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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-820
<b>VAC Chapter 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 General Permit Regulation
<b>Final agency action date</b>	June 29, 2021
<b>Date this document prepared</b>	May 11, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This action consists of the reissuance of 9 VAC25-820 General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The regulation provides for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth.

Amendments are proposed to update and clarify compliance plan requirements, effective dates, consolidation of facilities, schedules of compliance, monitoring frequencies and sample types, registration statement requirements for certain facilities treating domestic sewage, and unit costs of credit acquisitions to the Nutrient Offset Fund.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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."*

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The mandate 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 Virginia Pollutant Discharge Elimination System (VDPES) Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries.

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>.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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APA: Administrative Process Act  
 DEQ: Department of Environmental Quality  
 EPA (U.S. EPA): United States Environmental Protection Agency  
 HRSD: Hampton Roads Sanitary District  
 MGD: Millions of Gallons per Day  
 mg/L: Milligrams per Liter  
 NOIRA: Notice of Intended Regulatory Action  
 NPDES: National Pollutant Discharge Elimination System  
 STP: Sewage Treatment Plant  
 TAC: Technical Advisory Committee  
 TMDL: Total Maximum Daily Load  
 TN: Total Nitrogen  
 TP: Total Phosphorus  
 USC: United States Code  
 VAC: Virginia Administrative Code  
 VAMWA: Virginia Association of Municipal Wastewater Agencies  
 VPA: Virginia Pollutant Abatement  
 VPDES: Virginia Pollutant Discharge Elimination System  
 WLA: Wasteload allocation  
 WRRF: water resource recovery facilities  
 WWTP: Wastewater Treatment Plant

## Statement of Final Agency Action

*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.*

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On June 29, 2021, the State Water Control Board adopted the amended General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). In addition, the Board affirmed that it would receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Legal Basis**

*Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity’s overall regulatory authority.*

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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. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.*

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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 and/ or total phosphorus.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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The most significant changes to the regulation are:

- (1) Removed compliance dates that have since passed (40 CFR 25-820-40.A and 40 CFR 25-820-70 Parts I.C.1 and C.2);
- (2) Updated the permit effective and expiration dates, as well as the date of timely Registration Statement submittal for continuation of permit coverage (40 CFR 25-820-70 and -70.Part I.A);
- (3) Clarified the determination of transferred WLAs for consolidating facilities assigned different delivery factors, or where delivery factors may change at different consolidating facilities in different increments in future years (40 CFR 25-820-70 Part I.B.3);
- (4) Clarified monitoring sample type and collection frequencies for industrial facilities whose authorized equivalent loads exceed the upper ranges (350,000 lb/yr TN and 35,000 lb/yr) previously listed (40 CFR 25-820-70 Part I.E.1);
- (5) Revised the criteria for facilities treating domestic sewage > 1,000 GPD and ≤ 39,999 GPD to submit a registration statement with the department to more closely conform to criteria established in statute (40 CFR 25-820-70 Part I.G.1.c);

- (6) Updated prices of TN and TP credit purchases from the Nutrient Offset Fund (40 CFR 25-820-70 Part I.J.3); and
- (7) Updated DEQ contact information for submitting reports required by Part III G, H and I (40 CFR 25-820-70 Part III.I).

**Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantages to the public and to the agency of reissuing the general permit include minimizing compliance costs through implementation of nutrient trading and savings associated with the administration of a single watershed general permit. The regulatory action poses no disadvantages to the public or to the Commonwealth.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

State agencies with current or pending general permit coverage include George Mason University, the Virginia Department of Corrections, and the Virginia Department of Transportation

Localities Particularly Affected

This regulation is applicable throughout the Chesapeake Bay Watershed, which does not affect all Virginia localities. The proposed amendments are not expected to impose a disproportionate material water quality impact on any locality that would not be experienced by the other localities within the watershed. Whether there is a disproportionate or material water quality impact on the following localities that is not experienced by other localities is questionable as all localities within the Chesapeake Bay Watershed share the water quality impacts. Localities within the Chesapeake Bay Watershed include all or portions of the Counties of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Caroline, Charles City, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Giles, Gloucester, Goochland, Greene, Hanover, Henrico, Highland,

Isle of Wight, James City, King and Queen, King William, Lancaster, Loudoun, Louisa, Madison, Mathews, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford, Surry, Warren, Westmoreland, and York; and the Cities of Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Fairfax, Falls Church, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

Other Entities Particularly Affected

Other entities particularly affected include all dischargers of nutrients in the Chesapeake Bay watershed that are subject to the general permit registration requirements included in Part I.G of the general permit (9VAC25-820).

