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Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-720 Primary Chapter 9VAC25-720-50C, 60C, 70C and 120C Secondary Chapters 9VAC25-820
VAC Chapter title(s)	Water Quality Management Planning Regulation 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	Amend Existing Regulations
Date this document prepared	November 12, 2021

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 (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 regulation includes waste load allocations (WLAs) for dischargers of pollutants to various river basins throughout the Commonwealth of Virginia including total nitrogen (TN) and total phosphorus (TP) waste load allocations necessary for the restoration of water quality in the Chesapeake Bay and its tidal tributaries. DEQ proposes to amend Sections 50.C (Potomac-Shenandoah River Basin), 60.C (James River Basin), 70.C (Rappahannock River Basin), and 120.C (York River Basin) to accomplish two goals:

1. To establish TP WLAs to meet revised water quality criteria for chlorophyll-a in the tidal James River Basin.
2. To reassign unneeded TN and TP WLAs from industries that have either closed or otherwise eliminated their need for a WLA to the Nutrient Offset Fund for future use.

Minor modifications including (1) name changes, (2) the correction of one previous technical error, (3) WLA transfers associated with previously approved trades and WWTP consolidation projects, and (4) moving previously adopted WLAs from 9VAC25-820-80 to 9VAC25-720-60 C are also included.

The proposal also includes amendments to the 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 (9VAC25-820) that are necessary to implement the Water Quality Management Planning Regulation amendments as well as the Enhanced Nutrient Removal Certainty (ENRC) Program WLAs included in [House Bill \(HB\) 2129](#) adopted in Special Session I of the 2021 Virginia General Assembly.

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.

- ACSA: Augusta County Service Authority
- APA: Administrative Process Act
- Board: State Water Control Board
- COV: Code of Virginia
- 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
- MS4: Municipal Separate Storm Sewer System
- NOIRA: Notice of Intended Regulatory Action
- NPDES: National Pollutant Discharge Elimination System
- POTW: Publicly Owned Treatment Works
- PCP: Pollution Control Plant
- STP: Sewage Treatment Plant
- 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
- VIP: Virginia Initiative Plant
- VPA: Virginia Pollutant Abatement
- VPDES: Virginia Pollutant Discharge Elimination System
- WIP: Watershed Implementation Plan
- WLA: Waste Load Allocation
- WPCP: Water Pollution Control Plant
- WRF: Water Reclamation Facility
- WRRF: Water Resource Recovery Facilities
- WWTF: Wastewater Treatment Facility
- 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.

On December 14, 2021, the State Water Control Board adopted amendments the Water Quality Management Planning Regulation 9VAC25-720 and the 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 9VAC25-820 as final regulations.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The State Water Control Law (Code of Virginia) 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. Code of Virginia (COV) § 62.1-44.19:14.D requires that the Board review, during 2020 and every 10 years thereafter, the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and as a result of the review propose for inclusion in the regulation either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use. Further impetus prompting this action includes the Board’s adoption of water quality criteria for chlorophyll-a in the tidal portion of the James River (approved by EPA and effective 1/9/20), the need to adopt waste load allocations that are protective of the new criteria.

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

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Commonwealth’s mandate in § 62.1-44.15(10) of the Code of Virginia 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. Setting the specific effluent limits needed to meet the water quality goals is within the purview of the Board. Section 62.1-44.19:14.D of the Code of Virginia requires that the Board review during 2020 and every 10 years thereafter the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and as a result of the review propose for inclusion in the regulation either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use. This provision establishes the legal basis for any proposed reallocation of significant industrial discharger allocations. COV § 62.1-44.19:14.D.3 establishes that review of significant municipal discharger allocations will begin in 2030.

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 protection of Virginia's water quality.

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 purpose of this rulemaking is to protect State waters by adopting regulations that establish new or revised limitations on the amount of nutrients (TN and TP) that are discharged to the Chesapeake Bay watershed. Discharges from wastewater treatment plants contribute to the overall loading of nutrients to the Chesapeake Bay and its tributaries. These nutrients have been identified as pollutants causing adverse impacts on large portions of the Bay and its tidal rivers, which are included in the list of impaired waters required under §303(d) of the Clean Water Act and §62.1-44.19:5 of the Code of Virginia. Waters not meeting standards require development of a Total Maximum Daily Load (TMDL), also mandated under the same sections of federal and state law. EPA adopted the Chesapeake Bay TMDL in December 2010, and Virginia is now following a Watershed Implementation Plan to meet the requirements of that TMDL, in part by setting regulatory nutrient WLAs. The proposed amendments to the regulation are meant to accomplish two goals:

1. To incorporate final chlorophyll-a based TP WLAs for a subset of significant dischargers in the tidal James River Basin. The regulation currently includes WLAs adopted in 2005 that are not consistent with the TMDL for the Chesapeake Bay or the amended water quality criteria for chlorophyll-a developed in accordance with Appendix X to the Chesapeake Bay TMDL, approved by the Board on June 27, 2019, then approved by EPA and effective on January 9, 2020. DEQ has used the results of updated water quality modeling to establish TP WLAs to meet the recently adopted chlorophyll-a criteria. This amendment also incorporates additional TN and TP WLAs previously included in 9VAC25-820-80 into 9VAC25-720-60C.
2. To reassign unneeded TN and TP WLAs from industries that have either closed or otherwise eliminated their need for WLAs to the Nutrient Offset Fund for future use. This evaluation and reallocation is required by § 62.1-44.19:14.D of the Code of Virginia.

