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## Fast Track Proposed Regulation Agency Background Document

<b>Approving authority name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-720-60.C.
<b>Regulation title</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Amendments to Water Quality Management Planning Regulation; James River Basin Nutrient Waste Load Allocations
<b>Document preparation date</b>	August 2, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The proposed amendment to the Water Quality Management Planning (WQMP) Regulation, 9 VAC 25-720-60.C., would revise the total phosphorus waste load allocation for the Tyson Foods-Glen Allen Facility (VA0004031), located in the James basin.

In November 2005, the Tyson Foods-Glen Allen Facility's discharge permit (VA0004031) was reissued with a total phosphorus (TP) limit of 409 lbs/yr, based on a Total Maximum Daily Load (TMDL) study. TMDL waste load allocations are calculated using a combination of design flow in million gallons per day, effluent concentration in mg/L, and number of days discharging per year. The TMDL allocation was determined in relation to the sustainable phosphorus levels in the nearby receiving stream that would be protective of water quality. Coincidentally at this time, the TP waste load allocation under 9 VAC 25-720 was being finalized, with an underlying assumption that the TMDL requirement would also serve as the WQMP allocation. In other words, the WQMP allocation associated with the total James basin nutrient loads would not be more stringent than what was necessary to protect local water quality. It is now apparent that the WQMP allocation (TP = 326 lbs/yr) used a differing assumption for the design flow figure, which is affected by the fact that the facility is operated fewer than 7 days per week, but the allocation is expressed in pounds per year. The design flow and TP concentration bases for the TMDL

and WQMP waste load allocations have been reviewed and made consistent, with the result being an identical figure of 409 lbs/yr for both discharge limitations.

### Statement of final agency action

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

At their September 6, 2006 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. 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.
2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Virginia Code) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the attainment of the Virginia Water Quality Standards.

Action on this regulatory package has been completed by the Office of Attorney General, and the Board's authority to adopt these point source nutrient discharge regulations has been certified.

State Water Control Law (Code of Virginia) web site:  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the proposal's goals and problems it is intended to solve.*

The purpose of this rulemaking is to amend the total phosphorus waste load allocation for the Tyson Foods-Glen Allen Facility (VA0004031), under the Water Quality Management Planning (WQMP) Regulation, 9 VAC 25-720. This action is being proposed to make the WQMP allocation figure consistent with the phosphorus waste load allocated to this plant under a Total Maximum Daily Load (TMDL) study of the Chickahominy River, a tributary of the James River.

Achievement of the point source effluent limitations governed by the proposed amendments will aid in compliance with Virginia's new tidal water quality standards and are reasonably expected to contribute to the attainment or maintenance of such water quality. The proposed amendments will meet the Board's responsibility to protect State waters by adopting regulations that are technically correct, necessary and reasonable.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. The nutrient waste load allocations assigned to significant dischargers under amendments to the Water Quality Management Planning (WQMP) Regulation, 9 VAC 25-720, adopted by the Board in 2005 used a consistent approach of coupling full design flow with stringent nutrient reduction technology. Making the Tyson Foods-Glen Allen Facility's total phosphorus waste load allocation figure consistent under the Chickahominy TMDL study and the WQMP Regulation is protective of water quality in both the nearby receiving stream and the tidal James River downstream. The TMDL study concluded that a total phosphorus waste load allocation for Tyson Foods of 409 lbs/yr was protective of local receiving waters, and the proposed 83 lb/yr increase in the WQMP Regulation is insignificant in the context of the entire James River Basin's phosphorus waste load allocation of 1.35 million lbs/yr. The computer modeling used to simulate water quality conditions resulting from the Board-adopted total nutrient waste load allocations in the James is not sensitive enough to respond to this extremely small loading change, and would predict virtually the same acceptable compliance with the new tidal water quality standards.

### Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

In 9 VAC 25-720-60.C., for the Tyson Foods-Glen Allen Facility (VA0004031), revise the total phosphorus (TP) waste load allocation figure from 326 to 409 pounds per year. Also revise the total basin TP waste load allocation figure from 1,354,292 to 1,354,375 pounds per year.

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The public will benefit, as these amendments will result in the discharge of reduced amounts of nutrients in the Chesapeake Bay watershed compared to current levels. This, in turn, will aid in water quality restoration in the Bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the Bay. Tyson Foods-Glen Allen will benefit, being able to proceed with plans to invest approximately \$3.5 million dollars over the next four years for wastewater facility upgrades to meet total nitrogen and total phosphorus discharge limits, using current design plans and avoiding delays in the compliance schedule. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

### Requirements More Restrictive Than Federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

Notification was sent 2/18/05 to the appropriate General Assembly Committees (in accordance with §62.1-44.15(10), Virginia Code), describing provisions of the nutrient discharge control regulations, finally adopted by the Board in late 2005, which may be more restrictive than applicable federal requirements along with the reason why those provisions were needed. Because EPA has no specific regulation that establishes nutrient effluent limits in permits, some might view the proposals as more stringent than federal requirements and for this reason the General Assembly was notified during the original rulemaking to ensure the intent of the Code was met. The proposed amendment has the effect of slightly increasing the phosphorus waste load allocation for the Tyson Foods-Glen Allen Facility.

### Locality Particularly Affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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Only Henrico County, where the Tyson Foods-Glen Allen Facility is located, is particularly affected by the proposed amendments.

### Regulatory Flexibility Analysis

*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) establishment of less stringent compliance or reporting requirements; 2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) 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.*

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Analysis not performed as no small businesses are affected.

### Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

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None expected.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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No viable alternative approach, less burdensome or intrusive, identified.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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No direct impact expected.

**Detail of changes**

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

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
9VAC25-720-60.C.		James River Basin: Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.	1) For the Tyson Foods-Glen Allen Facility (VA0004031): Delete the TP waste load allocation figure of "326", and replace with "409".  2) For the James Totals: Delete the TP waste load allocation figure of "1,354,292", and replace with "1,354,375".