~S NSWC Dahlgren WWTF~~Naval Support Facility Dahlgren	VA0021067	6,578	658
A31R	KGCSA - Purkins Corner WWTP~~STP~~	VA0070106	1,096	110
	U~~nallocated Reserve WLA~~Nutrient Offset Fund		9,137	685
	TOTALS:		5,156,169	246,635

Notes:

[1] Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows: TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[2] Effective January 1, 2026, the Total Phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows: TP~~N~~ WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[3] The North River WWTF WLA includes 6,835 lbs/yr of TN and 570 lbs/yr of TP from the consolidation of the McGaheysville STP (VA0072931).

~~[1] Merck Stonewall – (a) these wasteload allocations will be subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full scale"~~

~~results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (b) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).~~

[24] Opequon WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

[35] Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and TP concentration of 0.18 mg/l.

9VAC25-720-60. James River Basin.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	3~~,426~~2,778
I09R	Covington STP	VA0025542	54,820	4~~,568~~3,705
H02R	Georgia Pacific	VA0003026	122,489	4~~9,658~~40,273
I37R	L~~ees Carpets~~Mohawk Industries, Inc.	VA0004677	30,456	1~~2,182~~9,880
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4~~,568~~3,705
I09R	Low Moor STP	VA0027979	9,137	7~~61~~617
I09R	Lower Jackson River STP	VA0090671	6~~3,957~~47,516	5~~,330~~3,211
I09R	Nutrient Offset Fund	Formerly VA0090671	16,441	1,112
I04R	M~~eadWestvaco~~WestRock Virginia LLC - Covington	VA0003646	394,400	1~~59,892~~96,711
H12R	Amherst STP	VA0031321	10,964	9~~14~~741

H05R	BWX Technologies Inc.	VA0003697	187,000	1,523[1,235]
H05R	Greif Inc.	VA0006408	73,246	29,694[24,082]
H31R	Lake Monticello STP[WWTP]	VA0024945	18,182[14,164]	1,515[957]
[H31R]	[Nutrient Offset Fund]	[Formerly VA0024945]	[4,018]	[272]
H05R	Lynchburg STP[1]	VA0024970	536,019[5]	33,501[27,169][4]
H28R	Moores Creek Regional STP[Advanced WRRF][6]	VA0025518	274,100[282,994][3]	22,842[18,525][19,637][4]
H38R	Powhatan CC STP	VA0020699	8,588	716[581]
J11R	Crewe WWTP	VA0020303	9,137	761[617]
J01R	Farmville WWTP	VA0083135	43,856	3,655[2,964]
G02E	The Sustainability Park, LLC[Nutrient Offset Fund]	Formerly VA0002780	25,583	1,919[768]
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816[6,339]
G01E	Falling Creek WWTP	VA0024996	153,801[182,738][3]	15,380[6,153]
G01E	Henrico County WWTP	VA0063690	1,142,085[3]	114,209[45,689]
G03E	Honeywell – Hopewell[AdvanSix Resins and Chemicals LLC]	VA0005291	1,090,798	51,592[40,541]
G03R	Hopewell WWTP	VA0066630	1,827,336[7]	76,139[30,459][8]
G15E	HRSD – Boat Harbor STP	VA0081256	740,000[473,524][3]	76,139[43,175][4]
G11E	HRSD – James River STP	VA0081272	1,250,000[378,819][3]	60,911[34,540][4]
G10E	HRSD – Williamsburg STP	VA0081302	800,000[426,171][3]	68,525[38,858][4]
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650[1,060]
G01E	Proctors Creek WWTP	VA0060194	411,151[3]	41,115[16,448]
G01E	Richmond WWTP[1]	VA0063177	1,096,402[5]	68,525[27,413]
G02E	Dominion-Chesterfield[2]	VA0004146	272,036[243,099]	210[170]
J15R	South Central WW Authority	VA0025437	350,239[3]	35,024[14,011]
G07R	Chickahominy WWTP	VA0088480	6,167	123
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409[424]
G11E	HRSD – Nansemond STP	VA0081299	750,000[568,228][3]	91,367[51,811][4]
G15E	HRSD – Army Base STP	VA0081230	610,000[340,937][3]	54,820[31,086][4]
G15E	HRSD – VIP WWTP	VA0081281	750,000[757,638][3]	121,822[69,081][4]

G15E	J~~H Miles & Company~~HRSD – MS4[9]	V~~A0003263~~	153,500	2~~1,500~~17,437
C07E	HRSD – Ches.-Elizabeth STP[10]	VA0081264	1~~,100,000~~454,583	1~~08,674~~41,448
G01E	T~~ranlin/Vastly~~Nutrient Offset Fund	Formerly Tranlin/Vastly	80,000	0
	TOTALS		1~~4,901,739~~12,390,611	1~~,354,375~~757,286

Notes:

[1]Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

[2]~~Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.~~Dominion-Chesterfield wasteload allocations shall be transferred to the Nutrient Offset Fund on January 1st following the retirement of the last coal fired generating unit. 82,240 lbs/yr of TN WLA shall be held in reserve and may be made available by the Department for an expansion of the Proctor's Creek WWTP provide the expanded facility provides treatment to achieve an annual average TN concentration of 3.0 mg/l or less and the Falling Creek WWTP is designed to meet its individual TN WLA.

[3]Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[4]Effective January 1, 2026, the Total Phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[5]Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TN WLA (lbs/yr) = Annual average treated flow (MGD) x 8.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[6]The Moores Creek Advanced WRRF WLA includes 8,894 lbs/yr of Total Nitrogen and 1,112 lbs/yr of Total Phosphorus from the consolidation of the Camelot WWTP (VA0025488).

[7]Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TN WLA (lbs/yr) = Annual average treated flow (MGD) x 12.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[8]Effective January 1, 2026, the Total Phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.50 mg/l x 8.345 x 365
~~Annual average treated flow is~~ the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[9]The former J. H. Miles wasteload allocations acquired by HRSD in accordance with an agreement dated December 21, 2015 may be used to fulfill HRSD commitments to provide nutrient credits to municipal separate storm sewer systems (MS4s) only.

[10]Effective January 1, 2023, the Total Nitrogen and Total Phosphorus wasteload allocations for the HRSD Chesapeake-Elizabeth STP transfer to the Nutrient Offset Fund.

9VAC25-720-70. Rappahannock River Basin.
C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.
The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
E09R	Culpeper WWTP	VA0061590	73,093[1]	5,483[2]
E02R	Marshall WWTP	VA0031763	7,797	585
E13R	Orange STP	VA0021385	36,547	2,741
E11R	Rapidan ~~STP~~WWTP	VA0090948	7,309	548
E02R	F~~auquier County Water & Sewer Authority~~ Remington WWTP	VA0076805	24,364	1,827
E02R	Clevengers Village WWTP	VA0080527	10,964	822
E02R	Warrenton Town STP	VA0021172	30,456	2,284

E18R	Wilderness WWTP	VA0083411	15,228	1,142
E20E	FMC WWTF	VA0068110	48,737[1]	3,655[2]
E20E	Fredericksburg WWTF	VA0025127	54,820[1]	4,112[2]
E21E	Haymount WWTF	VA0089125	7,066	530
E24E	Haynesville CC WWTP	VA0023469	2,802	210
E21E	KGCSA - Hopyard Farms WWTF~~STP~~	VA0089338	6,091	457
E20E	Little Falls Run WWTF	VA0076392	97,458[1]	7,309[2]
E20E	Massaponax WWTF	VA0025658	114,505[1]	8,405[2]
E23R	Montross Westmoreland WWTP	VA0072729	1,584	119
E21E	KGCSA - Oakland Park STP	VA0086789	1,706	128
E23E	Tappahannock WWTP	VA0071471	9,746	731
E26E	HRSD - Urbanna STP~~WWTP~~	VA0026263	1,218	91
E21R	US Army - Ft. A P Hill WWTP	VA0032034	6,457	484
E23E	Warsaw WWTP~~Aerated Lagoons~~	VA0026891	3,655	274
C01E	Omega Protein - Reedville	VA0003867	21,213	1,591
C01E	Reedville Sanitary District	VA0060712	2,436	183
C01E	Kilmarnock WWTP	VA0020788	6,091	457
	U~~nallocated Reserve WLA~~Nutrient Offset Fund		22,904	1,900
	TOTALS:		614,245	46,068

[1]Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[2]Effective January 1, 2026, the Total Phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TP

9VAC25-720-120. York River Basin.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
F20R	Caroline County Regional WWTP~~STP~~	VA0073504	9,137	609
F01R	Gordonsville STP	VA0021105	17,177	1,145
F04R	Ashland WWTP	VA0024899	36,547	2,436
F09R	Doswell WWTP	VA0029521	18,273	1,218
F09R	B~~ear Island Paper Company~~819 Virginia LLC	VA0029521	47,328	10,233
F27E	P~~lains Marketing L.P. - Yorktown~~Nutrient Offset Fund	Formerly VA0003018	167,128	17,689
F27E	HRSD - York River STP	VA0081311	275,927[1]	18,395[2]
F14R	Parham Landing WWTP	VA0088331	36,547	2,436
F14E	R~~ockTenn~~WestRock CP LLC - West Point	VA0003115	259,177	56,038
F12E	Totopotomoy WWTP	VA0089915	182,734[1]	12,182[2]
F25E	HRSD - West Point STP	VA0075434	10,964	731
	TOTALS:		1,060,939	123,112

[1]Effective January 1, 2026, the Total Nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TN WLA (lbs/yr) = Annual average treated flow (MGD) x 4.0 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

[2]Effective January 1, 2026, the Total Phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed above and (ii) the floating wasteload allocation calculated as follows:
TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365
Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.144.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a facility, as determined by the specific geographic location of the facility, to account for attenuation that occurs during riverine transport between the facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

"Department" or "DEQ" means the Department of Environmental Quality.

"Director" means the director of the Department of Environmental Quality.

"Eastern Shore trading ratio" means the ratio of pounds of point source credits from another tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin for every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.5 million gallons per day.

"Existing facility" means a facility (i) subject to a current individual VPDES permit from which a discharge has commenced or for which its owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, not subject to an individual VPDES permit, for which its owner holds a separate wasteload allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus above the wasteload allocation.

"Facility" means a point source from which a discharge or proposed discharge of total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.

"New discharge" means any discharge from a facility that did not commence prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual wasteload allocation of total nitrogen or total phosphorus for a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger and that does not have a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or for which an owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the owner of the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the owner of the facility must acquire credits at the end of a calendar year. For the purpose of this chapter, owners of facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility whose owner is authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45 , Certification for Noncommercial Environmental Laboratories, or 1VAC30-46 , Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that are registered for coverage under this general permit, by tributary, including their wasteload allocations, permitted design capacities, and delivery factors as appropriate.

"Significant discharger" means the owner of (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that was expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins and the Eastern Shore Basin, which encompasses the

creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"Wasteload allocation" means the most limiting of (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus wasteload allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-15. Applicability of Incorporated References Based on the Dates That They Became Effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference that regulation shall be as it exists and has been published as of July 1, 2014.

9VAC25-820-20. Purpose, Applicability, Delegation of Authority.

D. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake Bay watershed issued by the board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and § 62.1-44.19:14 of the Code of Virginia.

E. This general permit regulation governs owners of facilities holding individual VPDES permits or otherwise meeting the definition of "existing facility" that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

F. The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-820-30. Relation to Existing VPDES Permits Issued in Accordance with 9VAC25-31.

C. This general permit shall control in lieu of conflicting or duplicative mass loading effluent limitations, monitoring or reporting requirements for total nitrogen and total phosphorus contained in individual VPDES permits for facilities covered by this general permit where these requirements are based upon standards, criteria, wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

D. This general permit shall not control in lieu of more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality, or more stringent technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade.

C. The compliance schedule in this general permit shall control in lieu of conflicting or duplicative schedule requirements contained in individual VPDES permits for facilities covered by this general permit where those requirements address mass loading of total nitrogen or total phosphorus and are based upon standards, criteria, wasteload allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-40. Compliance Plans.

~~A~~. By July 1, 2022~~17~~, every owner of a facility subject to reduced individual total nitrogen or total phosphorus wasteload allocations as identified in 9VAC25-820-80 ~~and subject to a limit effective date after January 1, 2017, as defined in Part I C 1 of 9VAC25-820-70~~ shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.

1. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined wasteload allocations of all the permittees in the tributary as soon as possible. Permittees submitting individual plans are not required to account for other facilities' activities.

2. As part of the compliance plan development, permittees shall either:

a. ~~D~~emonstrate that the additional capital projects anticipated by subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations by January 1, 2026~~the applicable deadline for the tributary to which the facility discharges (Part I C of the permit)~~, or

b. Request that their individual wasteload allocations become effective on January 1, 2022~~17~~.

3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund (§ 10.1-2128.2 of the Code of Virginia), to achieve compliance with the individual and combined wasteload allocations in each tributary.

B. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of the general permit.

9VAC25-820-50. Transfer of Permit Coverage.

A. Coverage under the general permit shall be transferred by the current permittee to a new owner concurrently with the transfer of the individual permit or permits in accordance with 9VAC25-31-380. If the current permittee holds an aggregated wasteload allocation for multiple facilities in accordance with Part I B 2 of the general permit, the current permittee shall submit a revised registration statement for any facilities retained and the new owner shall submit a registration statement for the facilities transferred.

B. All conditions of the general permit, including, but not limited to, the submittal of a registration statement, annual nutrient allocation compliance and reporting requirements, shall apply to the new owner immediately upon the transfer date.

9VAC25-820-60. Termination of Permit Coverage.

The owner shall terminate coverage under this general permit concurrently with any request for termination of the individual permit or permits in accordance with 9VAC25-31-370.

9VAC25-820-70. General Permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000
Effective Date: January 1, 20222017
Expiration Date: December 31, 20262021

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT
TRADING IN THE CHESAPEAKE WATERSHED IN VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner of a facility required to submit a registration statement to the department by November 1, 20211616, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

d. Any owner of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

e. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

4. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a VPDES permit and not required by this general permit to submit a

registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

5. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, 2026~~21~~, in accordance with Part III M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(3) Issues coverage to the owner under the reissued general permit, or

(4) Notifies the owner that the discharge is not eligible for coverage under this general permit.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

(4) Initiate enforcement action based upon the 2017~~12~~ general permit,

(5) Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the administratively continued coverage under the terms of the 2017~~12~~ general permit or be subject to enforcement action for operating without a permit, or

(6) Take other actions authorized by the State Water Control Law.

B. Wasteload allocations.

1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were

previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

f. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

g. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the wasteload allocations assigned to any of the affected facilities.

h. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

i. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

j. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner that consolidates two or more facilities discharging to the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for ~~delivered~~ total nitrogen and an aggregated mass load limit for ~~delivered~~ total phosphorus, subject to the following conditions:

b. Aggregate mass limits will be calculated accounting for delivery factors in effect at the time of the consolidation

ab. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the wasteload allocations of the affected facilities. The regional facility shall be eligible to generate credits.

bc. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the

Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(4) Wasteload allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(5) Permitted design capacities assigned to affected industrial facilities; and

(6) Loads from affected sewage treatment works that do not have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following formulae:

Nitrogen Load (lbs/~~day~~year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year Phosphorus Load (lbs/~~day~~year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

cd. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities.

de. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

ef. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned wasteload allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the Chesapeake Bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned wasteload allocation.

C. Schedule of compliance.

1. For ~~The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the facilities~~ facilities listed in 9VAC25-820-80, compliance with chlorophyll-a based total phosphorus wasteload allocations shall be achieved as soon as possible, but no later than January 1, 2026. Compliance with floating wasteload allocations shall be no later than the January 1, 2026 effective date of the allocations.

~~a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan-based adjustment by the board pursuant to subdivision 1 b of this subsection, for each upgrade phase:~~

	~~Upgrade Phase~~	~~Limit Effective~~
	~~Phase I Total Nitrogen~~	~~January 1, 2017~~
	~~Phase 2 Total Nitrogen~~	~~January 1, 2022~~
	~~Phase 2 Total Phosphorus~~	~~January 1, 2017~~

b.2. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40 , the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

23. The registration list shall contain individual dates for compliance with wasteload allocations for dischargers, as follows:

a. Owners of facilities listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans that may be earlier than the upgrade phase schedule listed in subdivision 1 of this subsection.

b. Owners of facilities listed in 9VAC25-820-80 that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, 2022~~17~~.

c. Upon completion of the projects contained in their compliance plans, owners of facilities listed in 9VAC25-820-80 may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than January 1, 2026~~the upgrade phase schedule listed in subdivision 1 of this subsection~~.

d. Owners of new and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to discharges from the facility.

~~3. The significant dischargers in the James River Basin shall meet aggregate discharged wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.~~

F. Annual update of compliance plan. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit~~, but not the acquisition of credits through payments into the Nutrient Offset Fund,~~ to achieve compliance with the individual and combined wasteload allocations in each tributary. Annual compliance plan updates for facilities subject to reduced wasteload allocations and listed in 9VAC25-820-80 shall not rely on the acquisition of credits through payments into the Nutrient Offset Fund. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary.

G. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a nonrepresentative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency				
STP design flow	≥20.0 MGD	1.0 – 19.999 MGD	0.5-0.999 MGD	0.040 - 0.499 MGD	<0.040 MGD
Effluent TN load limit for industrial facilities		>100,000 ~~–></~~ ~~350,000~~ lb/yr	50,000 - 99,999 lb/yr	487 - 49,999 lb/yr	<487 lb/yr
Effluent TP load limit for industrial facilities		>10,000 ~~–></~~ ~~35,000~~ lb/yr	5,000 - 9,999 lb/yr	37 - 4,999 lb/yr	<37 lb/yr
Flow	Totalizing, Indicating, and Recording				1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO_{2-} (as N) + NO_{3-} (as N))	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week *	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week *	8 HC 2/Month, > 7 days apart	1/Month Grab
*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement					

5. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed in subdivision 1 of Part I E; however, the permittee shall report all results of such monitoring.

6. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

7. Data shall be reported on a form provided by the department, by the same date each month as is required by the owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant figures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

8. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.

~~8.~~9. Facilities with approved reclamation and reuse programs that choose to base their floating wasteload allocations on treated flow shall measure and report the total annual flow discharged to the reuse distribution system.

H. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

I. Requirement to register; exclusions.

1. The following owners are required to register for coverage under this general permit:

c. Every owner of an existing facility authorized by a VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into nontidal waters shall submit a registration statement to the department by November 1, 2016, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner upon approval of a registration statement.

d. Any owner of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70 , and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner beginning January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011 and is subject to offset requirements in accordance with Part II A 1 c of this general permit, shall submit a registration statement with the department at the time he makes application for an individual permit with the department or prior to commencing a discharge, whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III M.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

g. Name, mailing address and telephone number, email address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

h. Name (or other identifier), address, city or county, contact name, phone number, email address and fax number for the facility for which the registration statement is submitted;

i. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

j. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

k. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of wasteload allocation acquired. Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

l. For existing facilities, the amount of a facility's wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

~~l.~~m. For facilities subject to a floating wasteload allocation as listed in 9VAC25-820-80 with an approved reclamation and reuse system, an indication of whether the allocation should be based on discharged flow or treated flow. Facilities choosing to base their floating wasteload allocation on treated flow shall provide a water reclamation and reuse flow schematic and a description of how total flows discharged to the reuse distribution system will be measured.

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e. registration statements), as provide for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with the section and 9VAC25-31-1020. There shall be at least 3 months' notice provided between the notification from the department and the date after which such forms must be submitted electronically.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a facility's wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new wasteload allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion or (ii) delivery factor shall be published once a week for two consecutive weeks in a local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

j. A statement of the owner's intent to register for coverage under this general permit;

k. A brief description of the facility and its location;

l. The amount of wasteload allocation that will be acquired or transferred if applicable;

m. The delivery factor for a new discharge or expansion;

n. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1);

o. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner and persons who may be affected by the discharge from the facility;

p. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's representative who can be contacted by the interested persons to answer questions;

q. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

r. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its wasteload allocation if:

d. The annual mass load is less than or equal to the applicable wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

e. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility; or

f. In the event he is unable to meet the individual wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

g. The credits are generated and applied to a compliance obligation in the same calendar year;

h. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

i. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

j. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

k. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Nutrient Offset Fund; and

l. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in the amount of $5.084.60 for each pound of nitrogen and $11.1510.10 for each pound of phosphorus and shall be subject to the following requirements:

d. The credits are generated and applied to a compliance obligation in the same calendar year.

e. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from owners of facilities that discharge to a Rappahannock tributary by the owners of an Eastern Shore Basin facility.

f. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II
SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner of a facility authorized by a VPDES permit first issued before July 1, 2005, that expands the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

d. An owner of a facility authorized by a VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

e. An owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

d. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

e. The permitted design capacity, for all other expanding dischargers; and

f. Zero, for facilities with a new discharge.

3. An owner of multiple facilities that discharge into the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities shall be required to acquire wasteload allocations sufficient to offset any increase in delivered total nitrogen and

delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of wasteload allocations. wasteload allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

c. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

d. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(c) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(d) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

(5) Generated in accordance with conditions of the facility's individual VPDES permit; and

(6) In the case of credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

e. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

f. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(3) The VPA permit was issued before July 1, 2005;

(4) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(5) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(6) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

g. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;

h. The allocations or credits shall be generated in the same tributary;

i. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

j. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

k. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

l. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on

the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

PART III
CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

5. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

6. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

7. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

8. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

g. The date, exact place, and time of sampling or measurements;

h. The individuals who performed the sampling or measurements;

i. The dates and times analyses were performed;

j. The individuals who performed the analyses;

k. The analytical techniques or methods used; and

l. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be

extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

5. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

6. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

7. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

3. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

4. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case

later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

9. A description of the nature and location of the discharge;

10. The cause of the discharge;

11. The date on which the discharge occurred;

12. The length of time that the discharge continued;

13. The volume of the discharge;

14. If the discharge is continuing, how long it is expected to continue;

15. If the discharge is continuing, what the expected total volume of the discharge will be; and

16. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:

5. Unusual spillage of materials resulting directly or indirectly from processing operations;

6. Breakdown of processing or accessory equipment;

7. Failure or taking out of service some or all of the treatment works; and

8. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:

c. Any unanticipated bypass; and

d. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

d. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

e. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.

NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at https://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(3) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(4) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or of disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

d. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

e. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

f. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

d. The authorization is made in writing by a person described in Part III K 1;

e. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

f. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

P. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action~~:~~, ~~for~~ permit coverage termination~~, revocation and reissuance, or modification;~~ or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

Q. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

R. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights or any infringement of federal, state, or local law or regulations.

S. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

V. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.144.34:23 of the State Water Control Law.

W. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

X. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

Y. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

Z. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

AA. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

c. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

d. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(3) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(4) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

e. An upset occurred and that the permittee can identify the cause or causes of the upset;

f. The permitted facility was at the time being properly operated;

g. The permittee submitted notice of the upset as required in Part III I; and

h. The permittee complied with remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

5. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

6. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

7. Inspect at reasonable times facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

8. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours ~~and~~or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit~~s~~ coverage. Permit coverage is ~~are~~ not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

4. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

5. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

6. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement described in Part III Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9VAC25-820-80. Facilities Subject to Reduced Individual Total Nitrogen and Total Phosphorus Wasteload Allocations.

