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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>	9VAC25-720
<b>VAC Chapter title(s)</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Amendment to add ten new TMDL wasteload allocations in the James River Basin (9VAC25-720-60 A) and Rappahannock River Basin (9VAC25-720-70 A).
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	May 15, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code. 30, 2023*

### 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.*

The amendments to 9VAC25-720, Water Quality Management Planning Regulation (WQMPR), include adding nine new Total Maximum Daily Load (TMDL) wasteload allocations (WLA) in the James River Basin (9VAC25-720-60 A) and one new TMDL WLA in the Rappahannock River Basin (9VAC25-720-80 A).

The TMDL WLAs were developed in accordance with Federal Regulations (40 CFR § 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 14). The TMDL reports where WLAs are developed are subject to the TMDL public participation process, and the WLAs are adopted as part of 9VAC25-720 in accordance with the Department of Environmental Quality's

(DEQ's) "Public Participation Procedures for Water Quality Management Planning" guidance (GM 23-2005).

## 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). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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 Clean Water Act (CWA) and the Environmental Protection Agency's (EPA) Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state's 303(d) List of Impaired Waters. Also, the CWA and EPA's enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires DEQ to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving without violating water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant loads from each source that are necessary for the attainment of water quality standards.

The U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state's WQMPR (9VAC25-720). Also, U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §122.44(d) (1) (vii) (B) requires that new or reissued Virginia Pollution Elimination Discharge System (VPDES) permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL incorporated into the regulation will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality-based effluent limitations or in certain cases best management practices (BMPs).

## 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.*

**Allocation:** That portion of a receiving water's loading capacity that is attributed to one of its existing or future pollution sources (nonpoint or point) or to natural background sources.

**Best Management Practice (BMP):** a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

**Clean Water Act (CWA):** Clean Water Act 33 USC § 1251 et seq. as amended, as of 1987

**EPA:** United States Environmental Protection Agency

**Industrial Stormwater General Permit (ISWGP)** – Industrial Stormwater General Permit issued for 9VAC25-151 et. seq. (Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity)

**Municipal separate storm sewer (MS4):** network of drainage systems, including pipes, ditches, and other conveyances, designed to carry stormwater runoff directly to nearby streams, rivers, and other bodies of water owned or operated by a public body.

**Nonpoint source:** Pollution that is not released through pipes but rather originates from multiple sources over a relatively large area. Nonpoint sources can be divided into source activities related to either land or water use including failing septic tanks, improper animal-keeping practices, forest practices, and urban and rural runoff.

**Polychlorinated Biphenyl (PCB).** PCBs belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. PCBs were domestically manufactured from 1929 until manufacturing was banned in 1979. They have a range of toxicity and vary in consistency from thin, light-colored liquids to yellow or black waxy solids.

**Pollution Minimization Plan (PMP)** - plans designed to eliminate or reduce to the maximum extent practicable the on-going release of Polychlorinated Biphenyls (PCBs)

**SWPPP: Stormwater Pollution Prevention Plan** - plan required as part of a VPDES Industrial Stormwater 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

**Total Maximum Daily Load (TMDL):** The sum of the individual wasteload allocations (WLA's) for point sources, load allocations (LA's) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.

**VDOT:** Virginia Department of Transportation

**Virginia Pollution Discharge Elimination System (VPDES) permit:** a document issued by the board or the department, pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

**Wasteload allocation (WLA):** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**Water quality standard:** Law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

**Water Quality Management Planning Regulation (WQMPR):** 9VAC25-720 et. seq.

## 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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At its meeting on June 25, 2024, the State Water Control Board (SWCB) adopted the amendments to the WQMPR (9VAC25-720 et seq.).

## 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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§62.1-44.15 of the State Water Control Law authorizes the State Water Control Board to promulgate regulations controlling water pollution to protect public health and welfare. The Code of Virginia § 62.1-44.19:7 directs the Board to develop plans to address impaired waters. The EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s WQMPR (9VAC25-720). Changes to this chapter of the Virginia Administrative Code are exempt from provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 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.*

The regulatory changes are needed to meet the mandates of the federal Clean Water Act and the implementing Water Quality Management and Planning Regulation (40 CFR §130) to protect public health and welfare by requiring states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA, EPA’s enabling regulation, and the Code of Virginia, §62.1-44.19:7.C require Virginia to develop a TMDL for impaired waters. The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s Water Quality Management Plan (9VAC25-720). This regulatory change contributes to achieving the pollution reductions needed from point source dischargers to remove a stream from the impaired waters list and improve water quality to the benefit of citizens to take advantage of all beneficial uses available from State Waters.

**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.*

The amendments to the state’s WQMPR (9VAC25-720) include adding nine new TMDL wasteload allocation in the James River Basin (9VAC25-720-60.A) and one new TMDL wasteload allocation in the Rappahannock River Basin (9VAC25-720-70.A).

**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.*

Public: The regulatory change broadly benefits the public by improving the water quality of impaired waters by identifying the maximum amount of pollutant load a stream can assimilate and meet Water Quality Standards (9VAC25-260), to support all designated uses of waters, and ultimately be removed from Virginia’s 303(d) list of impaired waters. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries.

Agency or Commonwealth: The agency and Commonwealth will benefit because the change to the regulation meets the legal mandate in state and federal law to incorporate the WLA into the WQMPR to meet State Water Control Law § 62.1-44.19:7. Additionally, this meets the Clean Water Act 40 CFR 130.7 requirement to include the approved TMDL loads in the state’s waters quality management plans and VPDES permits.