NOTE: The original proposed amendments authorized for public notice by the State Water Control Board on December 9, 2020 also included the addition of floating WLAs for 36 significant municipal dischargers with design flows greater than or equal to 5 MGD west of the fall line and 3 MGD or greater east of the fall line. The floating WLAs were proposed in accordance with Initiative No. 52 in the [Commonwealth of Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan dated August 23, 2019](#). The proposed floating WLAs were superseded by [House Bill \(HB\) 2129](#) passed by the General Assembly during the 2021 Special Session 1 and have been removed from the final regulation.

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.

Substantive changes to the Water Quality Management Planning Regulation (9VAC25-720) being considered include:

1. New chlorophyll-a based WLAs for TP for eight significant wastewater dischargers addressed in 9VAC25-720-60.C (James River Basin).

2. Reallocating TN and TP WLAs for five significant industrial facilities in Sections 50.C (Potomac-Shenandoah River Basin), 60.C (James River Basin) and 120.C (York River Basin). These are facilities that have closed or otherwise altered their operations so that the allocations are no longer necessary. The proposed amendments will move the WLAs to the DEQ held Nutrient Offset Fund and are in response to a review of current WLAs performed by DEQ staff in accordance with § 62.1-44.19:14.D of the Code of Virginia.

Minor changes including (1) name changes, (2) the correction of one previous technical error, (3) WLA transfers associated with previously executed trades and WWTP consolidation projects, and (4) moving previously adopted WLAs from 9VAC25-820-80 to 9VAC25-720-60 C are also included.

Changes to the 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 (9VAC25-820) are necessary to implement the above changes to the Water Quality Management Planning Regulation (9VAC25-720) as well as the Enhanced Nutrient Removal Certainty (ENRC) Program WLAs included in [House Bill \(HB\) 2129](#) adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board adopted amendments to 9VAC25-820 authorizing the reissuance of the general permit for a new five year term. These amendments are effective January 1, 2022. Substantive changes to the January 1, 2022 version of 9VAC25-820 include:

1. Adding requirements to 9VAC25-820-40 and 9VAC25-820-70 Part 1.C for facilities subject to new chlorophyll-a based TP WLAs and ENRC Program WLAs to submit compliance plans to meet a new schedule of compliance. The requirements are consistent with the approach used in previous versions of 9VAC25-820 as well as the ENRC Program adopted in [HB 2129](#) of Special Session 1 of the 2021 Virginia General Assembly.
2. Removed the requirements from 9VAC25-820-40 and 9VAC25-820-70 Part 1.C for the significant dischargers in the James River Basin to meet aggregate TN and TP WLAs established in [Appendix X to the 2010 Chesapeake Bay TMDL](#). These aggregate WLAs are superseded by the individual chlorophyll-a based TP WLAs included in this rulemaking.
3. Removed the TN and TP WLAs for significant dischargers in the James River Basin from 9VAC25-820-80. These WLAs were previously adopted in accordance with [Appendix X to the 2010 Chesapeake Bay TMDL](#) and are all being either moved to 9VAC25-720-60 C or superseded by new chlorophyll-a based TP WLAs in 9VAC25-720-60 C as part of this rulemaking.
4. Added the list of facilities subject to reduced WLAs (either chlorophyll-a based TP WLAs or ENRC Program TN and TP WLAs) to 9VAC25-820-80. This listing establishes what facilities are subject to the new compliance plan and schedule of compliance requirements in 9VAC25-820-40 and 9VAC25-820-70 Part 1.C.

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.

Regarding the amended TP WLAs for James River significant dischargers to meet chlorophyll a criteria, the primary advantage to the public is protection of the aquatic life designated use through attainment of both the seasonal geometric mean and short-duration summer chlorophyll water quality criteria. Reduced annual TP loads are proposed to be targeted at the dischargers into the Upper James tidal fresh region, which has been shown to be effective through water quality modeling while also limiting the impact to the least number of affected facilities in the river basin. Limiting the number of facilities subject to chlorophyll-

a based TP WLAs and allowing facilities to meet the reductions through Virginia’s nutrient trading program potentially reduces total implementation costs for all of the facilities impacted as well as the Commonwealth’s obligation for cost share funding of POTW capital upgrades under Virginia’s Water Quality Improvement Fund. Reassignment of unneeded industrial WLAs to the Nutrient Offset Fund benefits the Commonwealth by providing opportunity to accommodate future economic development projects.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

None of the requirements of the proposed regulatory changes are more restrictive than applicable federal requirements. The chlorophyll-a based TP WLAs in the James River Basin are necessary to meet the Commonwealth’s commitments under EPA’s 2010 TMDL for Chesapeake Bay.

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

There are no other state agencies particularly affected.