A. Floating Wasteload Allocations

~~**The James River facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus wasteload allocations as indicated.**~~

Facility	VPDES No.
ACSA – Middle River Regional WWTP	VA0064793
North River WWTF	VA0060640
Waynesboro WWTP	VA0025151
Front Royal WWTP	VA0062812
Broad Run WRF	VA0091383
Leesburg WPCF	VA0092282
VA American Water Prince William-Section 1 WWTF	VA0024724
VA American Water Prince William-Section 8 WWTF	VA0024678
J. L. Mooney WWTF	VA0025101
Opequon WRF	VA0065552
Parkins Mill WWTF	VA0075191
Alexandria Renew Enterprises WWTP	VA0025160
Arlington County WPCF	VA0025143
Noman M Cole Jr PCP	VA0025364
Aquia WWTP	VA0060968
Culpeper WWTP	VA0061590

FMC WWTF	VA0068110
Fredericksburg WWTF	VA0025127
Little Falls Run WWTF	VA0076392
Massaponax WWTF	VA0025658
HRSD – York River STP	VA0081311
Totopotomoy WWTP	VA0089915
Lynchburg STP	VA0024970
Moores Creek Advanced WRRF	VA0025518
Falling Creek WWTP	VA0024996
Henrico County WWTP	VA0063690
Hopewell WWTP	VA0063690
HRSD – Boat Harbor STP	VA0081256
HRSD – James River STP	VA0081272
HRSD – Williamsburg STP	VA0081302
Proctor's Creek WWTP	VA0060194
Richmond WWTP	VA0063177
South Central Wastewater Authority WWTP	VA0025437
HRSD – Nansemond STP	VA0081299
HRSD – Army Base STP	VA0081230
HRSD – VIP WWTP	VA0081281
HRSD –Chesapeake-Elizabeth WWTP	VA0081264

B. Chlorophyll-a Based Total Phosphorus Wasteload Allocations

Facility	VPDES No.
Richmond WWTP	VA0063177
Falling Creek WWTP	VA0024996
Proctor's Creek WWTP	VA0060194
Henrico County WWTP	VA0063690
Philip Morris – Park 500	VA0026557
Hopewell WWTP	VA0066630
South Central Wastewater Authority WWTP	VA0025437

~~Facility~~	~~VPDES No.~~	~~Phase 1 Total Nitrogen (lbs/yr)~~	~~Phase 2 Total Nitrogen (lbs/yr)~~	~~Phase 2 Total Phosphorus (lbs/yr)~~
~~Buena Vista STP~~	~~VA0020991~~	~~N/A~~	~~N/A~~	~~2,778~~
~~Covington STP~~	~~VA0025542~~	~~N/A~~	~~N/A~~	~~3,705~~
~~GP Big Island LLC~~	~~VA0003026~~	~~N/A~~	~~N/A~~	~~40,273~~
~~Mohawk Industries, Inc.~~	~~VA0004677~~	~~N/A~~	~~N/A~~	~~9,880~~
~~Lexington – Rockbridge Regional WQCF~~	~~VA0088161~~	~~N/A~~	~~N/A~~	~~3,705~~
~~Alleghany County – Low Moor STP~~	~~VA0027979~~	~~N/A~~	~~N/A~~	~~617~~

~~Lower Jackson River STP~~	~~VA0090671~~	~~N/A~~	~~N/A~~	~~1,852~~
~~Clifton Forge STP~~	~~VA0022772~~	~~N/A~~	~~N/A~~	~~2,470~~
~~MeadWestvaco~~	~~VA0003646~~	~~N/A~~	~~N/A~~	~~96,771~~
~~Amherst - Rutledge Creek WWTP~~	~~VA0031321~~	~~N/A~~	~~N/A~~	~~741~~
~~BWX Technologies Inc.~~	~~VA0003697~~	~~N/A~~	~~N/A~~	~~1,235~~
~~Greif Inc.~~	~~VA0006408~~	~~N/A~~	~~N/A~~	~~24,082~~
~~Lake Monticello STP~~	~~VA0024945~~	~~N/A~~	~~N/A~~	~~1,229~~
~~Lynchburg STP (DWF only)~~	~~VA0024970~~	~~N/A~~	~~N/A~~	~~27,169~~
~~RWSA - Moores Creek Regional STP~~	~~VA0025518~~	~~N/A~~	~~N/A~~	~~18,525~~
~~Powhatan CC STP~~	~~VA0020699~~	~~N/A~~	~~N/A~~	~~581~~
~~Crewe WWTP~~	~~VA0020303~~	~~N/A~~	~~N/A~~	~~617~~
~~Farmville WWTP~~	~~VA0083135~~	~~N/A~~	~~N/A~~	~~2,964~~
~~Richmond WWTP (DWF only)~~	~~VA0063177~~	~~N/A~~	~~N/A~~	~~55,574~~
~~E. I. DuPont - Spruance~~	~~VA0004669~~	~~N/A~~	~~N/A~~	~~6,339~~
~~Chesterfield County - Falling Creek WWTP~~	~~VA0024996~~	~~N/A~~	~~N/A~~	~~12,473~~
~~Chesterfield County - Proctors Creek WWTP~~	~~VA0060194~~	~~N/A~~	~~N/A~~	~~33,344~~
~~Dominion - Chesterfield (Net)~~	~~VA0004146~~	~~N/A~~	~~N/A~~	~~170~~
~~Henrico County WWTP~~	~~VA0063690~~	~~N/A~~	~~N/A~~	~~92,623~~
~~The Sustainability Park LLC~~	~~VA0002780~~	~~N/A~~	~~N/A~~	~~1,556~~
~~Philip Morris USA - Park 500~~	~~VA0026557~~	~~N/A~~	~~N/A~~	~~2,149~~
~~Honeywell - Hopewell~~	~~VA0005291~~	~~N/A~~	~~N/A~~	~~41,841~~
~~Hopewell Regional WTF~~	~~VA0066630~~	~~N/A~~	~~N/A~~	~~61,749~~
~~South Central WW Authority WWTF~~	~~VA0025437~~	~~N/A~~	~~N/A~~	~~28,404~~
~~Tyson Foods - Glen Allen~~	~~VA0004031~~	~~N/A~~	~~N/A~~	~~409~~
~~Chickahominy WWTP~~	~~VA0088480~~	~~N/A~~	~~N/A~~	~~123~~
~~HRSD - Boat Harbor STP~~	~~VA0081256~~	~~N/A~~	~~N/A~~	~~43,177~~
~~HRSD - James River STP~~	~~VA0081272~~	~~N/A~~	~~N/A~~	~~34,541~~
~~HRSD - Williamsburg STP~~	~~VA0081302~~	~~N/A~~	~~N/A~~	~~38,859~~

HRSD – Nansemond STP	VA0081299	N/A	N/A	51,812
HRSD – Army Base STP	VA0081230	N/A	N/A	31,087
HRSD – Virginia Initiative Plant WWTP	VA0081281	N/A	N/A	69,083
HRSD – Chesapeake – Elizabeth STP	VA0081264	N/A	N/A	41,450
HRSD Aggregate Nutrient Discharge*	N/A	4,400,000	3,400,000	310,010
JH Miles and Company	VA0003263	N/A	N/A	17,437
*HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake – Elizabeth STP (VA0081264).				

Forms (9VAC25-820)

Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (rev. 10/11).

TAB K - General Permit for Use of Surficial Aquifer on the Eastern Shore - 9VAC25-910 and Groundwater Withdrawal Regulations - 9VAC25-610 - Proposed:

At the December 9, 2020, meeting of the State Water Control Board (Board), the Board will consider the approval of proposed amendments to the Groundwater Withdrawal Permitting Regulation (9VAC25-610) and a proposed General Permit for Use of the Surficial Aquifer on the Eastern Shore (9VAC25-910). There is significant non-potable groundwater use from the confined aquifer system for agricultural activities such as irrigation and cooling for poultry houses. Various parties on the Eastern Shore, including the Eastern Shore Groundwater Committee propose that use of the surficial aquifer or water table aquifer for non-potable uses achieves greater long-term aquifer sustainability. This regulatory proposal will amend the existing groundwater withdrawal regulation to authorize the development of a general permit and create a new general permit regulation to promote use of the surficial aquifer on the Eastern Shore. This memorandum provides a brief background on the summary of the groundwater management program and the General Assembly action authorizing this regulatory action (Chapter 755 of the 2019 Acts of Assembly).

The groundwater management program was established in 1973 pursuant to the Groundwater Act of 1973. The State Water Control Board designated Accomack and Northampton Counties as the Eastern Shore Ground Water Management Area (ESGMA) in 1978. The Ground Water Management Act of 1992 (§§ 62.1-254 et seq. of the Code of Virginia) replaced the Groundwater Act of 1973. The current statute requires permits for the withdrawal of 300,000 gallons or more of groundwater in a month in a groundwater management area.

Groundwater provides nearly all of the water supply on the Eastern Shore. For a number of years, the Eastern Shore Groundwater Committee, a group of locally appointed officials from Accomack and Northampton County, has been advocating for greater use of the surficial aquifer rather than the deeper confined aquifers, particularly for agricultural purposes. The statute and the regulation do not establish a predetermined aquifer priority for specific end uses of groundwater. In practice, DEQ implemented a first come first served approach and did not require the use of specific aquifers unless the aquifer requested by the applicant was fully allocated.

During the 2019 Session of the General Assembly, SB1599 (Chapter 755 of the 2019 Acts of Assembly), was passed. It amended the statute, adding §62.1-262.1 which directs the State Water Control Board to adopt regulations providing incentives for the withdrawal of water from the surficial aquifer, rather than the deep aquifer, in the ESGMA, as defined in the bill. DEQ and the State Water Control Board have limited ability to incentivize withdrawals using the options authorized by the bill. The primary option would be the development of regulations to create a general permit for use of the surficial aquifer. The regulation did not authorize general permits prior to this proposed action.

The Notice of Intended Regulatory Action was published on November 11, 2019. The public comment period was open from November 11, 2019 through January 6, 2020. DEQ received seven comments during the comment period. All but one of the comments related to a desire to participate on the Regulatory Advisory Panel (RAP). The Director appointed a RAP and the membership list is included as attachment A. The participation requests were nearly all accommodated in his appointments. The Accomack-Northampton Planning District Commission provided a substantive comment that included a number of suggestions. The RAP discussed these suggestions and there are included, in large part, in the proposed regulatory text. The RAP met a total of four times with two meetings before the pandemic state of emergency and two after DEQ began virtual meetings. The RAP completed its work on October 9, 2020.

PROPOSED AMENDMENT TO THE GROUNDWATER WITHDRAWAL PERMITTING REGULATION (9VAC25-610): Section 62.1-256 of the Code of Virginia authorizes the Board to adopt regulations, as it deems necessary to administer and enforce the provisions of this chapter. Section 62.1-262.1 of the Code of Virginia requires the Board to adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the ESGMA rather than from the deep aquifer in this management area. Today's amendments to the Groundwater Withdrawal Regulations establish the framework for the issuance of a general permit under the Groundwater Withdrawal Regulation.

Section 10 – Definitions - Added three new definitions, including a definition of "general permit" and two terms related to potential impacts to surface water from surficial aquifer use. The definitions related to impacts to surface water resulted

from discussion in the RAP related to the potential to affect surface water ponds, tidal wetland, and tidal water salinity by withdrawing too much surficial aquifer groundwater.

Section 95 – General Permits - Added a new section to authorize the development and use of a general permit for groundwater withdrawals meeting specific conditions. The language used is very similar to that used by other water programs for general permits and has been modified to address the groundwater withdrawal program.

PROPOSED GENERAL PERMIT FOR USE OF THE SURFICIAL AQUIFER ON THE EASTERN SHORE (9VAC25-910): Section 62.1-262.1 of the Code of Virginia requires the Board to adopt regulations to provide incentives for the withdrawal of ground water from the surficial aquifer in the ESGMA rather than from the deep aquifer in such management area. The proposed general permit regulation includes the establishment of permit terms, withdrawal limitations, and reporting requirements necessary to permit withdrawals from the surficial aquifer. Much of the general permit contains standard language that the Board has used in other general permits

Section 10 – Definitions – The majority of the definition in the regulation are program terms that can be applicable to individual permits as well as this general permit. No new definitions are included in the proposal that are not either included in the statute or regulations.

Section 35 – Authorization to withdraw groundwater from the surficial aquifer of the Eastern Shore – This section outlines that to withdraw surficial groundwater in the ESGMA the following must be met: 1) an appropriate application must be filed; 2) the fees must be paid (if required); 3) general permit coverage received and complied with; 4) and an individual permit has not been required for the withdrawal.

Section 40 – Exceptions to coverage – This section lays out what activities are not required to have general permit coverage. Two noteworthy exceptions are identified that are designed to protect the confined aquifers in the ESGWMA and impacts to surface waters. The first is that if a surficial groundwater withdrawal authorized by a general permit results in or is reasonably expected to result in, more than minor declines in confined water levels, degradation of water quality, or surface waters, the Board may require a general permit. The second is that wells drilled in the surficial aquifer cannot be deeper than 80 feet below the land surface to use this general permit unless the applicant submits geophysical log data. The RAP added this language to ensure that wells were drilled in the surficial aquifer rather than in a confined aquifer and to streamline the process for applicants not drilling deeper than 80 feet.

