



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720-50.C.
Regulation title	Water Quality Management Planning Regulation: Potomac-Shenandoah: Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.
Action title	Revise Total Nitrogen (TN) Waste Load Allocation for Fauquier Co. Water & Sewer Authority - Vint Hill WWTP (VPDES VA0020460) from 8,680 lbs/yr to 11,573 lbs/yr
Final agency action date	September 22, 2011
Document preparation date	August 16, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

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

In November 2005, the Fauquier Co. Water & Sewer Authority (FCW&SA) submitted a Petition of Appeal to the court, contesting adoption of amendments to the Water Quality Management Planning Regulation (WQMP; 9 VAC 25-720) by the State Water Control Board at their September 27, 2005 meeting. FCW&SA requested that the regulation be declared invalid and remanded to the Board for further proceedings, with the contention that the nutrient waste load allocations approved for their Vint Hill WWTP were too low.

The original basis for the Board-approved FCW&SA-Vint Hill WWTP nutrient waste load allocations and the Authority’s requested revisions were:

	Design Flow (MGD)	Annual Avg. TN (mg/L)	TN WLA (lbs/yr)	Annual Avg. TP (mg/L)	TP WLA (lbs/yr)
SWCB-Approved	0.95	3.0	8,680	0.3	868
Requested Allocations	0.95	8.0	23,146	0.3	868
Difference	No change	+ 5.0	+ 14,466	No change	No change

Subsequently, negotiations were held between DEQ and FCW&SA which lead to a Settlement Agreement between the parties that became effective May 26, 2009. The principal provision of the Agreement was that DEQ would initiate a rulemaking, to propose amending the WQMP Regulation by increasing Vint Hill’s total nitrogen (TN) waste load allocation, based on a TN concentration of 4 rather than 3 mg/l. That process was started, but then suspended when work began to finalize EPA’s Chesapeake Bay TMDL and Virginia’s Watershed Implementation Plan (WIP). The WIP included the higher TN waste load allocation for Vint Hill (11,573 lbs/yr), and the Bay TMDL was approved by EPA on December 29, 2010, thus superseding the rulemaking process. Further, the Fauquier Circuit Court issued a Final Order on April 4, 2011, dismissing FCW&SA’s appeal and noting that the Board’s implementation of the revised waste load allocation in the Agreement was now compelled by law.

For FCW&SA-Vint Hill WWTP the total nitrogen waste load allocation included in the Chesapeake Bay TMDL, and now required to be placed in the WQMP Regulation, is:

	Design Flow (MGD)	Annual Avg. TN (mg/L)	TN WLA (lbs/yr)	Annual Avg. TP (mg/L)	TP WLA (lbs/yr)
EPA-Approved for Bay TMDL	0.95	4.0	11,573	0.3	868

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Water Control Board, at its September 22, 2011 meeting, approved amendment of the Water Quality Management Planning Regulation (9 VAC 25-720-50.C.), to conform with the federal Environmental Protection Agency’s Chesapeake Bay Total Maximum Daily Load (approved December 29, 2010); specifically, the total nitrogen waste load allocation for the Fauquier Co. Water & Sewer Authority - Vint Hill WWTP (VPDES VA0020460). The subject amendment will increase the total nitrogen waste load allocation from 8,680 to 11,573 lbs/yr. In conjunction with this revision, the associated Footnote #8, which conditioned the nutrient WLAs on securing a Certificate To Operate for an expanded design flow by 12/31/11 (CTO issued 11/23/10), was deleted from the Regulation.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 25-720-50.C.		<ol style="list-style-type: none"> 1. Vint Hill WWTP - Total Nitrogen (TN) Waste Load Allocation (lbs/yr) = 8,680 2. Footnote #8 - Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD. 	<ol style="list-style-type: none"> 1. Vint Hill WWTP - Total Nitrogen (TN) Waste Load Allocation (lbs/yr) = 11,573 2. Footnote #8 deleted.

The rationale for the change is conformance to a federal requirement under the Environmental Protection Agency’s Chesapeake Bay Total Maximum Daily Load, which was approved December 29, 2010. EPA’s Bay TMDL includes a total nitrogen waste load allocation of 11,573 lbs/yr for the Vint Hill WWTP, as does Virginia’s Bay TMDL Watershed Implementation Plan.

Regulatory flexibility analysis

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

Not analyzed, as action is necessary to meet the requirements of a federal law or regulation.

Family impact

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

No adverse impact expected.