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response
<p>Joseph Wood, Ph.D. Virginia Senior Scientist Chesapeake Bay Foundation 1108 E Main St #1600 Richmond VA 23219</p> <p>jointly with:</p> <p>Jameson Brunkow Senior Advocacy Manager &amp; James Riverkeeper James River Association 211 Rocketts Way, Suite 200 Richmond, VA 23219</p>	<p>DEQ’s summary list of proposed amendments largely address the goals of this regulation. Issues outside of this core subject matter that were not raised and addressed through the Advisory Panels during the development of this regulation would lack the Clean Water Act’s (CWA) required public notice steps and meaningful stakeholder involvement. Any substantive change to the regulations beyond the adjustments proposed should be done in a subsequent rulemaking and in accordance with the Administrative Process Act (APA).</p> <p>The Chesapeake Bay Foundation (CBF) and James River Association (JRA) recommend the following:</p> <p>1. Lagging progress in nonpoint source sectors means it is important for Virginia to achieve all possible reductions through wastewater and to ensure such reductions are not offset by growth. Reliance on voluntary actions and upgrades will fail to provide adequate accountability and the reasonable assurance required under the CWA.</p> <p>One critical mechanism to achieving this is maintaining and reducing the wastewater sector’s permitted Waste Load Allocations (WLAs). Virginia’s nutrient trading program accommodates this approach. DEQ should begin planning to evaluate, and where appropriate, reduce WLAs in the upcoming Decennial Review. Similar to the recent</p>	<p>Comment noted. This regulatory action addresses issues discussed during the Technical Advisory Committee (TAC) meetings and is in accordance with the APA.</p> <p>1. The 2030 decennial review process will include an evaluation of municipal WLAs in 9VAC25-720 in accordance with Va. Code § 62.1-44.19:14.D. No further amendments to 9VAC25-820 in response to this comment.</p>

Commenter	Comment	Agency response
<p>(Continued)</p> <p>Joseph Wood, Ph.D. Virginia Senior Scientist Chesapeake Bay Foundation 1108 E Main St #1600 Richmond VA 23219</p> <p>jointly with:</p> <p>Jameson Brunkow Senior Advocacy Manager &amp; James Riverkeeper James River Association 211 Rocketts Way, Suite 200 Richmond, VA 23219</p>	<p>evaluation of industrial discharger WLAs, Decennial Review is the appropriate opportunity to reduce unused WLAs for municipal sources. Summaries of credits as documented through the 2021 Nutrient Credit Exchange Compliance Plan provide a clear indication there are available nutrient credits in the marketplace, particularly in the Potomac and James River Watersheds to address any WLA exceedances between Decennial Reviews. WLAs are not permanent and reclaiming unneeded credits will represent a critical step to continuing to reduce nutrient loads. This process represents the approach Virginia has adopted to address any needs related to growth.</p> <p>2. In regard to Compliance Plans (9VAC25-820-40, 5.C), CBF and JRA recommend retaining all due dates in the regulation unless all such compliance plans have been fully completed and approved.</p> <p>3. CBF and JRA encourage DEQ to ensure language changes that are intended to clarify transferred WLAs do not lead to a decrease in water quality protections.</p>	<p>2. All of the 2017 Schedules of Compliance have been completed. No changes are needed in response to this comment.</p> <p>3. No change in response to this comment is warranted. Proposed changes at 9VAC 25-820.70, Part I.B.3 are intended to clarify and ensure transferred WLAs will be protective of water quality.</p>
<p>James J. Pletl, Ph.D. Director, Water Quality Dept. Hampton Roads Sanitation District (HRSD) 1434 Air Rail Ave Virginia Beach, VA 23455</p>	<p>There appears to be an error in Part I, Section C.3 of the proposed General Permit changes titled, "<i>Schedule of compliance.</i>" Only subdivision 3 has been proposed for deletion, but the entire sentence: "<i>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.</i>" must also be deleted given recent changes to Virginia legislation.</p>	<p>Aggregated James River WLAs remain in the General Permit until replaced by chlorophyll-a based WLAs to be addressed in 9VAC25-720. Chlorophyll-a based WLAs are subject to a separate rulemaking and were not addressed by HB 2129.</p>