Section 45 – Application – This section identifies what an applicant must submit in their application for the general permit. The majority of application requirements are standard and when possible, streamlined to reduce the time and cost of developing an application. Noteworthy application requirements proof of local government notification, documentation of the water volume needed, and the submission of geophysical logs if the proposed wells are deeper than 80feet. Part E allows the application to be administratively withdrawn for failure to submit information requested in writing after 60 days.

Section 50 – General Permit – This section contains all the required performances that are included in the general permit and is what the applicant will receive that provides coverage to withdraw surficial groundwater. Identified below are sections that provided regulatory streamlining.

> **Section 50.B – Reporting** – The reporting frequency for this general permit was reduced from quarterly reporting (individual permit) to annual reporting. Monthly meter readings are still required and records maintained.
>
> **Section 50.C – Water Conservation and Management Plan** – Individual permits require detailed water conservation and management plans specific to the facility. For this general permit a more generic list of best practices have been identified that comprise an annual audit and will be provided to the applicant as a reporting form with the general permit. The completed audit form will be provided to DEQ annually with the withdrawal volume report.

Section 50.D – Mitigation Plan – A permit cannot be issued with unmitigated impacts. An automated online system will provide applicants with an Area of Impact (AOI) map. This map is included with the application form. The mitigation plan has been simplified and will be included in the general permits when dictated by the AOI. This is possible because the likelihood of impacts is less from surficial withdrawals than from confined aquifer withdrawals.

The remainder of the general permit is typical language included in most DEQ general permits.

Proposed Regulatory Text:

9VAC25 CHAPTER 610.
GROUNDWATER WITHDRAWAL REGULATIONS.
PART I.
General.

9VAC25-610-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of groundwater, without recycle of said waters to their source of origin.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"General permit" means a groundwater withdrawal permit authorizing the withdrawal of groundwater in a groundwater management area under specified conditions including the size of the withdrawal or the aquifer or confining unit from which the withdrawal is to be made.

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing groundwater users. Geophysical investigations include pump tests and aquifer tests.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Instream beneficial uses" means uses including, but not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The

preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit issued under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the board pursuant to § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water" means all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

"Water well systems provider" means any individual who is certified by the Board for Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

9VAC25-610-95. General permits.

A. The board may issue a general permit by regulation for withdrawals of groundwater within a groundwater management area as it deems appropriate in accordance with the following:

1. A general permit may be written to cover the following:

a. Withdrawals of a certain size;

b. Withdrawals from a specific aquifer or confining unit; or

c. Other categories of withdrawals deemed appropriate by the board.

2. A general permit must clearly identify the applicable conditions of this chapter for each category or subcategory of withdrawals covered by the permit.

3. The general permit may exclude specified withdrawals or areas from coverage.

B. When the board determines on a case-by-case basis that concerns for the aquifer, water quality, or the ecosystem services that depend on the groundwater so indicate, the board may require individual applications and individual permits rather than approving coverage under a general permit regulation. Cases where an individual permit may be required include the following:

1. The wells of two or more groundwater users within the area are interfering or may reasonably be expected to interfere substantially with one another;

2. The available groundwater or surface water supply that rely on surficial aquifer input has been or may be adversely impacted or instream beneficial uses may be impacted.

3. The groundwater or surface water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical or biological properties of groundwater, or surface waters, which has a harmful or detrimental effect on the quality or quantity of such waters.

4. The applicant or permittee is not in compliance with the conditions of the general permit regulation or coverage; or

5. An applicant or permittee no longer qualifies for coverage under the general permit.

C. General permit coverage may be revoked from a permittee for any of the reasons set forth in 9VAC25-610-300 A subject to appropriate opportunity for a hearing.

D. Activities authorized under a general permit and general permit regulation shall be authorized for the fixed term stated in the applicable general permit and general permit regulation.

E. When an individual permit is issued to a permittee, the applicability of general permit coverage to the individual permittee is automatically terminated on the effective date of the groundwater withdrawal individual permit.

F. When a groundwater withdrawal general permit regulation is issued that applies to a permittee that is already covered by an individual permit, that person may request exclusion from the provisions of the general permit regulation and subsequent coverage under an individual permit.

G. General permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of the Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia, §2.2-4000 et seq.).

9VAC25 CHAPTER 910.
GENERAL PERMIT FOR USE OF SURFICIAL AQUIFER ON THE EASTERN SHORE.

9VAC25-910-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (Ground Water Management Act of 1992) and 9VAC25-610 (Groundwater Withdrawal Regulation), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Department" or “DEQ” means the Department of Environmental Quality.

“Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the counties of Accomack and Northampton.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

9VAC25-910-20. Information requirements.

Pursuant to 9VAC25-610-380, the board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal, and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a general permit coverage shall provide the information requested by the board.

9VAC25-910-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of the surficial aquifer in the Eastern Shore Groundwater Management Area under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the board. Coverage, or application denial by the board, shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-910-40. Delegation of authority.

The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-910-50. Effective date of the permit.

The general permit in 9VAC25-910-90 becomes effective on (insert the effective date of the regulation) and

expires on (insert the date 15 years after effective date of the regulation). Any coverage that is granted pursuant to 9VAC25-910-90 shall remain in full force and effect until 11:59 p.m. on (insert the date 15 years after the effective date of the regulation) unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-910-60. Authorization to withdraw groundwater from the surficial aquifer of the Eastern Shore.

A. A person granted coverage under the general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area, as defined in this chapter, provided that:

1. The applicant submits an application in accordance with 9VAC25-910-80;

2. The applicant remits any required permit application fee;

3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-910-90 and complies with the limitations and other requirements of the general permit; the general permit coverage letter; and the Ground Water Management Act of 1992 and attendant regulations; and

4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. An applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

9VAC25-910-70. Exceptions to coverage.

A. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

B. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations.

C. The board shall deny application for coverage under this general permit to any applicant conducting activities that cause; may reasonably be expected to cause; or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses. The board may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

D. Coverage under this general permit shall not be granted for:

1. An activity outside the Eastern Shore Groundwater Management Area.

2. An activity in an aquifer other than the surficial aquifer of the Eastern Shore Groundwater Management Area.

3. A well with a maximum depth greater than 80 feet below land surface, unless the applicant provides geophysical logs with the application that show the maximum depth of the well is constructed within the surficial aquifer of the Eastern Shore Groundwater Management Area, as determined by department review. Wells with a maximum depth less than or equal to 80 feet below land surface do not require submission of geophysical logs.

9VAC25-910-80. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in the Eastern Shore Groundwater Management Area.

B. A complete application for general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The permit fee as required by the 9VAC25-20 (Fees for Permits and Certificates);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. The application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude;

6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5 minute topographic map or equivalent computer generated map. The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and

the location of each of its existing and proposed wells and must include all springs, rivers and other surface water bodies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

9. Documentation justifying volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with 9VAC25-910-80 B 2; and

10. Where existing or proposed wells are greater than 80 feet below land surface, a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch) shall be obtained from boreholes at the locations and depths approved by the department. At least four months prior to the scheduled geophysical logging, the permittee shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging. Geophysical log data collected without the oversight of the department will not be accepted by the department.

C. The board may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the board under the requirements of subsection B of this section, the board will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the board for failure to provide the required information after 60 calendar days from the date of the latest written information request made by the board. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-910-90. General permit.

An owner whose application is accepted by the board will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610.

GENERAL PERMIT FOR GROUNDWATER WITHDRAWALS FROM THE SURFICIAL AQUIFER OF THE EASTERN SHORE GROUNDWATER MANAGEMENT AREA.

Effective date: (insert the effective date of the regulation).

Expiration date: (insert the date 15 years after the effective date of the regulation).

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and 9VAC25-610 (Groundwater Withdrawal Regulations) (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

PART I.

Operating Conditions.

A. Authorized withdrawal.

The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-910-80.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the Permittee in accordance with Part II, subdivisions F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process; including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the Eastern Shore Drought Evaluation Region or in accordance with the county's (or locality's) drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan.

In cases where the area of impact provided with the permit application for the water withdrawal from the surficial aquifer does not remain on the property owned by the permittee and existing groundwater withdrawers are included in the area of impact, the permittee shall mitigate all adverse impacts on existing groundwater users in accordance with the following process:

1. The permittee shall review and respond to any claim of an adverse impact from a groundwater user within the area of impact within five business days.

2. If the permittee accepts the claim as valid, the permittee shall notify the claimant and shall implement mitigation within 30 business days.

3. If the permittee does not accept the claim as valid, the permittee shall notify the claimant that:

a. The claim is denied and provide a justification for the denial, or

b. Additional documentation from the claimant is required in order to evaluate the claim. Within 15 business days of receiving additional documentation from the claimant, the permittee shall notify the claimant that (i) the permittee agrees to mitigate adverse impacts within 30 business days, or (ii) the claim is denied and provide a justification for denial.

4. If the permittee denies the claim, the permittee shall notify the claimant within 30 business days that the claimant may request that the parties agree to submit their dispute within 30 business days to a mutually agreed-upon impartial arbitrator that is authorized to resolve the claim by rendering a final and binding decision. The losing party shall be responsible for the arbitration costs. If the arbitrator approves the claim, the permittee shall mitigate the adverse impacts within 30 business days of the arbitrator's decision or as soon as practical.

E. Well tags.

Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the board and are available from the department.

F. Well abandonment.

The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

PART II.

Conditions Applicable to All Groundwater Withdrawal Permits.

A. Duty to comply.

The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate.

The permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I, subsection D of this general permit.

D. Inspection, entry, and information requests.

Upon presentation of credentials, the permittee shall allow the board, the department, or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices (including sampling, monitoring and withdrawal) that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

E. Duty to provide information.

The permittee shall furnish to the board or department, within a reasonable time, information that the board may request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the board or department, upon request, copies of records required to be kept by regulation or this permit.

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.

2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.

3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) records of all data used to complete the application for the permit for a period of at least three years from the date of the expiration of coverage under this general permit. This period may be extended by request of the board at any time.

4. Records of metering information shall include, as appropriate:

a. The date, exact place and time of measurements;

b. The names of the individuals that performed measurements;

c. The date the measurements were performed; and

d. The results of the measurements;

G. Water withdrawal volume metering and equipment requirements.

Each well and/or impoundment or impoundment system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.

2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I, subsection B of this permit. An alternative method for determining flow may be approved by the board on a case-by-case basis.

H. Well construction.

At least 30 calendar days prior to the scheduled construction of any well, the permittee shall notify the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.

2. For wells constructed with a maximum depth greater than 80 feet, a complete suite of geophysical logs

(16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report.

3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.

4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 business days of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II I.2.b.

J. Notice of planned change.

The permittee shall give notice to the department at least 30 business days prior to any planned alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

2. The permittee may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.

b. A new owner has assumed responsibility for the facility (Note: A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted).

c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.

d. Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

3. The notice of termination shall contain the following information:

a. The owner's name, mailing address, telephone number, and email address (if available);

b. The facility name and location;

c. The general permit number;

d. A completed Termination Agreement Form obtained from the department; and

e. The basis for submitting the notice of termination, including:

(1) A statement indicating that a new owner has assumed responsibility for the facility;

(2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;

(3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or

(4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and

(5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal individual permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage.

Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the board either:

1. Issues coverage to the owner under this general permit; or

2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

M. Duty to reapply.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the board. The board shall not grant permission for application to be submitted later than the expiration date of the existing permit.

TAB L - Significant Noncompliance Report and Chesapeake Bay Preservation Act Program Notices of Violations:

Significant Noncompliance - Two new permittees were reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance (SNC) for the quarter ending June 30, 2020.

1. Permittee/Facility: **Western Virginia Water Authority/WVWA WPCP**
Type of Noncompliance: **Failure to Meet Permit Effluent Limits (TSS)**
City/County Roanoke, Virginia
Receiving Water: Roanoke River
Impaired Water: The Roanoke River is listed as impaired for fish consumption, recreation and aquatic life uses. The causes of the fish consumption impairment are PCBs and Mercury, the aquatic life use is impaired for benthics and the recreational use is impaired for bacteria.
River Basin: Roanoke River Basin
Dates of Noncompliance: May and June 2020
Requirements Contained In: VPDES Permit
DEQ Region: Blue Ridge Regional Office
The Authority attributes the violations to high flows and a critical equipment failure in June during the high flow period. DEQ's Blue Ridge Regional Office has issued a Notice of Violation to the Authority. The Authority is currently under a consent order to address inflow and infiltration and has implemented projects to reduce flow to the plant. DEQ will evaluate whether an amended or superseding consent order is necessary to address the violations.

