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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>                                    | State Water Control Board   |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 9 VAC25-820   |
| <b>Regulation title(s)</b>                            | 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 |
| <b>Action title</b>                                   | 2021 Amendment and Reissuance of the Existing Regulation  |
| <b>Date this document prepared</b>                    | January 8, 2020   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

This rulemaking is proposed in order to amend and reissue the existing general permit which expires on December 31, 2021. The general permit governs facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. The facilities are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus.

In addition, a periodic/small business impact review of this regulation will be conducted as part of this regulatory action.

### Acronyms and Definitions

*Please define all acronyms or technical definitions used in the Agency Background Document.*

APA: Administrative Process Act

DEQ: Department of Environmental Quality

EO: Executive Order

EPA (U.S. EPA): United States Environmental Protection Agency

MS4: Municipal Separate Storm Sewer System

NOIRA: Notice of Intended Regulatory Action

NPDES: National Pollutant Discharge Elimination System

TH: Town Hall

USC: United States Code

VAC: Virginia Administrative Code

VPDES: Virginia Pollutant Discharge Elimination System

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

The impetus of this regulatory change is Virginia Code § 62.1-44.15 (5a) which states, "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollutant Discharge Elimination System permit shall not exceed five years." This general permit expires on December 31, 2021, and must be reissued in order to make coverage available for discharges from facilities holding individual VPDES permits that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries after December 31, 2021.

The periodic review of this regulation is mandated by Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>

### Legal basis

*Please identify: (1) the agency (includes any type of promulgating entity); and, (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The basis of this regulation is §62.1-44.19:14 of the Code of Virginia which directs the State Water Control Board to issue a Watershed General VDPES Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

**Purpose**

*Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

The proposed action authorizes wastewater discharges of nitrogen and phosphorus from wastewater treatment facilities already authorized by a VPDES permit. The general permit establishes annual effluent loading limits for nitrogen and phosphorus, and establishes the conditions by which credits (the difference in pounds between the facility’s limit and the mass actually discharged) may be exchanged. The general permit also establishes how any increase in nitrogen or phosphorus loading from a new or expanding discharger must be offset by other nutrient reductions elsewhere in the basin. The primary issue that needs to be addressed is that the existing general permit expires on December 31, 2021 and must be reissued in order to continue making it available after that date.

**Substance**

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Proposed provisions include changing the existing effective dates of the general permit to January 1, 2022 through December 31, 2026, updating “Continuation of Permit Coverage Language” section to be consistent with other VPDES general permits, clarifying reporting requirements when parameters are reported as less than a quantitation level, addressing waste load allocation transfers between facilities that have differences in delivery factors, addressing potential waste load allocation changes that may be necessary due to changes in the Water Quality Management Planning Regulation (9VAC25-720) which is undergoing a rulemaking concurrent to this regulation.

**Alternatives**

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

As §62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation, there are no viable alternatives.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Public Participation

*Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments.*

The State Water Control Board is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The State Water Control Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to: Emilee Adamson, P.O. Box 1105, Richmond, Virginia 23218, phone: 804 698-4355, FAX: 804 698-4032, and [emilee.adamson@deg.virginia.gov](mailto:emilee.adamson@deg.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Public Hearing at Proposed Stage

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### Technical Advisory Committee

*A technical advisory committee will be involved in the development of the proposed regulation.*

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

### Family Impact

*In accordance with § 2.2-606 of the Code of Virginia, assess the potential 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.*

This regulation will have no direct impact on the institution of the family or family stability.