Localities Particularly Affected

The proposed amendments are expected to impose a disproportionate material financial impact on any locality served by treatment facilities subject to new chlorophyll-a based WLAs (the Cities of Richmond, Hopewell, Petersburg and Colonial Heights and the Counties of Goochland, Henrico, Hanover, Chesterfield, Prince George and Dinwiddie) or ENRC Program WLAs (the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg and the Counties of Gloucester, Isle of Wight, James City, Mathews, Surry, and York).

Other Entities Particularly Affected

The following industries and wastewater treatment facilities are particularly affected by the proposed amendments: J. P. Salyards-Alma Plant, Plains Marketing LP Yorktown, The Sustainability Park LLC, Dominion Energy Chesterfield Power Station, Tranlin/Vastly, Philip Morris-Park 500 WWTP, Falling Creek WWTP, Proctor’s Creek WWTP, Richmond WWTP, South Central Wastewater Authority WWTP, Henrico County WWTP, Hopewell WWTP, HRSD-Boat Harbor STP, HRSD-James River STP, HRSD-Williamsburg STP, HRSD-Nansemond STP, HRSD-Army Basis STP, HRSD-VIP WWTP , HRSD-York River STP, New Kent Chickahominy WWTP, Lower Jackson River STP and Aqua Virginia Inc.’s Lake Monticello WWTP.

Periodic Review and Small Business Impact Review Report of Findings

Indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This regulation enhances the Department's ability to ensure compliance with all applicable federal requirements under the CWA and specific requirements under the Code of Virginia by ensuring nutrient discharges conform to the Chesapeake Bay TMDLs and state regulations. The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

This regulation continues to be needed. It provides the necessary requirements for controlling discharges of nutrients into the rivers and tributaries leading to the Chesapeake Bay and for achieving the Chesapeake Bay TMDLs.

No comments were received during the public comment period that indicate a need to repeal the regulation. Comments were received during the comment period indicating that the regulation should be revised and that the regulation should not be revised. Revisions are proposed in this regulatory action to ensure that point source nutrient reductions necessary to meet chlorophyll-a based WLAs in the James River Basin are accomplished by January 1, 2026 and that additional nutrient reductions necessary to meet the ENRC Program requirements are accomplished in accordance with the requirements of HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly.

The department has determined that the regulation, with the proposed revisions, is clearly written and is easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Public Comment

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

A public hearing was held on October 7, 2021 at the DEQ Piedmont Regional Office. No comments were received from the public at the public hearing. Comments received during the public comment period include:

Commenter	Comment	Agency response
Mary Eure, Spotsylvania County Utilities	An error has been noted in the waste load allocations found in 9VAC25-720-70 C assigned to the Massaponax WWTF, VA0025658. The Massaponax WWTF has been assigned a TP waste load allocation of 8,405 lbs./yr rather than the correct 8,588 lbs./yr. This	DEQ agrees with this correction of this technical error which occurred in a previous modification to the WQMP Regulation and proposes to include a TP WLA of 8,588 lbs/yr for the Massaponax WWTP.

	<p>error occurred during the last rulemaking when TN and TP allocations were transferred from the FMC WWTF to the Massaponax WWTF to accommodate an expansion at that time. DEQ has noted the discrepancy as well and advised us to request that the allocation be restored to the Massaponax WWTF.</p>	
<p>Michael T. McEvoy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>Notes in the email notice and notice in the Virginia Register for this action indicate that no comment is requested concerning proposed amendments that address floating WLAs because the proposed amendments have been suspended by House Bill (HB) 2129. Since the “floating allocation” concept has been rendered moot by a change in state law, all floating cap provisions in the proposal must be removed.</p>	<p>DEQ agrees that the concept of a floating WLAs included in Initiative #52 of the Phase III WIP has been superseded by HB 2129 of the 2021 General Assembly and is not included in the final proposal.</p>
<p>Michael T. McEvoy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>VAMWA supports Scenario 3C which spreads the reductions equally among all municipal and industrial facilities in the tidal fresh segment and upriver to the headwaters.</p> <p>The proposal to concentrate the burden of TP reductions in the tidal fresh rather than a lesser reduction at a greater number of facilities is unfair</p> <p>VAMWA is unaware of any data or information that supports concentrating the burden in the tidal fresh area to the exclusion of the above fall line area. To the extent that DEQ views the proposal as less expensive in the aggregate, the nutrient trading program is available to mitigate the expense and likely achieve a financially comparable outcome in the aggregate. There is also potential savings in the tidal fresh area under Scenario 3C.</p>	<p>DEQ supports Scenario 3B(i) for the reasons outlined to the Board in December 2020 including (1) Scenario 3B(i) limits any capital upgrades to 6 POTWs and 1 industrial discharger rather than including an additional 12 POTWs and 5 industrial dischargers at slightly less stringent TP concentrations, (2) the 6 tidal fresh POTWs represent 81% of the total municipal design flow for facilities in the tidal fresh and upriver segments creating greater economies of scale, (3) smaller potential applicant pool and state expenditures from the Water Quality Improvement Fund, and (4) the approach is consistent with the concept of adaptive management.</p> <p>As of 2020, there were adequate credits on the market to cover all of the reductions required by the proposal. Use of the nutrient trading program allows for optimizing the capabilities of existing infrastructure and deferral of some capital upgrade expenses.</p>
<p>Michael T. McEvoy, Virginia</p>	<p>The difference of approximately 40,000 lbs of delivered TP between Scenarios 3B(i) and 3C</p>	<p>While the water quality model projects that chlorophyll criteria will be attained under Scenario 3B(i) and Scenario 3C(i), the margin</p>