2. Permittee/Facility: **Henrico County/Henrico County Water Reclamation Facility**
Type of Noncompliance: **Failure to Meet Permit Effluent Limits (Total Suspended Solids)**
City/County Henrico, Virginia
Receiving Water: James River
Impaired Water: The James River is listed as impaired for recreation, aquatic life, and fish consumption uses. The cause of the recreational impairment is bacteria, the aquatic life use is impaired due to inadequate submerged aquative vegetation, excess chlorphyll a, and benthics, and the fish consumption use is impaired due to PCBs.
River Basin: James River Basin
Dates of Noncompliance: February, April, May and June 2020
Requirements Contained In: VPDES Permit
DEQ Region: Piedmont Regional Office
The County attributes the violations to the need for final filter rehabilitation at the treatment plant, and the County has initiated both an interim and long term corrective action plan. The short term plan consists of rehabbing three sets of filters and the long term plan includes filter replacement. The County reported additional TSS exceedances in August 2020. DEQ's Piedmont Regional Office has issued a Notice of Violation to the County and anticipates entering into a consent order with the County to address the violations.

Chesapeake Bay Preservation Act Program Notice of Violation: - DEQ completed its compliance review of the Lancaster County (County) Chesapeake Bay Preservation Act (CBPA) program in 2016. On October 6, 2016, DEQ transmitted the staff report of the review to the County, which identified four conditions for compliance as well as a timeframe for addressing the conditions. On October 15, 2020, DEQ issued the County a Notice of Violation for not meeting a condition related to Soil and Water Quality Conservation Assessments for lands upon which agricultural activities are conducted. For several years, the County has not completed any Soil and Water Quality Conservation Assessments, despite continued facilitation on the part of DEQ. DEQ anticipates entering into a Corrective Action Agreement with the County describing the deficiency, corrective action, and a timeframe for completing the corrective action.

TAB M - Consent Special Orders - City of Winchester (Sanitary Sewer Overflows Consent Special Order w/ Civil Charges and Injunctive Relief): From April 2018 to April 2020, Winchester reported approximately 180 sanitary sewer overflows (SSOs), from their System that reached state waters. The SSOs are detailed in Appendix C of the proposed order. All but two of the SSOs were attributed to the aging sanitary system and heavy rains causing inflow and infiltration into the System. On February 21, 2019, DEQ issued a Notice of Violation to Winchester for the unpermitted discharges to state waters. During discussions with DEQ, Winchester conveyed that an additional $8.7 million in projects were planned for 2019-2021 for upgrades to the System through pump station repairs/replacements, additional sanitary sewer line replacement/lining, additional manhole replacement, and the purchase of a new vacuum truck. The proposed order contains specific I&I reduction projects that have been incorporated into the schedule of compliance in Appendix A.
Civil charge: $92,625 to be deposited into the Virginia Environmental Emergency Fund. No public comments were received during the comment period.

Tab M - Consent Special Orders - U.S. General Services Agency (OW), M.A. Mortenson Company (OP), Hensel Phelps Parent 1 Inc. d/b/a Hensel Phelps Construction CO (OP) (Fort Pickett, Nottoway County) Consent Special Order with Civil Charges and Schedule of Compliance: DEQ issued VWP Permit No. 15-1145 on February 22, 2016, authorizing permanent impacts to 3.84 acres of palustrine forested wetlands (PFO) and 2,859 LF of stream bed. Temporary impacts were authorized to 0.03 acres of PFO. The permit was issued to the U.S. General Services Agency (GSA) to construct the Foreign Affairs Security Training Center (FASTC) at Fort Pickett, Nottoway County. The training center plan covers approximately 3,600 acres, and includes driving tracks, firing ranges, a mock urban environment, explosives ranges, and associated classrooms and administrative buildings. GSA employs two primary contractors for the development, including M.A. Mortenson Co. (Mortenson) and Hensel Phelps Construction Co. (HPC). While GSA is both an owner and operator, the contractors are the operators. This enforcement action requires GSA to complete any remaining corrective action and the contract parties to pay a civil charge. Due to the size of the construction area, DEQ staff conducted a series of inspections on June 11, 20, & 27, and July 9 & 13, 2018, making the following observations in a consolidated Inspection Report dated July 25, 2018. During all of the inspections, GSA and contractor representatives accompanied DEQ staff, and were informed of observations and recommended corrective actions:
1) Unauthorized sediment impact to 11,594 LF of stream channel, 4.95 acres of PFO, and 0.01 acres of palustrine emergent wetland. The impacts are the result of the accumulation of 118 inches of eroded sediment deposited to various stream channels present throughout the construction site. The deposition resulted from the failure to install and maintain erosion and sediment control measures during construction.
2) Riprap installed as outlet protect in stream channels adjacent to Impact Areas 7 and 27 was disruptive to aquatic life movement through the stream channel and impeded passage of normal or expected high flows.
3) ESC measures were not installed or maintained in good working order, resulting in sediment impacts to surface waters.
4) Required boundary flagging to mark non-impacted surface waters within 50 feet of permitted activities or within the project or right-of-way-limits was missing and/or damaged around non-impacted surface waters.
DEQ's Inspection Report dated July 25, 2018 required GSA to take a number of site-wide corrective actions, including: a) removal of accumulated sediment from the stream beds and wetland areas; b) repair and/or replacement of Erosion and Sediment Control measures, where necessary; c) slope stabilization above and below perimeter controls; d) replacement of flagging for avoided areas with high visibility fencing and signage; and e) repair and/or replacement of check-dams downstream of impact areas.
On August 13, 2018, DEQ issued NOV No. 1807-000788 to GSA, providing notice of the observations documented in the July 25, 2018 consolidated inspection report.
DEQ staff have been in regular, ongoing communication with GSA and contractor staff to monitor corrective action.
Civil charge: $101,400. The public comment period has not closed at the time of this summary. If any comments are received, the Department will update the Board at the meeting.

TAB N - FY2021 Virginia Clean Water Revolving Loan Fund Final Authorizations: Title IV of the Clean Water Act requires the annual submission of a Project Priority List and Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, the loan amounts, and repayment terms. The next step in this process is for the Board to set the loan terms and authorize the execution of the loan agreements.

On June 1, 2020, Clean Water Financing and Assistance Program (CWFAP) staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation, living shoreline, and brownfield remediation applicants. July 10, 2020 was established as the deadline for receiving applications. Based on this solicitation, DEQ received 11 wastewater improvement applications requesting $172,696,395, two (2) stormwater applications requesting $32,067,700, and one (1) living shoreline application requesting $550,000, bringing the total amount requested to $205,314,095.

By memorandum dated September 21, 2020, the Director of DEQ tentatively approved the list of 14 projects for which loan assistance was requested from available and anticipated FY 2021 resources and authorized staff to proceed to public comment. A listing of the projects in priority order and a brief description of each is included in Attachment A. A public meeting was convened on October 30, 2020. Notice of the meeting was posted on the Virginia Regulatory Town Hall and DEQ's CWFAP website. No comments were received.

The staff has conducted initial meetings with the FY 2021 targeted recipients and has finalized the recommended loan amounts, interest rates, and loan terms in accordance with the Board's guidelines. No changes from the tentative approval list previously approved are being recommended.

The loan terms listed in the table below are submitted for Board consideration. In accordance with Board guidelines, a residential user charge impact analysis was conducted for each project. This analysis determines the anticipated user charges as a result of the project relative to the affordable rate as a percentage of the applicant's median household income. Projects involving higher user charges relative to income generally receive lower interest rates than those with relatively lower user charges.

Congress has not finalized the federal State Revolving Fund appropriation for FY 2021. As such, we are unsure as to the amount, if any, that could be made available as principal forgiveness in FY 2021. The staff will analyze the projects with regard to the program's hardship affordability criteria and will be prepared to work with the Director on providing principal forgiveness to some projects as allowed by previous delegations if it is provided for by the federal appropriation.

As in the last several years, we are proposing that the ceiling rate subsidy for wastewater related projects differ depending on the term of the loan, such that 20-year ceiling loan rates are set at 1.50% (150 basis points) below market, 25-year ceiling loan rates are 1.25% (125 basis points) below market, and 30-year ceiling loan rates are 1.00% (100 basis points) below market. Market rates would be based on an evaluation by Virginia Resource Authority (VRA) of the market conditions that exist about a month prior to each loan closing or the actual leveraged bond issue. For stormwater projects, if the local government has adopted a dedicated source of revenue to implement a stormwater control program in accordance with 15.2-2114 of the Code of Virginia, the loan recipient is entitled to an additional interest rate reduction of 1%. The program is recommending the hardship interest rate be set at 0.5% and a minimum interest rate of 1% for all loans that do not qualify for the hardship interest rate.

For projects such as wastewater treatment plants and pump stations that involve significant mechanical equipment, the maximum loan term would be up to 25 years, whereas the term for projects that primarily involve wastewater conveyance piping installation or improvements and projects funded using programmatic financing could be up to 30 years and no longer than the expected useful life of the project. For stormwater and living shoreline projects, loan terms are set at 20 years.

FY 2021 Proposed Interest Rates and Loan Authorizations				
	Locality		***Loan Amount***	***Rates and Loan Terms***
1	Town of Coeburn	$	2,070,845	0.5%, up to 30 years
2	City of Norfolk	$	6,000,000	0.5%, up to 30 years
3	Town of Exmore	$	17,255,000	0.5%, up to 30 years
4	Town of Front Royal	$	8,000,000	CR*, up to 25 years
5	Bedford Regional Water Authority	$	12,520,000	0.5%, up to 25 years
6	Nelson County Service Authority	$	14,328,000	0.5%, up to 25 years
7	City of Richmond	$	24,871,250	0.5%, up to 20 years
8	Town of Marion	$	428,300	0.5%, up to 25 years
9	Town of Bridgewater	$	230,000	CR*, up to 30 years
10	Prince William County	$	85,443,000	CR*, up to 25 years
11	Middlesex County	$	1,550,000	CR*, up to 30 years
12	City of Norfolk	$	1,567,700	0.5%, up to 20 years
13	Fairfax County	$	30,500,000	CR-1%*, up to 20 years
14	Westmoreland County	$	550,000	0.5%, up to 20 years
	TOTAL	$	205,314,095	
CR = Ceiling Rate *minimum 1%				

Staff Recommendations

Authorize the execution of loan agreements for the projects, loan amounts, interest rates and terms listed above, and that 20-year ceiling loan rates are set at 1.5% (150 basis points) below market, 25-year ceiling loan rates are 1.25% (125 basis points) below market, and 30-year ceiling loan rates are 1% (100 basis points) below market, based on VRA's evaluation of the market conditions that exist about a month prior to each loan closing or the actual leveraged bond issue to fund ceiling rate loans. The minimum interest rate will be 1% for all loans that do not qualify for the hardship interest rate of 0.5%. Loan closings will be subject to receipt of a favorable financial capability analysis report and supporting recommendation from VRA for each loan recipient.

TAB O - Agricultural Best Management Practices Loan Program Revised Guidelines:

Purpose

DEQ operated the Agricultural Best Management Practices (Ag BMP) Loan Program from December 1999 to June 2016 to provide a source of low interest financing which encouraged the use of specific best management practices that reduce or eliminate the impact of agricultural non-point source pollution on Virginia waters. The goal of the program was to improve water quality in the Commonwealth. During the 2019 session, the Virginia General Assembly amended the code to expand the list of eligible applicants and practices, and to allow for grants to producers. DEQ staff revised the Ag BMP Loan Program Guidelines to be consistent with code changes, the Guidelines were approved by the State Water Control Board in June 2019, and the program was restarted on July 1, 2019. After administering the program for over a year, staff identified the need for several revisions to the Guidelines, including adding Soil and Water Conservation Districts and local governments that start a local loan program as eligible applicants, revising loan amount minimums and maximums, and adding four new practices to the eligible practice table.