Regulated entities could incur costs, such as installing new equipment, changing operational procedures, or undertaking best practices if they need to reduce pollution discharges. WLAs are not self-executing; their application primarily occurs when DEQ issues new or modified VPDES permits within impaired waters. As a result, DEQ cannot currently quantify the costs. The WLAs from the TMDL studies could indirectly affect certain facility and locality expenses. The impact of a WLA, if any, depends on the entity's operations and permit requirements. If a DEQ permit necessitates pollutant reductions to meet the overall WLA, each permittee would have distinct requirements and options to reduce sediment, phosphorus or Polychlorinated Biphenyls (PCBs) based on their specific industrial processes or BMPs. These cannot be monetized because of the variability in potential industrial processes, BMPs, and the need to review a VPDES permit application to assess if an individual facility needs to reduce sediment, phosphorus or PCB discharges.

### 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.*

This regulatory change has no requirements that exceed applicable federal requirements.

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

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

#### **Other State Agencies Particularly Affected:**

This regulatory change may affect the Virginia Department of Transportation (VDOT) which is one of the eight entities that hold a Municipal Separate Storm Sewer System (MS4) permit in the watershed of the impaired stream. As a result, VDOT may incur some costs to reduce sediment and phosphorus discharges to comply with WLAs established for the James River tributaries TMDL. Under their MS4 permit in the watershed, VDOT must submit a TMDL action plan outlining the measures they will undertake to accomplish sediment and phosphorus reductions to meet the WLAs. MS4 permittees may incur costs, such as installing new equipment, changing procedures, or adopting best practices. Exact costs are uncertain because of the variability in control measures identified in the action plans. VDOT, along with other MS4 permittees in the watersheds, does not have a specific individual reduction target. Instead, the TMDL report aggregates reductions across all MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions.

#### **Localities Particularly Affected:**

Four localities (Chesterfield County and the Cities of Hopewell, Colonial Heights, and Petersburg) may be affected since they also hold MS4 permits and may incur costs to reduce sediment and phosphorus discharges to comply with the WLA established for the James River tributaries TMDL. Under their MS4 permits, they must submit a TMDL action plan outlining measures they will undertake to accomplish sediment and phosphorus reductions to meet the WLAs. MS4 permittees may incur costs, such as installing new equipment, changing procedures, or adopting best practices. Exact costs are uncertain because of the variability in potential processes, BMPs, and the need to review control measures identified in the action plans. These localities, along with other MS4 permittees in the watersheds, do not have a specific individual reduction target. Instead, the TMDL report aggregates reductions across all

MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions.

**Other Entities Particularly Affected:**

Central State Hospital, Fort Lee, and John Tyler Community College are other entities holding MS4 permits that may be affected by the adoption of the WLAs. Similarly to other MS4 permittee, these entities must draft TMDL action plans outlining the measures they will undertake to accomplish sediment and phosphorus reductions. Exact costs are uncertain because of the variability in potential processes, BMPs, and the need to review control measures identified in the action plans. By aggregating the WLA with other MS4s, the entities have flexibility to address their share of the pollutant load and necessary reductions.

The sediment and phosphorus TMDL WLAs generated for Rohoic Creek in the James River Tributaries TMDL affect five existing Industrial Stormwater General Permit (ISWGP) facilities. The indirect costs for the facilities cannot be monetized at this time because the specific reductions for each facility are not known until permit issuance, and facilities have a variety of pollutant reduction options specific to their operations.

Additionally, seven (7) facilities with an ISWGP may be affected since they may need to reduce PCB discharges in order to comply with the WLA established for the Mountain Run TMDL. ISWGP facilities are required to develop a Stormwater Pollution Prevention Plan (SWPPP) as part of their existing VPDES permit requirements. To meet their WLA, each will be required to incorporate a Pollution Minimization Plan (PMP) into their existing SWPPP that identifies sources of PCBs in their effluent and the measures they will carry out to reduce PCBs and report their progress over time. The effects associated with drafting and implementing a PMP cannot be precisely determined because DEQ cannot predict which pollution reduction options facilities will incorporate into their PMPs since they have many alternatives available specific to their operations.

**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.*

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The comment period for the regulation amendment with the TMDL wasteload allocations extended from March 25 – April 25, 2024. No comments were received.

**Details of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action 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.*

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Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
60 A	N/A	James River Basin section does not include Sediment or Phosphorus WLAs for these impaired sections of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek	Adding nine new TMDL WLA in the James River Basin to reduce sediment discharges into these impaired sections of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek and reduce phosphorus in these impaired sections of Oldtown Creek, Rohoic Creek, and Swift Creek
70 A	N/A	Rappahannock River Basin section does not include a PCB WLA for this impaired section of Mountain Run	Adding one new TMDL WLA in the Rappahannock River Basin to reduce PCB discharges into this impaired section of Mountain Run

**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.*

These regulation amendments meet the requirements of federal and state law and regulation. The regulatory amendment does not directly impose any direct compliance requirement, reporting requirement, or performance standard that could be lessened or substituted for small business. Any delays in adopting the standards or exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. No alternative approach to developing a TMDL and the associated WLA was considered since State Water Control Law § 62.1-44.19:7 and the Clean Water Act 40 CFR 130.7(c) requires DEQ to develop a TMDL for each impaired water body to address pollutants that may enter the water. The regulation only lists the TMDLs and WLA, along with the impaired streams where it applies, but does not identify any facilities affected or mandate any direct measures, compliance, reporting, or standard that facilities must take to meet the WLA.

**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.*

The amendment of the WQMPR is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.