<p>Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>should be reserved in the Nutrient Offset Fund and available for future point source use.</p>	<p>of attainment is predicted to be quite narrow for both scenarios. The modeling runs have consistently demonstrated that criteria attainment is very sensitive to TP. Thus, it is quite possible that the alternative scenario being proposed by VAMW (Scenario B(i) with an additional 40,000 lbs of TP allocated) would not result in attainment. The Department will not consider this option without a formal demonstration that it will result in water quality standards attainment.</p>
<p>Michael T. McEvoy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>VAMWA requests aligning the compliance plan submittal deadline in 9VAC25-820-40A for facilities subject to the reduced individual total nitrogen or total phosphorus waste load allocations with the Virginia Nutrient Credit Exchange Association's Compliance Plan Annual Update submittal deadline of February 1, 2023 (rather than July 1, 2022). This request is based on (and compelled by) the statute: "The compliance plans due beginning February 1, 2023, shall address the requirements of the ENRC Program." Va. Code § 62.1-44.19:14 C 3.</p>	<p>DEQ agrees with this comment and has made the change in the final proposed regulation at 9VAC25-820-40 A.</p>
<p>Michael T. McEvoy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>Request effective date for facilities that determine they are capable of complying with the reduced individual allocations without the need for a schedule of compliance to January 1, 2023 rather than January 1, 2022 to match the February 21, 2023 compliance plan submittal deadline.</p>	<p>DEQ agrees with the January 1, 2023 compliance date as reflected in Exhibit 15 to the public hearing record (see 9VAC25-820-70 I C 3 b).</p>
<p>Michael T. McEvoy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>VAMWA supports the proposed deletion of James River Basin aggregate waste load allocations as proposed.</p>	<p>Comment noted</p>
<p>Joseph Wood, Chesapeake Bay Foundation Jamie Brunkow, James River Association</p>	<p>Virginia has made significant strides towards addressing nutrient pollution to the James River and the Chesapeake Bay. Still, significant additional efforts are needed to achieve a restored system by 2025. Lack of progress in unregulated sectors, increasing development, and growing pressures from climate change</p>	<p>The Clean Water Act (CWA) section 303(d) requires that a TMDL be "established at a level necessary to implement the applicable water quality standard." Documenting adequate reasonable assurance increases the likelihood that regulatory and voluntary mechanisms will be applied such that the pollution reduction levels specified in the TMDL are achieved and, therefore, applicable WQS are attained. EPA's "Supplemental</p>

	<p>have limited our progress. As a result, the proposal before the State Water Control Board (Board) is unlikely to achieve the necessary nutrient reductions to attain water quality standards by the 2025 deadline, especially in the James River. Request that DEQ perform modeling runs that assume historical nonpoint source loadings and climate change projections through 2035 so that the public can be provided reasonable assurance that limits set out in the Chesapeake Bay TMDL will be met and water quality standards attained.</p>	<p>information for reviewing the Reasonable Assurance section in a TMDL” describes the elements that demonstrate reasonable assurance. DEQ believes the documentation produced by the Chesapeake Bay Program Office for the watershed model input deck explains the process for quantifying, classifying, and temporally linking point and nonpoint allocations. Additionally, Virginia’s annual reporting of nutrient and sediment milestones is a part of EPA’s accountability framework, which is designed to ensure that the allocations of the Bay TMDL, including those for the James River, will be met.</p> <p>Given the narrow margin of attainment projected for the four “attaining” scenarios, which assume WIP3 NPS controls, it is not expected that any of these scenarios would result in attainment under historical NPS loadings. Nonpoint sources are a major contributor of nitrogen and phosphorus pollution in the James River estuary. Through the years Virginia has invested considerable resources to cost-share programs for NPS pollution controls. This investment is likely to continue. DEQ believes that the importance of this investment is demonstrated when it is accounted for in modeling scenarios.</p> <p>It also has to be recognized that the point source sector consistently outperforms its TMDL reduction goals and the additional reductions help to offset any lagging reductions from more difficult nonpoint source sectors. James River dischargers registered under the watershed general permit operated at 63% of their current aggregate delivered nitrogen waste load allocation and at 71% of their current aggregate delivered phosphorus waste load allocation in 2020. This resulted in 4.5 million lbs of excess TN reduction and 242,000 lbs of excess TP reduction. Additional upgrades are being completed to meet the reduced waste load allocations established to meet the chlorophyll-a water quality criteria and the Enhanced Nutrient Reduction Certainty Program requirements. With reducing waste load allocations, the excess point source nutrient reductions are expected to decrease, however the sector is expected to continue to outperform its waste load allocation creating additional reductions that help offset any shortfall in the nonpoint source sector.</p>
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<p>Joseph Wood, Chesapeake Bay Foundation Jamie Brunkow, James River Association</p>	<p>In order to provide the public with reasonable assurance that the limits set out in the Chesapeake Bay TMDL will be achieved, we contend that several reasonable options remain that should be included in the proposal:</p> <ul style="list-style-type: none"> ● Perform modeling runs that evaluate attainment under historical levels of nonpoint source implementation and climate change extending beyond 2025. ● As proposed in the draft WQMPR, require the eight facilities in the tidal-fresh portion of the James River to achieve a 0.2 mg/L phosphorus effluent. ● Require all facilities throughout the watershed to achieve a 0.25 mg/L phosphorus effluent, in addition to requiring 0.2 mg/L effluent for facilities that discharge directly to the tidal fresh segment. ● Identify and require additional industrial reductions in the tidal fresh James River. 	<p>See previous comment for discussion of modeling runs under historical levels of nonpoint source implementation and climate change extending beyond 2025.</p> <p>The proposed waste load allocations under Scenario 3B(i) include six municipal treatment facilities with phosphorus waste load allocations based on a concentration of 0.2 mg/l and one industrial treatment facility with a corresponding 50% reduction in phosphorus waste load allocation. The TP WLA reduction at the eighth facility reflects a minor difference between model inputs and the existing WLA and does not represent a significant reduction.</p> <p>The modeling work performed in support of the rulemaking involved staff from EPA, the Virginia Institute of Marine Science and DEQ. The work was completed in late 2020 and included the modeling and post processing of a total of 32 scenarios. The requested scenario was not identified while the work was being performed. DEQ has proposed the adoption of Scenario 3B(i) which achieves all of the necessary reductions in the critical tidal fresh segment of the James River.</p> <p>Additional industrial reductions in the tidal fresh section of the James River were evaluated but none were identified because the existing WLAs were based on TP concentrations considered to be "state-of-the-art nutrient removal technology" under 9VAC25-820-10.</p>