Background

The Virginia Clean Water Revolving Loan Fund (VCWRLF) loan program was established in 1988 to create a self-perpetuating source of low interest financing which would be available to Virginia municipalities for improving publicly owned wastewater treatment works and collection systems. On behalf of the State Water Control Board (Board), DEQ developed and continues to administer the VCWRLF program. DEQ's Virginia Ag BMP Loan Program is a subset of the VCWRLF loan program and is intended to create a continuing source of low cost financing that will be available to Virginia's agricultural producers to assist in their efforts to reduce agricultural non-point source pollution.

Over the past year of administering the program, staff identified the need for several revisions to the Guidelines. During evaluation and revision of the Ag BMP Loan Program Guidelines, DEQ provided a draft version of the Guidelines to the agricultural conservation stakeholder group which included Virginia Farm Bureau, Natural Resources Conservation Service, Virginia Dairyman's Association, Virginia Cattleman's Association, Virginia Association of Soil and Water Conservation Districts, Agribusiness Council, Grain Producers Association, Poultry Federation, Farm Service Agency, and the Virginia Cooperative Extension. Stakeholder comments were discussed and resolved during a virtual stakeholder meeting held on September 16, 2020. DEQ has incorporated stakeholder input and made final revisions to the Guidelines.

On September 30, 2020, the revised Guidelines were presented to the public for a 30-day public comment period ending October 30, 2020. No public comments were received.

Summary of Guidelines Revisions and Staff Recommendation

After administering the Ag BMP Loan Program for over a year, DEQ made these key revisions to the Guidelines:

(1) Added Soil and Water Conservation Districts and local governments that start a local loan program as eligible applicants,

(2) Changed language to allow for loans less than $10,000 provided total project cost is at least $10,000 with cost share making up the difference,

(3) Increased maximum loan amount from $500,000 to $600,000, and set the maximum amount of outstanding debt in the program at $1,000,000,

(4) Changed language to allow for credit reviews to be conducted by Virginia Resources Authority in addition to Farm Credit, and

(5) Updated the Ag BMP Practice table to be consistent with the Virginia Agricultural Cost Share practice changes, including adding 4 new practices and updating practice descriptions.

Staff recommends the State Water Control Board approve the revised Agricultural BMP Loan Program Guidelines.

Text of Guidelines:

VIRGINIA'S AGRICULTURAL BMP LOAN PROGRAM GUIDELINES
STATE WATER CONTROL BOARD

Approved December 7, 1999
Updated May 9, 2012
Amended June 27, 2019
Amended December 9, 2020

VIRGINIA'S AGRICULTURAL BMP LOAN PROGRAM AND ENABLING LEGISLATION

In order to reduce agriculture non-point source pollution of Virginia's waters, the Virginia General Assembly in its 1999 session amended Chapter 22 of the *Code of Virginia* by adding § 62.1-229.1 which expanded the activities of the Virginia Water Facilities Revolving Fund (the Fund) to the Commonwealth's agricultural producers (Producers) for implementation of specific agricultural best management practices (Ag BMPs). This Code section was amended in 2019 to add a grant funding option, to expand eligible applicants, and to expand eligible practices to include riparian buffers and renovation, improvement or equipping of facilities.

> *§ 62.1-229.1. Loans for agricultural best management practices*
>
> *Loans and grants may be made from the Fund, in the Board's discretion, to (i) any person, for the construction, renovation, improvement or equipping of facilities or structures to implement agricultural best management practices to prevent pollution of state waters; (ii) a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the construction, renovation, improvement or equipping of such facilities or structures; or (iii) a financial institution working with a local government to establish a program pursuant to clause (ii). The Board shall develop guidelines for the administration of such loans and grants and shall determine the terms and conditions of any loan or grant from the Fund.*
>
> *For purposes of this section, facilities or structures to implement agricultural best management practices may include riparian buffers planted in trees and maintained in accordance with the terms and conditions of the loan or grant.*

The purpose of this Ag BMP assistance initiative is to provide a source of low cost financing to encourage the use of specific best management practices that reduce or eliminate the impact of Agricultural Non-point Source (NPS) pollution on Virginia waters. The goal of the program is to improve water quality in the Commonwealth.

FUNDING AVAILABILITY

The Virginia Clean Water Revolving Loan Fund (VCWRLF) program was established in 1988 to create a perpetual source of low and no interest financing which would be available to Virginia municipalities for improving publicly owned wastewater treatment works and collection systems. On behalf of the State Water Control Board (the Board), DEQ developed and continues to administer the VCWRLF program and manage the Fund in conjunction with the Virginia Resources Authority (VRA). Virginia's Ag BMP program is one of a number of program components eligible to utilize the Fund to provide a continuing source of low cost financing to Virginia's ~~agricultural producers~~eligible applicants to assist in their efforts to reduce agricultural non-point source pollution.

The Ag BMP program is not dependent on legislative appropriations for its fund availability. During the early stages of the Ag BMP loan program, the Board set aside a total of $15 million from the Fund to capitalize the program. All repayments of principal and interest from previous Ag BMP loans are returned to the Fund and used to provide additional loans to other ~~Virginia agricultural producers~~eligible applicants. In addition to the revenue available from repayments, DEQ can request that the Board consider making additional funding set-asides from the Fund as necessary to meet Virginia's agricultural non-point source pollution reduction needs. In December 2019, the Board approved an additional set aside of $10 million from the Fund.

WHO IS ELIGIBLE TO APPLY

Any Producer wishing to implement eligible best management practices to reduce the amount of polluted agricultural runoff entering Virginia waters ~~adjacent to their existing agricultural operation~~ will be considered by DEQ for Ag BMP program assistance. Soil and Water Conservation Districts are also eligible to apply. Local governments and financial institutions working with a local government that have developed a low interest loan program are eligible for funding

from the program. Producers will be considered for loan assistance regardless of whether they choose to participate in any other state and/or federal agricultural assistance program.

ACRONYMS AND DEFINITIONS

Definitions of terms and acronyms used in this guidance document as they apply to the Virginia Agricultural BMP Loan Program are:

Ag BMP.....Agricultural Best Management Practice
Board or SWCB.....State Water Control Board
DEQ.....Department of Environmental Quality
DCR.....Department of Conservation and Recreation
"Fund".....Virginia Water Facilities Revolving Fund
"in-kind services".....Labor and/or materials provided by the ~~Producer~~ applicant or their farm employees and/or rental fees for farm equipment owned by the ~~Producer~~applicant
Incurred cost.....Eligible expenses for which the loan recipient has been invoiced or amounts which are due and stipulated in a contract for labor, material or professional services
NPS.....Non-Point Source – Pollution from runoff of agricultural chemicals, animal waste, storm water, fertilizer and/or erosion
NRCS.....United States Department of Agriculture, Natural Resources Conservation Service
Producer.....Landowner, agent, or operator of record, which may be an individual, corporation, limited liability company, trust, or other legal entity, engaged in agricultural production for market and having control of the property on which the practice will be located
SWCD.....Soil and Water Conservation District
VCWRLF.....Virginia Clean Water Revolving Loan Fund
VRA……..Virginia Resources Authority

LOAN AMOUNTS

Minimum Loan Amount

The minimum allowable loan amount is $10,000. For projects that have received cost share funds prior to loan closing, loans may be less than $10,000 provided total project cost, which includes the cost share amount, is at least $10,000.

Maximum Loan Amount

The maximum allowable loan amount is $65~~5~~00,000.

The maximum amount of active program loan utilization ~~amount~~ is $1,000,000. Active program loan utilization is the current loan amount outstanding in the program and the amount of any new loan application(s).

ELIGIBLE LOAN AMOUNT

V~~irginia agricultural producers~~Eligible applicants may request loan assistance from the Virginia Ag BMP program to finance implementation expenses under a cost-share grant agreement up to 100% of loan eligible expenses for approved Ag BMPs. In cases where cost-share funds will be provided at completion of one or more practices, these funds must immediately be applied to retirement of the loan obligation to avoid any duplication of funding. Funding is limited to the expenses relating to implementation of the eligible practice(s) and the loan amount cannot be greater than the total estimated cost of implementing the practice(s).

LOAN REPAYMENT PERIOD

The total Ag BMP loan amount, useful life of the structure or facility, and payment capacity are considered in setting the loan repayment period. Based on these factors, repayment periods may range from 1 to 10 years but will not exceed the expected useful life of the practice funded. DEQ may offer extended repayment periods in situations that result in a significant water quality benefit.

ELIGIBLE PRACTICES FOR FINANCING BY PROGRAM

Virginia's legislation specifically limits Ag BMP assistance to facilities and structures that are necessary for ~~Producers~~ "any person" to implement agricultural best management practices. The list of best management practices pertains to construction, renovation, improvement, or equipping of facilities or structures as prescribed by statute and is specific to practices for water quality protection. The practices that are eligible for loan assistance through the Virginia Ag BMP program are listed in Table 1.

INTEREST RATE

Loan assistance will be made available at 0% per annum.

PRINCIPAL FORGIVENESS

DEQ may authorize up to 100% of loan assistance in the form of principal forgiveness for 1) projects providing a high water quality benefit and 2) applicants demonstrating financial need. The amount of principal forgiveness, if any, authorized for any project will be based on the availability of principal forgiveness funding in the program, the total amount of loan funds needed for the project, and the amount of grant funds made available to the project from other funding sources. Loan applicants should consult IRS Publication 225 – Farmer's Tax Guide and a tax professional about potential tax liability associated with accepting principal forgiveness.

ELIGIBLE EXPENSES

Authorized assistance amounts will be restricted to costs associated with services, labor, and materials necessary to complete or implement the approved BMP(s). Disbursement of funds will be made as the cost of implementation or construction is incurred. The following expenses may also be included when determining the allowable amount of Ag BMP assistance and can be reimbursed from loan proceeds after the cost is incurred.

- costs associated with professional services for any planning, design, or construction services needed to implement the approved BMP
- contractor(s) invoices for payments due or payments which are due to contractor(s) as specified in a binding contract relating to the approved BMPs
- invoiced cost of materials stored on site / incorporated in the work
- invoiced cost for labor used to install the practice
- other related costs incurred as necessary and as approved by DEQ

INELIGIBLE EXPENSES

The following expenses cannot be included when determining the allowable amount of an Ag BMP loan or reimbursed from loan proceeds:

- "in-kind services"
- costs related to farm production equipment
- costs which have been paid by federal, state, local, or other grant sources cannot be included in the assistance amount or reimbursed; in the event that grant funds are received for work previously paid for with loan funds, the grant funds must be applied to reduction of the loan principal
- finance charges

AG BMP PROCESS OVERVIEW

APPLICATION – The application (Appendix A) is a short questionnaire which provides the name of the ~~Producer~~applicant, location of the farm, specific BMP(s) proposed for assistance, estimated total cost of the practice(s), and the applicant's estimate of the amount of assistance that will be required. ~~*Virginia Agricultural BMP Loan Program Guidelines* booklets which include the application form are available to Producers at their local SWCD offices, DEQ and DCR regional offices, and Farm Credit offices.~~

Applications do not need to be submitted by any specific date and there is no scheduled solicitation of applications for Ag BMP assistance. After an application is received by DEQ, a member of the Clean Water Financing and Assistance Program (CWFAP) staff will contact the applicant and arrange a meeting at the project location. This "*Initial Meeting*" provides an opportunity for the CWFAP staff to gain a better understanding of what the project will involve, determine if any part of the proposed practice(s) is not eligible, explain what happens next in the loan review and approval process, and answer any questions the applicant may have. (*See Ranking of Applications section below.*)

At any time during the year, an ~~Producer~~ applicant may take the first step in applying for Ag BMP program assistance from DEQ by completing the application, which can be found online at https://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance.aspx, and sending it to DEQ at CWFAP@deq.virginia.gov or mailing a hard copy to the address below:

Clean Water Financing and Assistance Program
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

RANKING OF APPLICATIONS – DEQ staff will prioritize applications for assistance on a monthly basis. Applications for practices which are expected to provide the greatest water quality benefit will be given the highest funding priority. Applications considered to impact segments of Impaired, Nutrient Enriched, or Exceptional State waters and those within watersheds with an approved TMDL Implementation Plan will receive a HIGH funding priority. Applications affecting an area with an impoundment, a natural trout stream, a designated scenic river, or that

demonstrate another recognizable water quality benefit will be given a MEDIUM priority rating. All applications which do not meet the criteria for a HIGH or MEDIUM prioritization will receive a LOW ranking. This prioritization process is conducted once per month, generally during the last week of the month. Applications received by the 20th of each month will be considered in that month's applicant group.