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>(Continued)</p> <p>James J. Pletl, Ph.D.                      Director, Water Quality Dept.                      Hampton Roads Sanitation District (HRSD)                      1434 Air Rail Ave                      Virginia Beach, VA 23455</p>	<p>Part III of the General Permit, Section W, includes new language regarding the ability of an authorized contractor acting as a representative of the administrator to conduct inspections of facilities covered by this General Permit. Although this language may be supported by regulation, the General Permit and supporting regulation does not define “administrator” and does not define the qualifications and training of the “authorized contractor.” It is critical that any contractor involved in any inspection of a facility addressed by this General Permit be properly educated and trained regarding the elements of such an inspection as well as the appropriate techniques for collecting and preserving samples. The qualifications of such a contractor need to be addressed either in the General Permit, or in guidance before the regulation is finalized.</p>	<p>The new language (“...acting as a representative of the administrator...”) is required in all VPDES permits in accordance with 9VAC25-31-190, “Conditions applicable to all permits.” 9VAC25-820-10 indicates that the words and terms not defined herein shall have the same meanings as those of 9VAC-25-31 which defines “Administrator” as “the Administrator of the United States Environmental Protection Agency, or an authorized representative.” It is at USEPA’s discretion to determine if their contractors are duly qualified and trained. No change in response to the comment is proposed.</p>
<p>Kendra Sveum, P.E.                      Plant Manager                      Broad Run Water Reclamation Facility (WRF)                      Loudoun Water                      44865 Loudoun Water Way                      Ashburn, VA 20147</p>	<p>Loudoun Water requests amendments to the existing nutrient WLA acquisition framework to better meet the needs of growing communities. The framework should account for the application of advanced wastewater treatment technology and special case requirements. Loudoun Water requests an amended framework be made available to the Broad Run WRF and other similarly situated facilities, or that DEQ otherwise meet the WLA needs of Broad Run WRF.</p> <p>To meet the needs of the Broad Run WRF service area (which includes the eastern portion of Loudoun County and its large and rapidly growing residential base, major commercial facilities and ongoing development associated with Dulles International Airport, the Metro rail system’s new Silver Line, and a large portion of the nation’s data centers), the Broad Run WRF must be expanded from 11 MGD to 30 MGD over the next 20 years. The Broad Run WRF’s current Total Nitrogen (TN) WLA is based on a design flow of 11 MGD and discharge concentration of 4.0</p>	<p>DEQ recognizes the importance of the issues raised by Loudoun Water. However, the proposed recommendations have broad implications that were not discussed by the TAC advising DEQ on this rulemaking nor the Regulatory Advisory Panel providing input to DEQ on the current WQMP Regulation rulemaking. These recommendations reflect substantive proposed changes</p>