<p>Joseph Wood, Chesapeake Bay Foundation Jamie Brunkow, James River Association</p>	<p>We urge the agency to develop a policy to automatically reclaim allocations when facilities close (when consolidation of sources is not implicit in the closure). Virginia law is very clear that no facility has a property right in WLAs assigned to it. The trading program should incentivize actual pollutant reduction performance. WLAs are intended to be based on need as determined by DEQ. Thus, when a facility closes, DEQ should reclaim such facility's allocations, thereby prohibiting the closed facility from generating tradable credits.</p>	<p>DEQ agrees that a VPDES permits and waste load allocations listed in the Water Quality Management Planning Regulation are generally not considered to be property rights. However with the creation of the nutrient trading program the Virginia General Assembly created a category of quasi-property rights when it allowed for nutrient credits and WLAs to be bought and sold. Revoking nutrient WLAs assigned in 9VAC25-720 may not be performed automatically and must follow the abbreviated requirements of Administrative Process Act at § 2.2-4006.A.14.</p>
<p>Joseph Wood, Chesapeake Bay Foundation Jamie Brunkow, James River Association</p>	<p>Several large municipal facilities that are not covered by the legislation's requirement to achieve additional nutrient reductions still have great potential for reduced nutrient concentrations through facility operational upgrades. The Board should consider taking advantage of this opportunity to achieve additional reductions from these facilities through the requirement of optimized treatment.</p>	<p>Prior to the adoption of the Chesapeake Bay TMDL, DEQ required Interim Optimization Plans for significant dischargers that were not yet subject to final water quality based effluent limits for TN and TP. With the adoption of final WLAs, the watershed general permit has simply required compliance with the water quality based WLAs. The nutrient trading program itself incentivizes optimized treatment by allowing any credits generated to be sold and by minimizing the number of credits that must be acquired for facilities operating over their WLA. DEQ will continue to consider approaches that encourage optimal operation of existing treatment works.</p>
<p>Joseph Wood, Chesapeake Bay Foundation Jamie Brunkow, James River Association</p>	<p>With the adoption of this regulation, Virginia will implement nutrient reductions to meet the chlorophyll criteria for the James River that are beyond what Chesapeake Bay mainstream dissolved oxygen targets require. There is no reason that the York River, similarly impaired, should not have the same level of protection as the James River. We urge the agency to initiate development of York River chlorophyll criteria.</p>	<p>There is currently no plan to develop numeric chlorophyll criteria specific to the York River. The impetus behind numeric chlorophyll criteria for the James River was the need for a TMDL endpoint given the absence of chronic hypoxia in the estuary. There is no similar need in the York River since chronic hypoxia occurs there, which is why dissolved oxygen criteria attainment is being used to drive nutrient reductions. Working with the Chesapeake Bay Partnership through the Criteria Assessment Protocols Workgroup, DEQ hopes to develop a process for implementing existing narrative chlorophyll criteria that are applicable to the mainstem Bay and tidal tributaries like the York. Ideally, the chlorophyll threshold(s) developed by the workgroup will be tied to harmful effects caused by algal blooms that aren't explicitly addressed by the TMDL.</p>
<p>James Pletl, Hampton</p>	<p>The proposal in the Virginia Register announcement is</p>	<p>DEQ agrees that the documentation is confusing due to multiple rulemakings</p>