Contingent on availability of funds, all projects that receive a HIGH or MEDIUM priority ranking and are ready to proceed to construction or the implementation phase within a six-month timeframe will be recommended for a conditional funding authorization. The conditions of that authorization are that DEQ receives verification that the applicant has an acceptable conservation plan / nutrient management plan and that DEQ and VRA approve the loan application after loan underwriting is complete.

HIGH and MEDIUM priority projects that cannot proceed to construction or the implementation phase within a six-month timeframe will be deferred and may be reconsidered for funding at a later date. The applicant will need to resubmit an application when the project is within six months of construction or implementation.

With no recognizable water quality benefit, all proposed projects that received a LOW priority ranking will be denied for funding.

NUTRIENT MANAGEMENT PLANS – ANIMAL WASTE PRACTICE(S)

Prior to approving loan funding for projects that include animal waste practices, the loan program requires that the applicant obtain a current Nutrient Management Plan (NMP) which has been prepared by a DCR certified planner. If the ~~Producer~~ applicant chooses to have a DCR certified private planner develop the Nutrient Management Plan, the preparation fee can be included in the loan amount. An independent cost estimate for the preparation fee may be required.

CONSERVATION PLANS – ALL PRACTICE(S)

Prior to funding approval, the loan program requires that the applicant have a conservation plan that has been approved by the local Soil & Water Conservation District (SWCD) and contains the proposed practice(s) and an implementation schedule for the specific site or field. Several types of plans qualify as a conservation plan for non-animal waste practices provided the plan includes a schedule and can be used to fulfill the conservation planning requirement:

- Conservation Plan (NRCS or DCR standards)
- Nutrient Management Plan (DCR standards)
- Ag Stewardship Plan (VDACS standards)
  - Chesapeake Bay Plan (CBLAD standards) – A Chesapeake Bay Plan is required for all practices located within areas included under the Chesapeake Bay Preservation Act.

If the proposed practice(s) is not included in an existing plan, appropriate government agencies such as the local SWCD, NRCS or DCR can prepare one at no charge to the ~~Producer~~applicant. If the ~~Producer~~applicant chooses to have a private planner develop the plan, the fee can be included in the loan amount. The plan must identify the practice and an installation schedule that applies only to the specific field or location of the proposed BMP. While "Whole Farm" plans are not required to fulfill conservation plan requirements, the development of plans which address additional water quality issues is encouraged.

CONDITIONAL AUTHORIZATION AND CREDIT REVIEW – Shortly after the prioritization process is completed, each applicant who submitted a request for assistance for a practice(s) that resulted in a HIGH or MEDIUM priority and is ready to proceed will receive a Conditional Loan Authorization letter from DEQ. The letter will state the amount of funds that have been authorized, contingent on two conditions being fulfilled prior to DEQ's final approval of the loan. The first condition is that the applicant will provide DEQ with evidence that they have a conservation plan or nutrient management plan in place that meets the loan program requirement. The second condition is that the applicant is approved by DEQ and VRA following credit review and underwriting. Included with the Conditional Loan Authorization letter will be two financial forms. One is the *Virginia Agricultural BMP Loan Program Application for Loan* and the other is the *Financial Information* worksheet. It is very important that applicants who are selected for funding enter the credit review process in a timely manner. Within 30 days after receiving a Conditional Loan Authorization Letter, the applicant should complete the two financial forms and submit them to ~~their local Farm Credit office~~VRA. Once ~~the Farm Credit office~~VRA has received the completed financial information forms and any additional financial information that was requested from the applicant, VRA or Farm Credit will conduct an underwriting analysis. Based on the result of that analysis, VRA or Farm Credit will provide DEQ ~~and VRA~~ with a recommendation for either approval or denial of the loan based on approved underwriting standards. Recommendations will also specify any collateral that VRA or Farm Credit has recommended as appropriate security for the loan. DEQ will then approve or deny the request.

DESIGN – Many practices that will be financed with Ag BMP program assistance will require development of design documents. This is especially the case for those projects involving construction of animal waste control facilities. The design documents usually consist of a set of specifications and construction drawings, which demonstrate that the practice or practices meet, at least, the minimum standards established by NRCS, DCR or DEQ. If the ~~Producer~~ applicant elects to hire a private consultant to prepare the design documents, the fee for design of the BMP will be eligible for reimbursement from loan proceeds. Upon completion of the design, the ~~Producer~~ applicant must provide DEQ with a copy of the design document(s) and the most recent estimate of the cost of implementing the practice(s).

LOAN APPROVAL – Once a loan has been approved by DEQ and VRA and the appropriate conservation plan or nutrient management plan and design document(s) have been received, DEQ will finalize the terms and conditions of the loan and provide the applicant and VRA with authorization to execute the loan agreement. The authorization will include the amount and term of the loan as well as a list of any special conditions that are applicable.

LOAN AGREEMENT – After receipt of authorization from DEQ, VRA will, on behalf of the Commonwealth, execute a loan agreement with the ~~Producer~~applicant. The loan agreement will specify the loan amount, interest rate, repayment period, loan security arrangements and any special conditions which were stipulated by DEQ. The loan agreement will also require the loan recipient to operate and maintain the practice which is constructed with the loan funds for the life of the loan and utilize the practice for its intended use as an agricultural BMP.

CONSTRUCTION AND DISBURSEMENT OF LOAN FUNDS – Loan funds are disbursed on a reimbursement basis, after costs have been incurred. VRA may disburse loan funds to the ~~Producer~~ applicant only upon written authorization from DEQ. Therefore, when loan recipients have incurred expenses which are eligible for payment from loan funds, it is necessary for them to submit a *Request for Disbursement of Ag BMP Loan Funds* form to DEQ. Copies of loan eligible invoices or contracts must accompany the disbursement request form. Upon receipt of the ~~Producer's~~ applicant's request for disbursement, DEQ will review the request and may contact the ~~Producer~~ applicant to arrange a visit to the project site. Once DEQ has completed their review of the request and supporting documentation (including any additional information requested of the recipient) and conducted the site visit (as deemed appropriate by DEQ) DEQ will then authorize VRA to disburse the eligible amount of loan funds to the ~~Producer~~applicant. Usually the disbursement is authorized within 3 to 5 working days from the date DEQ receives a complete request for disbursement.

CONSTRUCTION COMPLETION AND FINAL DISBURSEMENT – Once construction activities are complete, the ~~Producer~~ applicant will request a final inspection of the practice(s) which were financed with Ag BMP loan proceeds. After receiving the request for a final inspection, a DEQ representative will conduct an onsite review of the practice(s) to determine that the Ag BMP project is complete and meets the minimum standards set forth in the plans and specifications. DEQ will review the final disbursement request and authorize the final disbursement after a completion determination is made.

LOAN AND FUND MAINTENANCE – VRA will collect repayments on Ag BMP loans for the term specified in the financing agreement.

LOAN DEFAULT – In the event of a default, DEQ and VRA will take all appropriate measures, including legal actions, which are necessary to collect amounts due. At DEQ and VRA's sole discretion, loans in default may be referred to the Virginia Office of the Attorney General and the Borrower will be responsible for any additional fees and collection costs.

Table 1 – Practice Descriptions

Practice #	Practice Name	Practice Description	Practice Purpose
EM-1AT	Small Scale Manure Composting for Equine Operations – Aerated Systems	A small-scale manure composting practice is a system designed to manage solid waste from areas where horses and other small barn-lot animals are concentrated. This practice is designed to provide for the storage and composting of livestock waste so as to control surface runoff from facilities and permit the safe recycling of animal waste onto the land.	Improve water quality through the proper storing, composting and spreading of waste on small-scale livestock operations.
EM-1T	Small Scale Manure Composting for Equine Operations – Static Systems	A small-scale manure composting practice is a system designed to manage solid waste from areas where horses and other small barn-lot animals are concentrated. This practice is designed to provide for the storage and composting of livestock waste so as to control surface runoff from facilities and permit the safe recycling of animal waste onto the land.	Improve water quality through the proper storing, composting and spreading of waste on small-scale livestock operations.
FR-3	Woodland Buffer Filter Area	Creates a woodland buffer filter area to protect waterways or water bodies by reducing erosion, sedimentation, and the pollution of water from agricultural nonpoint sources.	Change land use and establish a forest buffer to provide stream bank protection and to control soil erosion, sedimentation, and nutrient loss from surface runoff to improve water quality. This practice will also provide forest areas for the benefit of wildlife and aquatic environments.
LE-1T*	Livestock Exclusion with Riparian Buffers	A structural and/or management practice that will restrict access to surface waters to reduce sediment, nutrient, and bacteria loadings to streams and reduce NPS pollution associated with grazing livestock on pastures within identified TMDL Implementation Areas only.	Provide livestock watering systems and fencing that will improve water quality by eliminating direct access to surface waters, establishing riparian buffers, and by improving pasture management by establishing rotational grazing to control erosion. Stream exclusion fencing is a required component of this practice. When rotational grazing is established, participants must implement a rotational grazing plan.
LE-2T*	Livestock Exclusion with Reduced Setback	This practice will promote structural and/or management practice(s) that will enhance or protect vegetative cover to reduce runoff of nutrients, sediment, and bacteria from existing pastureland within TMDL implementation areas and therefore reduce NPS pollution associated with grazing livestock.	Provide alternative livestock watering systems and fencing that will improve water quality by eliminating direct access to surface waters and by improving pasture management by establishing rotational grazing to control erosion. When rotational grazing is established, participants must implement a rotational grazing plan. Stream exclusion fencing is a required component of this practice.
SE-2	Shoreline Stabilization	Structures and/or vegetative measures will be designed and implemented to stabilize shoreline areas of estuaries, bays and the ocean.	Improve water quality by stabilizing shoreline areas that are being eroded because of waves, boat wake or overland flow.
SL-1**[Ŧ]	Long Term Vegetative Cover On Cropland	Grass and/or legume vegetation will be established on cropland with existing cover of less than 60% converting it to pasture or hay land.	To promote conversion of cropland to fields with a healthy, well- maintained sod and to reduce soil erosion and enhance water quality.
SL-4	Terrace System	Earth embankment, channel, or a combination ridge and channel constructed across the slope.	Improve water quality by reducing slope and slope length to one that will slow the movement of sediment and nutrients from cropland.

SL-5	Diversion	Channel with a supporting ridge on the lower side constructed across the general land slope.	Improve water quality by directing nutrient and sediment laden water from large areas to sites where it can be used or disposed of safely.
SL-6A	Small Acreage Grazing System	This practice is designed to reduce soil erosion in pastures and to prevent those areas exposed to heavy alternative livestock traffic from experiencing excessive manure and soil losses due to the destruction of ground cover and eliminate direct access to or a direct runoff input to live streams where there is a defined water quality problem.	Prevent manure and sediment runoff from a heavy use area and pastures from entering watercourses and to capture a portion of the manure as a resource for other uses such as fertilizer. This is accomplished by dividing the pasture into grazing paddocks. Livestock is rotated from paddock to paddock as is necessary to maintain a permanent vegetative cover. One lot is stabilized and designated as a heavy use area for use in periods of wet weather and when the grass in the grazing paddocks needs to rest in order to re-grow to the appropriate grazing height.
SL-6AT	Small Acreage Grazing System	This practice is designed to reduce soil erosion in pastures and to prevent those areas exposed to heavy alternative livestock (non-bovine) traffic from experiencing excessive manure and soil losses due to the destruction of ground cover and eliminate direct access to or a direct runoff input to live streams. Alternative livestock are addressed as pollutant sources in TMDLs.	Prevent manure and sediment runoff from heavy use areas and pastures from entering watercourses and to capture a portion of the manure as a resource for other uses such as fertilizer. This is accomplished by dividing the pasture into grazing paddocks. Livestock is rotated from paddock to paddock as is necessary to maintain a permanent vegetative cover. One lot is stabilized and designated as a heavy-use area for use in periods of wet weather and when the grass in the grazing paddocks needs to rest and re-grow to the appropriate grazing height.
SL-6B	Alternative Water System	A structural practice that will provide an alternative water source for livestock to reduce direct deposition of animal waste to waterways. This practice may reduce stream bank erosion and livestock waste reaching the stream.	Provide watering facilities for livestock to reduce or eliminate the need for livestock to access streams, which reduces erosion and livestock waste reaching the stream.
SL-6N	Stream Exclusion with Narrow (<35 ft) Width Buffer and Grazing Land Management	A structural and/or management practice that will enhance or protect vegetative cover to reduce runoff of sediment and nutrients from grazing livestock on existing pastureland through livestock exclusion.	Provide livestock water systems, fencing and/or a hardened pad for winter-feeding that will improve water quality control erosion and eliminate direct access to or a direct runoff input to all live streams or live water. Stream exclusion fencing and an offstream watering facility are required components of this practice. Rotational grazing is an optional enhancement of this practice. The exclusion and/or rotational grazing system receiving cost share should reflect the least cost, technically feasible, environmentally effective approach to resolve the existing water quality problem.