Commenter	Comment	Agency response
<p>(Continued)</p> <p>Kendra Sveum, P.E. Plant Manager Broad Run Water Reclamation Facility (WRF) Loudoun Water 44865 Loudoun Water Way Ashburn, VA 20147</p>	<p>mg/L. The Total Phosphorus (TP) WLA is based on the Dulles Area Watershed Policy discharge concentration requirement of 0.1 mg/L. A Broad Run WRF expansion to 30 MGD is currently confined by the existing WLAs that would mathematically necessitate reducing discharge concentrations to 1.4 mg/L TN and 0.03 mg/L TP. These concentrations are below “state-of-the-art” (SOA) nutrient removal levels considered technically and reliably achievable with current wastewater treatment technologies.</p> <p>To complete the process of planning, design, and construction of a significant facility expansion requires a minimum timeframe of 10 years. Thus, to avoid delays in planning and construction, there is a need for DEQ to provide as part of this rulemaking a known and reasonably achievable technology basis upon which the next plant expansion should be designed.</p> <p>Loudoun Water planning efforts have included maximizing expansion of their non-potable reuse system. But this approach will not be sufficient to meet the predicted WLA deficit from a Broad Run WRF expansion. The implementation of a <i>potable</i> reuse program would require a significant, successful public outreach program. Even assuming a highly resourced effort by Loudoun Water, DEQ and the Virginia Department of Health, the alternative of a wide-scale potable reuse is not considered a feasible alternative to WLA assignment at this time.</p> <p>While the Nutrient Exchange is available to assist utilities with WLA compliance in some circumstances, the Nutrient Exchange is not a feasible alternative for long-term offset needs of expanding facilities such as Broad Run WRF. Loudoun Water has confirmed with a representative of the Nutrient Exchange that it does not provide the opportunity for the acquisition of required WLA for a facility expansion. Instead, the Nutrient Exchange only executes contracts for annual credits. Significantly, annual credit contracts are only offered on a short-term basis (maximum of five years). It is not feasible to base the compliance planning and investment for a major facility expansion on this type of uncertain, short-term credit supply.</p> <p>The following Enhanced Nutrient Allocation Acquisition framework is requested by Loudoun Water to minimize nutrient allocation use and actual discharges while also providing regulatory certainty as to the proper design basis for special case circumstances. This request is based on Va. Code § 62.1-44.19:15, which provides that additional nutrient allocations may be acquired by various mechanisms</p>	<p>that would be more appropriately addressed through separate 9VAC25-720 and 9VAC25-820 rulemaking processes.</p>



Commenter	Comment	Agency response
<p>(Continued)</p> <p>Kendra Sveum, P.E. Plant Manager Broad Run Water Reclamation Facility (WRF) Loudoun Water 44865 Loudoun Water Way Ashburn, VA 20147</p>	<p>including any means “<i>as may be approved by the Department on a case-by-case basis.</i>” In addition, DEQ has previously reserved the opportunity to “<i>amend this regulation to adjust individual nitrogen and phosphorus waste load allocations</i>” consistent with water quality standards. 9VAC25-720-40.D.</p> <p>The following tiered system minimizes nutrient discharges to levels that DEQ can administer well within the wastewater sector allocations under the Chesapeake Bay TMDL.</p> <p><b>Tier 1. State-of-the-Art Nutrient Removal Technology</b></p> <p>Tier 1 would require that any expansion beyond the design flow basis of a current WLA be self-offset to the extent of SOA technology levels.</p> <p><b>Tier 2. Net Nutrient Load Basis: Intake Credits for Post-2010 Nutrient Withdrawals</b></p> <p>Tier 2 of the proposed framework is similar to Tier 1 in that it is also a self-offset concept. Tier 2 is based on minor extension of an existing regulatory principle to a comparable situation. Specifically, existing regulations recognize that nutrient removal occurs by means of withdrawal of nutrient-containing water from surface supplies. However, the current regulation limits such intake credits for existing, background nutrients in the water source only to industrial withdrawals.</p> <p>In the special case of municipal wastewater treatment facilities expanding to a capacity that mathematically would otherwise require effluent nutrient concentrations to be reduced to sub-SOA levels, Loudoun Water requests appropriate Chesapeake Bay watershed-level intake credits to account for the pre-existing TN and TP levels in the source water, rather than penalizing the WWTP for merely cycling those pre-existing surface water nutrients through the water-wastewater utility system.</p> <p>For consistency with the Chesapeake Bay TMDL, Loudoun Water would not oppose limiting municipal intake credits to the increased water withdrawal quantity occurring after January 1, 2011.</p> <p>The specific proposed amendments to the relevant regulations to implement this request are:</p> <p>Existing 9VAC25-720-40.C should be amended as follows:</p>	