<p>Roads Sanitary District (HRSD)</p>	<p>contradictory and confusing, and makes it difficult for the public to understand what is being proposed in this action and what is not being proposed. It is HRSD's understanding that Initiative No. 52 and the concept of "floating WLAs" are no longer part of the Phase III Watershed Plan, and instead are now based on House Bill 2129. If this is incorrect, HRSD strongly opposes the use of Initiative No. 52 and the floating WLA approach in the WQMPR and the General Permit that is being proposed.</p>	<p>occurring at the same time. HB 2129 (ENRC) waste load allocation reductions were approved by the Board on June 29, 2021. The final proposed amendments to 9VAC25-720 and 9VAC25-820 are included as Exhibits 14 and 15 to the public hearing record. These proposed amendments implement the HB 2129 waste load allocations and do not include the floating waste load allocations presented to the Board on December 9, 2020.</p>
<p>James Pletl, Hampton Roads Sanitary District (HRSD)</p>	<p>The proposed regulation states that the WLAs currently referenced as JH Miles & Company will be referenced as "HRSD-MS4" and the accompanying footnote states that these WLAs may only be used to support HRSD commitments to provide nutrient credits to municipal separate storm sewer systems. This proposed change is inappropriate and must be modified before adopting final amendments. This MS4-only provision does not reflect HRSD's understanding of how the WLAs originally owned by JH Miles but acquired by HRSD can be used. It would be unfair to severely restrict HRSD's use of the WLAs after-the-fact when the WLAs were acquired in accordance with controlling law and regulations setting no such limitation, and the trading agreement by which HRSD accomplished the JH Miles consolidation was approved by DEQ without an MS4-only use restriction. Also, as a result of HB 2129, HRSD now has an unrestricted statutory right to the JH Miles WLAs, because the new law requires the State Water Control Board to "Transfer the total nitrogen (153,500 lbs/yr) and total phosphorous (17,437 lbs/yr) waste load allocations for the HRSD-J.H. Miles Facility consolidation to HRSD in accordance with the approved registration list December 21, 2015, transfer." The 2015 transfer of the WLAs to</p>	<p>The quoted language reflects the language presented to the Board in December 2020, prior to the adoption of HB 2129. The Board approved transfer of the former JH Miles waste load allocations to HRSD (with no restrictions on the use) on June 29, 2021 in accordance with HB 2129 and those amendments to 9VAC25-720-60 C became effective on October 27, 2021. No further amendments to the allocation are proposed in this final action.</p>

	<p>HRSD included no restrictions of the type now proposed by DEQ. Accordingly, the reference to "HRSD-MS4" needs to be removed and should be replaced with "HRSD-JH Miles (HB2129 Consolidation)". Similarly, the proposal's associated footnote (9) limiting use of the WLAs to MS4 purposes only must also be removed and replaced with the following based on HB 2129: "The total nitrogen (153,500 lbs/yr) and total phosphorous (17,437 lbs/yr) waste load allocations for the HRSD-J.H. Miles Facility consolidation under the approved registration list December 21, 2015, transfer are continued as statutorily assigned to HRSD by Code of Virginia § 62.1-44.19:14 G 3."</p>	
<p>James Plett, Hampton Roads Sanitary District (HRSD)</p>	<p>The proposed regulation 9VAC25-820-40 requires compliance with allocations by January 1, 2026. However, House Bill 2129 has multiple compliance dates for HRSD facilities that replace this requirement in the proposed regulation. Those complex revisions are incorporated into the Board's exempt final amendments that took effect October 21, 2021. Those prior revisions should be maintained consistent with HB 2129.</p>	<p>The January 1, 2026 compliance date in the proposed 9VAC25-820-40 only applies to facilities with reduced Total Phosphorus waste load allocations under 9VAC25-820-80 b. In response to the comment however, amendments have been made to 9VAC25-820-40 A 1 to clarify that the compliance dates for reduced WLAs in HB 2129 are established in 9VAC25-720-60 and 9VAC25-720-120 as discussed in Part I C 1 of the proposed general permit (9VAC25-820-70).</p>

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.*

Table 1a: Changes Since the Previous Stage 9VAC25-720

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
720-50	N/A	Footnotes requiring TN and TP floating WLAs for municipal	Floating WLA footnotes deleted	The floating WLA approach was superseded by ENRC Program

		facilities greater than or equal to 5 MGD west of the fall line and 3 MGD or greater east of the fall line		requirements included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the ENRC Program WLAs.
720-60	N/A	Footnotes requiring TN and TP floating WLAs for municipal facilities greater than or equal to 5 MGD west of the fall line and 3 MGD or greater east of the fall line	Floating WLA footnotes deleted	The floating WLA approach was superseded by ENRC Program requirements included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the ENRC Program WLAs.
720-60	N/A	J H Miles- HRSD footnote allowed for the former J H Miles WLA acquired by HRSD to be used solely to fulfill commitments to provide nutrient credits to municipal separate storm sewer systems (MS4s)	Footnote deleted	Conditions on the transfer of the WLA were established by HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the WLA transfer.
720-60	N/A	HRSD – Ches/Elizabeth STP footnote transferred the TN and TP WLAs to the Nutrient Offset Fund effective January 1, 2023.	Footnote deleted	HB 2129 established that the transfer of the TN and TP WLAs will occur on January 1, 2026. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the transfer of the WLAs on January 1, 2026.
720-70	N/A	Footnotes requiring TN and TP floating WLAs for municipal facilities greater than or equal to 5 MGD west of the fall line and 3 MGD or greater east of the fall line	Floating WLA footnotes deleted	The floating WLA approach was superseded by ENRC Program requirements included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-