SL-6W	Stream Exclusion with Wide (>35 ft) Width Buffer and Grazing Land Management	A structural and/or management practice that will enhance or protect vegetative cover to reduce runoff of sediment and nutrients from grazing livestock on existing pastureland through livestock exclusion.	Provide livestock water systems, fencing and/or a hardened pad for winter-feeding that will improve water quality control erosion and eliminate direct access to or a direct runoff input to all live streams or live water. Stream exclusion fencing and an offstream watering facility are required components of this practice. Rotational grazing is an optional enhancement of this practice. The exclusion and/or rotational grazing system receiving cost share should reflect the least cost, technically feasible, environmentally effective approach to resolve the existing water quality problem.
SL-7	Extension of Watering Systems	A management system that will provide and ensure adequate surface cover protection to minimize soil erosion. The system will reduce sediment, nutrients and pathogen loads in runoff.	Improve the quantity, quality and utilization of forage for livestock and will reduce the risk of surface and groundwater contamination from nonpoint source pollution from pastures by assuring that an adequate stand of forage is available to absorb runoff and reduce pollutants.
SL-11B	Farm Road, Animal Travel Lane, Heavy Use Area Stabilization	This practice will promote structural and/or management practices that will protect surface water and groundwater recharge areas from pollution from travel ways of farm equipment and livestock or from a winter feeding area.	Protect or maintain water quality by stabilizing travel ways used by farm equipment and livestock or from winter feeding area.
WP-1	Sediment Retention, Erosion or Water Control Structures	Structures that will collect and store debris or control the grade of drainageways.	Improve water quality by reducing the movement of sediment and materials from agricultural land to receiving streams.
WP-2A	Streambank Stabilization	Protection methods along steams to reduce erosion, sedimentation and the pollution of water from agricultural nonpoint sources.	Offer an incentive that will change landuse, provide vegetative stabilization or improve management techniques to more effectively control soil erosion, sedimentation and nutrient loss from surface runoff to improve water quality.
WP-2B	Stream Crossing & Hardened Access	A stabilized area to provide access to and/or across a stream for livestock and/or farm machinery.	Improve water quality by controlling bank and streambed erosion and reducing sediment by providing a controlled crossing and/or access to streams.
WP-2C	Stream Channel Stabilization	Stabilizing the stream channel with the use of non-erodible material and/or structures that will prevent the stream channel from eroding.	Improve water quality by reducing erosion by stabilizing stream channels.
WP-2N	Stream Protection - Fencing with Narrow (<35 ft) Width Buffer	Protection by fencing along all live streams or live water in a field, to reduce erosion, sedimentation, and the pollution of water from agricultural nonpoint sources.	Offer an incentive that will change land use, provide vegetative stabilization, or improve management techniques to more effectively control soil erosion, sedimentation, and nutrient loss from surface runoff to improve water quality.
WP-2W	Stream Protection - Fencing with	Protection by fencing along all live streams or live water in a field, to reduce erosion, sedimentation, and the pollution of water from agricultural nonpoint sources.	Offer an incentive that will change landuse, provide vegetative stabilization, or improve management techniques to more effectively control soil erosion, sedimentation, and

	Wide (>35 ft) Width Buffer		nutrient loss from surface runoff to improve water quality.
WP-2T*	Stream Protection (fencing)	Protection by fencing along all waterbodies and streams in a field to reduce erosion, sedimentation, and the pollution of water from agricultural nonpoint sources in TMDL implementation areas.	Change land use or improve management techniques to more effectively control soil erosion, sedimentation, and nutrient loss from surface runoff to improve water quality.
WP-4	Animal Waste Control Facility	A planned system designed to manage liquid and/or solid waste from areas where livestock and poultry are concentrated. This practice is designed to provide facilities for the storage and handling of livestock and poultry waste and the control of surface runoff to permit the recycling of animal waste onto the land in a way that will abate pollution that would otherwise result from existing livestock or poultry operations.	Improve water quality by storing and spreading waste at the proper time, rate, and location, and/or to control erosion and nutrient input caused by feeding operations located adjacent to riparian areas or other environmentally sensitive features.
WP-4B	Dairy Loafing Lot Management System	Prevent areas which are exposed to heavy livestock traffic from experiencing excessive manure and soil losses due to the destruction of ground cover. Unimproved loafing lots that are used for dairy herd exercise and loafing are usually denuded of vegetation and harbor undesirable plants.	Prevent manure and sediment runoff from entering water courses and sensitive karst areas and to capture a portion of the manure as a resource for other uses such as crop fertilizer. Accomplished by dividing the area into lots. The dairy cattle are rotated from lot to lot as necessary to maintain vegetative cover. One lot is designated as a sacrifice area for use in wet weather. This practice is for dairy cattle only.
WP-4C	Composter Facilities	Planned system designed to manage treatment and disposal of poultry and swine carcasses resulting from normal mortality. This practice is designed to provide facilities for composting poultry and swine carcasses from normal mortality, storage of raw materials necessary for composting, storage of the composted end product, and the recycling of composted carcasses by land applying the end product in a manner that will abate pollution that would otherwise result from existing disposal methods for normal poultry and swine mortality carcasses.	To improve water quality by properly composting normal mortality for poultry and swine and spreading the composted material at the proper time, rate, and location.
WP-4E	Animal Waste Structure Pumping Equipment	Mechanism used to agitate and/or pump liquid and/or simi-liquid animal waste for the purpose of land application.	Insure that animal wastes are land applied at the most optimum times so as not to effect water quality.
WP-4F	Animal Mortality Incinerator Facilities	A planned mortality incineration system.	Dispose of poultry and livestock carcasses resulting from normal mortality.
WP-4LC**	Animal Waste Control Facility for Confined Livestock Operations	A planned system designed to prevent those areas exposed to heavy livestock traffic from experiencing excessive manure and soil losses due to the destruction of ground cover and to manage liquid and/or solid waste from areas where livestock are concentrated. A covered facility that requires 100% confinement of livestock which includes a feeding area as well as a bedded or manure pack area with a manure storage area if needed. Permanent removal of livestock from all acres associated with the confined	Improve water quality by preventing manure and sediment runoff from entering watercourses and sensitive karst areas and capturing a portion of the manure as a resource for other uses by storing and spreading waste at the proper time, rate, and location.

		livestock is required. All associated acres must be re-vegetated. This practice is not intended for grazing operations.	
WP-4LL**	Loafing Lot Management System with Manure Management (excluding bovine dairy)	A planned system designed to prevent those areas exposed to heavy livestock traffic from experiencing excessive manure and soil losses due to the destruction of ground cover and to manage liquid and/or solid waste from areas where livestock are concentrated. A sacrifice lot or covered facility that includes a feeding area as well as a bedded or manure pack area with a manure storage area if needed. A minimum of three associated grassed lots are required. All streams must be excluded. Streams associated with the grassed lots require a 35' minimum buffer.	Improve water quality by preventing manure and sediment runoff from entering watercourses and sensitive karst areas and capturing a portion of the manure as a resource for other uses by storing and spreading waste at the proper time, rate, and location.
WP-4SF**	Seasonal Feeding Facility with Attached Manure Storage	A planned system designed to prevent those areas exposed to heavy livestock traffic from experiencing excessive manure and soil losses due to the destruction of ground cover and to manage liquid and/or solid waste from areas where livestock are concentrated. A covered concrete facility that includes a feeding area as well as a manure storage area that allows for the capture and storage of manure during inclement weather. An approved rotational grazing plan and stream exclusion are required.	Improve water quality by preventing manure and sediment runoff from entering watercourses and sensitive karst areas and capturing a portion of the manure as a resource for other uses by storing and spreading waste at the proper time, rate, and location.
WP-5	Stormwater Retention Pond	Structure that will collect and retain stormwater in order to release the water at a rate that will reduce the amount of downstream erosion due to storm water flow.	Improve water quality by reducing the amount of channel erosion during storm events.
WP-6	Agricultural Chemical & Fertilizer Handling Facility	Facility to adequately store, mix and contain agricultural chemicals and fertilizers.	Improve water quality by properly handling chemicals and fertilizers during mixing and cleaning equipment.
WP-7	Surface Water Runoff Impoundment for Water Quality	Structure that will impound surface water runoff and allow sediment and nutrients to settle out.	Improve water quality by impounding surface water and allowing sediments and nutrients to settle out.
WP-8	Relocation of Confined Feeding Operations From Environmentally Sensitive Areas	The relocation of confined feeding operations from areas that have an increased chance of contaminated runoff entering the state's streams, rivers and estuaries.	Improve water quality by relocating confined feeding operations away from environmentally sensitive areas such as sinkholes, streams and rivers to reduce or eliminate the amount of pollution-laden runoff reaching these areas.
WQ-5	Water Table Control Structure	Water control structure for the management of drainage water.	Regulate and manage drainage water to improve water quality by trapping sediment

			and managing dissolved or suspended nutrients.
WQ-6	Constructed Wetlands	Construction of a wetland for the treatment of animal waste runoff or stormwater runoff.	Improve water quality by using a constructed wetlands to remove nutrients from animal waste or sediments and nutrients from stormwater runoff.
WQ-6B	Wetland Restoration	Activities which restore land to the hydraulic condition that existed prior to 1985 and the installation of drainage and conversion to cropland.	Improve water quality by returning environmentally sensitive land back to its original wetland condition before it was converted to cropland.
WQ-7	Irrigation Water Recycling System	A system of practices designed to distribute, collect and reuse irrigation water and surface runoff from agricultural fields involved in the production of vegetable and horticultural crops.	Improve water quality by collecting and reusing irrigation and surface runoff that may be high in nutrients, sediments, or pesticides from a variety of vegetable and horticultural crops grown using plastic or synthetic fiber mulches and impervious surfaces.
WQ-8	Fuel Storage Treatment	This practice will promote proper removal of farm underground fuel storage tanks and the construction of an above ground farm fuel storage facility with proper containment system.	Improve water quality by removing leaky or possibly leaking fuel storage tanks and contaminated soil and replacing the tank with an above ground storage tank with the proper spill and rupture containment facility.
WQ-11	Agricultural Sinkhole Protection	This practice will provide a protection method to improve groundwater quality from surface contamination.	Improve water quality by removing sources of pollution from sinkholes and providing an adequate buffer to trap and filter sediments and nutrients from surface flows that enter the groundwater through sinkholes.
WQ-12	Roof Runoff Management System	A planned system designed to manage roof runoff from agricultural structures in areas where concentrated runoff creates a water quality concern through contact with animal waste such as barnyards and feeding areas. This practice is designed to collect, control and convey precipitation runoff from a roof to an appropriate discharge area in a way that will protect water quality.	Protect water quality by capturing roof runoff and routing it away from contaminated and/or sensitive areas to control erosion and nutrient input.
NTD[Ŧ]	No-Till Planter/Drill	Purchase of no-till planters or no-till drills that are not replacements or upgrades of a no-till planter or drill that is currently owned by the applicant.	Improve water quality by encouraging the use of continuous no-till planting and cover crops. Reduce the acres which are under conventional tillage.

* LE-1T replaced with SL-6W for FY2021, LE-2T replaced with SL-6N for FY2021, WP-2T replaced with WP-2N and/or WP-2W for FY 2021

** Newly eligible loan practices beginning in FY 2021

[Ŧ] SL-1 has maximum loan term of 5 years, NTD has maximum loan term of 7 years