Commenter	Comment	Agency response
<p>(Continued)</p> <p>Kendra Sveum, P.E.                      Plant Manager                      Broad Run Water                      Reclamation Facility                      (WRF)                      Loudoun Water                      44865 Loudoun Water                      Way                      Ashburn, VA 20147</p>	<p>Unless otherwise noted, the nitrogen and phosphorus waste load allocations assigned to individual significant dischargers in <u>9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C</u> 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 significant portion of the nutrient load originates in its intake water. In these <u>industrial discharger</u> cases, the board may limit the permitted discharge to reflect only the net nutrient load portion of the assigned waste load allocation. <u>In the case of a municipal discharger, such a demonstration shall be limited to (a) new or expanding treatment facilities with state-of-the-art nutrient removal technology and (b) nutrient load credit calculated based on state-of-the-art nutrient removal technology and the volume of water withdrawal increase after January 1, 2011 only.</u> Such limits shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay watershed and water quality models.</p> <p>Similarly, existing 9VAC25-820-70 Part I B 4 should be amended as follows:</p> <p>Unless otherwise noted, the nitrogen and phosphorus waste load 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 <u>industrial discharger</u> cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned waste load allocation. <u>In the case of a municipal discharger, such a demonstration shall be limited to (a) new or expanding treatment facilities with state-of-the-art nutrient removal technology and (b) nutrient load credit calculated based on state-of-the-art nutrient removal technology and the volume of water withdrawal increase after January 1, 2011 only.</u> <u>These demonstrations shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models.</u></p>	

Commenter	Comment	Agency response
<p>(Continued)</p> <p>Kendra Sveum, P.E. Plant Manager Broad Run Water Reclamation Facility (WRF) Loudoun Water 44865 Loudoun Water Way Ashburn, VA 20147</p>	<p><b>Tier 3. Nutrient Offset Fund (“NOF”) WLA Supply</b></p> <p>To the extent that Tier 1 and Tier 2 actions are insufficient to meet the WLA requirements of the expanded Broad Run WRF, Loudoun Water requests DEQ transfer sufficient additional TN and TP WLA to Broad Run WRF from any available NOF WLA supply to the extent necessary for the 30 MGD facility. DEQ has identified potential NOF supply within the Potomac-Shenandoah basin. In addition, DEQ has identified potential NOF supply in other river basins or tributaries to the Chesapeake Bay, which can be used in the Potomac basin in accordance with basin-to-basin transfer ratios established in Virginia’s Phase III WIP. Loudoun Water understands that DEQ intends to designate additional NOF (i.e., reserve) allocation through a pending rulemaking. Loudoun Water requests authorization to use that reserve to provide treatment for (and thereby reduce nutrient loadings from) additional wastewater flows from Virginia’s growing population.</p> <p><b>Tier 4. Enhanced State-of-the-Art Nutrient Removal</b></p> <p>If additional WLA is required for Broad Run WRF after Tier 1 (SOA technology), Tier 2 (intake credits for post-2010 nutrient withdrawal increases), and Tier 3 (NOF WLA supply), Loudoun Water requests that additional TN and TP WLA be granted based on the remaining WLA need for the expanded design capacity under assumed concentrations of 3.0 mg/L TN and 0.1 mg/L TP, subject to the following conditions and limitations:</p> <ol style="list-style-type: none"> <li>a. That Broad Run WRF’s permit include a requirement that the facility designed to meet the above referenced concentrations be operated to achieve lower effluent concentrations whenever feasible.</li> <li>b. That Broad Run WRF shall use consumptive non-potable reuse where practicable to minimize discharges (potable reuse shall not be required).</li> <li>c. That any nutrient credits generated by Broad Run WRF from operating below such TN and TP WLAs shall not be tradeable by Broad Run WRF to other facilities or third parties. This restriction shall not preclude Broad Run WRF in any given year from acquiring annual nutrient credits from the Virginia Nutrient Credit Exchange Association to offset any exceedance of the TN and TP WLAs provided in this provision, such as in the event of an upset causing annual average TN to exceed 3.0 mg/L unexpectedly.</li> </ol>	

Commenter	Comment	Agency response
Woodie Walker Director of Environmental Services, Historian and Curator Rappahannock Tribe 5036 Indian Neck Rd Indian Neck, VA 23148	No comments. Thanked DEQ for reaching out to the Rappahannock Tribe.	Comment noted.
Christopher Pomeroy VAMWA General Counsel  (Comments during April 1, 2021 Public Hearing)	No comments. Thanked DEQ on behalf of VAMWA for the ongoing coordination and collaboration on the regulation since 2007.	Comment noted.

### Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

No changes made since previous stage.

### Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \*Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
40.A		Requires submittal of a compliance plan by July 1, 2017 for facilities identified in 9VAC25-820-80 and subject to a limit effective date after January 1, 2017 as defined in 9-VAC25-820-70 I C 1.	Removed. Compliance dates are in the past.
40.B	40	Requires submittal of an annual compliance plan update.	Renumbered.
50.B		Transfer of conditions to new owner.	Change in style: removed “but not limited to”.
70		Effective date of permit	Updated the effective (2022) and expiration (2026) dates to reflect the reissuance date of the permit.
70.I.A.1.a		Authorization to discharge for owners of facilities that	Updated the date of timely Registration Statement submittal from November 1, 2016 to

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		submit a timely Registration Statement.	November 1, 2021 to reflect a new reissuance cycle of the general permit.
70.I.A.3.a		Continuation of permit coverage to owners of facilities that submit a timely Registration Statement.	Updated the date of timely Registration Statement submittal from November 1, 2016 to November 1, 2021 to reflect a new reissuance cycle of the general permit.
70.I.A.3.b.(1) 70.I.A.3.b.(2)		Continuation of permit coverage – board choices when an owner of an expiring or expired permit has violated or is violating the conditions of that permit.	Updated the year citation of the effective date of the previous cycle general permit (from 2012 to 2017).
70.I.B.3		Authorizes two or more consolidating facilities to receive aggregated mass nutrient load limits.	Deleted the word “delivered” preceding both “total nitrogen” and “total phosphorus” to read, “... <i>may apply for and receive an aggregated mass load limit for <del>delivered</del> total nitrogen and an aggregated mass load limit for <del>delivered</del> total phosphorus, subject to the following conditions:</i> ”  The change (in conjunction with subdivision 70.I.B.3.a, below) addresses situations where consolidating facilities may be assigned different delivery factors, or where delivery factors may change at different consolidating facilities in different increments in future years. Aggregated mass loads are to be applied end-of-pipe to discharged loads.
	70.I.B.3.a	Calculation of aggregated mass nutrient load limits for consolidating facilities.	Added: <i>“a. Aggregate mass limits will be calculated accounting for delivery factors in effect at the time of the consolidation.”</i>  See subdivision 70.I.B.3, above. Addresses situations where consolidating facilities may be assigned different delivery factors, or where delivery factors may change at different consolidating facilities in different increments in future years. Clarifies the calculation of aggregated mass loads are to account for delivery factors at the time of consolidation.
70.I.B.3.a	70.I.B.3.b	Conditions for calculating aggregate mass load limits if <u>all</u> of the affected consolidating facilities have wasteload allocations in <a href="#">9VAC25-720-50 C</a> , <a href="#">9VAC25-720-60 C</a> , <a href="#">9VAC25-720-70 C</a> , <a href="#">9VAC25-720-110 C</a> , and <a href="#">9VAC25-720-120 C</a> of the Water Quality Management Planning Regulation.	Renumbered.
70.I.B.3.b	70.I.B.3.c	Conditions for calculating aggregate mass load limits if <u>any</u> , but not <u>all</u> of the affected consolidating	Renumbered.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		facilities have wasteload allocations in <a href="#">9VAC25-720-50 C</a> , <a href="#">9VAC25-720-60 C</a> , <a href="#">9VAC25-720-70 C</a> , <a href="#">9VAC25-720-110 C</a> , and <a href="#">9VAC25-720-120 C</a> of the Water Quality Management Planning Regulation.	
70.I.B.3.b.(3)	70.I.B.3.c.(3)	Formulae for calculating aggregated wasteload allocations.	Corrected the time period associated with loading units, and added clarifying units for flow to read:  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
70.I.B.3.c	70.I.B.3.d	Conditions for calculating aggregate mass load limits if <u>none</u> of the affected consolidating facilities have wasteload allocations in <a href="#">9VAC25-720-50 C</a> , <a href="#">9VAC25-720-60 C</a> , <a href="#">9VAC25-720-70 C</a> , <a href="#">9VAC25-720-110 C</a> , and <a href="#">9VAC25-720-120 C</a> of the Water Quality Management Planning Regulation.	Renumbered.
70.I.B.3.d	70.I.B.3.e	Conditions for facilities consolidated under common ownership or operation that were previously authorized by a Virginia Pollutant Abatement (VPA) permit issued before July 1, 2005.	Renumbered.
70.I.B.3.e	70.I.B.3.f	Conditions for facilities that become regional facilities that were previously authorized by a VPA permit issued before July 1, 2005.	Renumbered.