				720 incorporating the ENRC Program WLAs.
720-70	N/A	N/A	Massaponax WWTF TP WLA set to 8,588 lbs/yr	The TP WLA was increased by 183 lbs/yr. This change corrects an error created in a previous rulemaking when a temporary WLA trade to the Rush River WWTP was inadvertently treated as a permanent WLA transfer
720-120	N/A	Footnotes requiring TN and TP floating WLAs for municipal facilities greater than or equal to 5 MGD west of the fall line and 3 MGD or greater east of the fall line	Floating WLA footnotes deleted	The floating WLA approach was superseded by ENRC Program requirements included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. On June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the ENRC Program WLAs.

Table 1b: Changes Since the Previous Stage 9VAC25-820

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
820-40.A	N/A	July 1, 2022 deadline for submission of compliance plan	February 1, 2023 deadline for submission of compliance plan	Deadline amended to comply with the provisions of HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly
820-40.A 1	N/A	Compliance plan requires compliance “as soon as possible”	Compliance plan requires compliance with ENRC WLAs by dates established in HB 2129 and 9VAC25-720-60 and 9VAC25-720-120. Compliance plan for chlorophyll-a based TP WLAs in the James River Basin must require compliance “as soon as possible”.	The “as soon as possible” criteria for meeting effluent limits is established in 9VAC25-31-250 and is applicable to the chlorophyll-a based TP WLAs. However the ENRC WLAs are not effective until the dates established in HB 2129 and 9VAC25-720-60 and 9VAC25-720-120. The provisions in 820-40.A 1 have been modified accordingly.

820-40.A 2 b	N/A	Facilities that do not demonstrate that additional capital projects are necessary to meet new WLAs must request an individual WLA compliance date of January 1, 2022.	Condition was amended to recognize that the early compliance date only applies to chlorophyll-a based TP WLAs and to establish a compliance date of January 1, 2023.	The condition was amended to recognize that the early compliance date for facilities that do not demonstrate the need for additional capital projects is not applicable to ENRC Program WLAs adopted in HB 2129. The early compliance date was also pushed back to recognize the amended February 1, 2023 deadline for submission of the compliance plan.
820-70.I.C.1	N/A	Compliance with floating WLAs shall be no later than the January 1, 2026 effective date of the allocations	Reference to floating WLAs have been eliminated. Compliance with ENRC Program WLAs shall be on the effective date of the reduced allocations as established in 9VAC25-720-60 and 9VAC25-720-120.	The floating WLA approach was superseded by ENRC Program requirements included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly and on June 29, 2021, the State Water Control Board approved amendments to 9VAC25-720 incorporating the ENRC Program WLAs and effective dates. The requirements in the general permit have been amended accordingly.
820-70.I.C.3 a	N/A	Owners of facilities listed in 820-80 will have individual dates of compliance based on their compliance plans	Owners of facilities listed in 820-80 b will have individual dates of compliance based on their compliance plans	Condition amended to recognize that the individual compliance dates apply to the chlorophyll-a based WLAs and not the ENRC Program WLAs included in HB 2129.
820-70.I.C.3 b	N/A	Owners of facilities listed in 820-80 that waive their compliance schedules in accordance with 820-40 A 2 b shall have an individual compliance date of January 1, 2022	Owners of facilities listed in 820-80 b that waive their compliance schedules in accordance with 820-40 A 2 b shall have an individual compliance date of January 1, 2023	Condition was amended to recognize that the individual compliance dates apply to the chlorophyll-a based WLAs and not the ENRC Program WLAs included in HB 2129 and to match the amended compliance date of January 1 2023 in 820-40 A 2 b.
820-70.I.C.3 c	N/A	Upon completion of compliance plan projects, owners of facilities listed in 820-80 may receive	Upon completion of compliance plan projects, owners of facilities listed in 820-80 b may receive a	Condition was amended to recognize that the individual compliance dates apply to the chlorophyll-a based WLAs

