



Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-820 (If more than one chapter is affected by action, please indicate a primary action chapter number and secondary action chapter numbers)
Regulation title	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
Action title	Amendments to conform to 2012 General Assembly Statutory Changes
Final agency action date	June 25, 2012
Document preparation date	June 5, 2012

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

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

Summary

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

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. The amendments conform the general permit to statutory changes enacted by the 2012 General Assembly.

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 the State Water Control Board meeting on June 25, 2012, the Board adopted the amendments to 9VAC25-820.

All changes made in this regulatory action

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

Current section number	Current requirement	Change and rationale
10	Eastern Shore Basin	Changed to Eastern Coastal Basin to conform to statute change
10	Definition of "Waste load allocation"	Definition modified to conform to statute change
70	Part I B 1 and B 2	Modified to conform to statute change
70	Part I F	Annual reporting requirement modified to conform to statute change
70	Part I H 1 e	Added provision to allow for the acquisition of credits to offset new discharges
70	Part I J 2 and J 3	Modified to conform to statute change
70	Part II B	Modified to conform to statute change

Changes to the existing regulation include:

1. Expansion of the trading program to allow smaller, "non-significant" dischargers to generate compliance credits which may be provided to other dischargers. Under the current regulation, only the larger "significant" facilities with wasteload allocations in the Water Quality Management Planning Regulation are able to generate compliance credits.
2. Elimination of the requirement to submit a redundant annual report in addition to a year end Discharge Monitoring Report.
3. Provisions allowing new or expanding facilities to offset new loads with compliance credits. The existing point sources operating under this permit were 20% below their aggregate Nitrogen cap and 47% below their aggregate Phosphorus cap in 2011. Allowing new or expanding facilities to make use of the capacity under the cap generated by upgrades at existing facilities will take pressure off of the current offset market.
4. Changes to reflect the planned development of nonpoint source credit certification regulations by the Department of Conservation and Recreation.

Regulatory flexibility analysis

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

This general permit complements 9 VAC 25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and to 9 VAC 25-720 (the Water Quality Management Planning Regulation) and is intended to provide 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 regulatory amendments and the Chesapeake Bay TMDL, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

Family impact

Assess the impact of this 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.