70.I.C.1		Schedules of compliance pertaining to the TN and TP load allocations that apply to facilities listed in section -80.	Removed. The previous permit cycle's compliance deadlines will need to be met by the January 1, 2022 effective reissuance date of the general permit.
70.I.C.2		Registration List individual dates of compliance with WLAs.	Removed. All compliance schedules will need to be completed by the January 1, 2022 effective reissuance date of the general permit.
70.I.C.3	70.1.C	January 1, 2023 schedule of compliance for significant dischargers in the James River Basin to meet aggregate discharged TN and TP WLAs.	Renumbered.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
70.I.E.1 [Table]		Effluent TN and TP load limits for industrial facilities.	Changed the Effluent TN field to read, “ $\geq$ 100,000 <del>350,000</del> lb/yr” and the Effluent TP field to read, “ $\geq$ 10,000 <del>35,000</del> lb/yr. Industrial facility load limits are based on “equivalent” rather than STP design flows. Industrial facilities currently exist whose authorized equivalent loads exceed the upper ranges previously listed.
70.I.G.1.c		Criteria for facilities treating domestic sewage > 1,000 GPD and $\leq$ 39,999 GPD to submit a registration statement with the department.	Added, “...and is subject to offset requirements in accordance with Part II A 1 c of this general permit...” to more closely conform to the criteria established in <u>Code of Virginia</u> §§62.1-44.19:14.C.5. and 15.A.5.
70.I.H.2		The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits.	Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this permit sector, registration statements shall be submitted electronically. Three months’ notice shall be given by the department about this requirement. Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will have no choice but to file registrations statements electronically. No impact to the permittee is anticipated from this modification intended to comply with EPA’s e-Reporting Rule and 9VAC25-31-1020..
70.I.J.3		Payment amounts to the Nutrient Offset Fund per pound of TN and TP	Updated based on staff judgement of an increase in unit costs relative to the previous permit cycle. The unit TN price increased from \$4.60 to \$5.08 per pound, and the unit TP price increased from \$10.10 to \$11.15 per pound. Removed “but not be limited to” (change of style).
9VAC25-820-70 Part II.B.3		Acquisition of wasteload allocations, priority of options.	Change in style: removed “but not be limited to”.
9VAC25-820-70 Part III Conditions Applicable to All Permits		Part III contains conditions applicable to all permits.	<p>Added under Part III I (Reports of noncompliance), a permittee shall promptly submit any facts or incorrect information submitted with a registration statement or any report to the department. This wording is being added at reissuance for all general permits for consistency with the VPDES and NPDES regulations. Minor impact since permittees need to be aware of this new requirement if they discover an error on any report submitted or registration statement on which permit coverage was based.</p> <p>In Part III.I.3, the web link was updated to cite <a href="https://portal.deq.virginia.gov/prep/Report/Create">https://portal.deq.virginia.gov/prep/Report/Create</a> for the online submission of reports of non-compliance.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>In Part III W (Inspection and entry) added “The permittee shall allow the director or an authorized representative, <u>(including an authorized contractor acting as a representative of the administrator)</u>, upon presentation of credentials and other documents as may be required by law, to:</p> <ol style="list-style-type: none"> <li>1. Enter...</li> <li>2. Have access to...</li> <li>3. Inspect...and</li> <li>4. Sample...</li> </ol> <p>For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours <del>and</del> <u>or</u> whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.</p> <p>This wording is being added at reissuance for all general permits for consistency with the VPDES and NPDES regulation. No impact.</p> <p>Other changes made in Part III are minor and were done to be consistent with other general permits. No impact.</p>

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

This general permit complements 9VAC25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and 9VAC25-720 (the Water Quality Management Planning Regulation) and is intended to provided compliance flexibility to the affected facilities in order to ensure the most cost-effective nutrient reduction technologies are installed within the respective tributary watersheds. This regulation does not impose any additional compliance costs upon regulated entities above and beyond those already imposed by the aforementioned regulations, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

### Family Impact

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

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