		a revised individual compliance date of January 1 for the calendar year following the year in which a Certificate to Operate is issued.	revised individual compliance date of January 1 for the calendar year following the year in which a Certificate to Operate is issued.	and not the ENRC Program WLAs included in HB 2129.
820-70.I.D	N/A	Annual compliance plan updates for facilities subject to reduced waste load allocations in 820-80 may not rely on the acquisition of nutrient credits from the Nutrient Offset Fund.	Annual compliance plan updates for any existing facilities may not rely on the acquisition of nutrient credits from the Nutrient Offset Fund.	Under the current general permit, annual compliance plans for any existing facilities may not rely on the acquisition of nutrient credits from the Nutrient Offset Fund. The Nutrient Offset Fund is available as a backstop at the end of a compliance year in the event that the market is short of credits but existing permittees may not plan on the use of the Nutrient Offset Fund up front. In the proposed stage, the requirement was amended to address the concern that existing facilities relying on the acquisition of credits from other dischargers may experience a shortage of credits due to new floating WLAs being applied to the credit supplier.
820-70.E.6	N/A	Required reporting of flows discharged to a reuse distribution system for facilities basing their floating WLA on treated flow	820.70.E.6 deleted	Provision allowed for an alternative calculation of floating WLA for facilities with a reclamation and reuse system. This provision was deleted with the elimination of the floating WLA concept.
820-70.H.1.g	N/A	Establish registration statement requirements for reclamation and reuse facilities	820-70.H.1.g deleted	This provision established additional information that must be submitted for reclamation and reuse systems in order to accurately calculate floating WLAs. This provision was deleted with the elimination of the floating WLA concept.
820-70.III.1.3	N/A	Provides website for 24 hour reporting requirements	Website link updated	Link updated to reflect current DEQ website.

Detail 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.*

Table 1a: Changes to Existing VAC Chapter 9VAC25-720

Note: Amendments to 9VAC25-720 were approved by the State Water Control Board on June 29, 2021 to incorporate the ENRC Program WLA reductions included in HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly. The amendments became effective October 27, 2021. The changes below reflect the changes to the version of 9VAC25-720 that is in effect as of October 27, 2021.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
720-50.C Potomac Basin	N/A	TN and TP waste load allocations for the protection of Chesapeake Bay	<ul style="list-style-type: none"> • Transferred TN and TP WLAs from the former Pilgrims Pride Alma facility to the DEQ held Nutrient Offset Fund. The poultry processing facility which was originally granted these WLAs has permanently closed and no process wastewater is discharged from the facility. This allocation is being moved to the Nutrient Offset Fund in accordance with § 62.1-44.19:14.D and will be made available for future economic development. • Updating TN and TP WLAs for the North River WWTF to address the consolidation with the McGaheysville STP. • Eliminating a footnote requiring Merck to acquire nutrient credits, if available, for loads over their original WLA. This footnote provision was approved by the Board when it previously approved increased WLAs for Merck not knowing whether adequate capacity existing under the TMDL. All TMDL modeling scenarios in recent years have included the increased WLAs approved by the Board so there is no longer a need for the outdated credit purchase requirement. • Updated numerous facility names.

<p>720-60.C James Basin</p>	<p>N/A</p>	<p>TN and TP waste load allocations for the protection of Chesapeake Bay</p>	<ul style="list-style-type: none"> • Establishing chlorophyll-a based TP WLAs for 8 facilities located in the tidal fresh section of the James River Basin. These allocations cut the existing allocations for 7 facilities by approximately 50%. The TP WLA reduction at the 8th facility reflected a minor difference between model inputs and the existing WLA and does not represent a significant reduction. • Incorporated TN and TP WLAs previously included in 9VAC25-820-80. These WLAs were previously established within the watershed general permit regulation to address additional nutrient reductions necessary to meet dissolved oxygen criteria under the terms of Appendix X of EPA's 2010 Chesapeake Bay TMDL. This consolidation ensures that all of the WLAs are included in the same regulation. These same WLAs will be deleted from 9VAC25-820-80 as noted below. • Moved excess TN and TP WLAs for two municipal facilities to the Nutrient Offset Fund. The original WLAs for these two facilities were based upon design flows greater than the design flow of the treatment plants actually constructed and moving the excess portions of the WLAs provides for more equitable WLAs and allows for additional economic development. • Transferred TN and TP WLAs from The Sustainability Park LLC to the DEQ held Nutrient Offset Fund. This allocation was originally granted for a cigarette manufacturing facility which closed prior to the 2010 Chesapeake Bay TMDL. This allocation is being moved to the Nutrient Offset Fund in accordance with § 62.1-44.19:14.D and will be made available for future economic development. • Transferred TN WLA from Tranlin/Vastly to the DEQ held Nutrient Offset Fund. This allocation was originally obtained
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			<p>by Tranlin/Vastly from Dominion Chesterfield for the construction of a proposed paper mill in Chesterfield County. The proposed mill was never constructed. This allocation is being moved to the Nutrient Offset Fund in accordance with § 62.1-44.19:14.D and will be made available for future economic development.</p> <ul style="list-style-type: none"> • Established a condition that will result in the automatic transfer of TN and TP WLAs for the Dominion Chesterfield Power Station to the DEQ held Nutrient Offset Fund as of January 1st following the retirement of the last coal fired generating unit. This allocation was originally granted account for the nutrient loads generated by planned air pollution control equipment on Dominion’s coal fired power units. The last of the coal fired units is expected to be retired in the coming years and facility will no longer have a need for the WLAs. This allocation is being moved to the Nutrient Offset Fund in accordance with § 62.1-44.19:14.D and will be made available for future economic development. A footnote designating these WLAs as “net” WLAs has been removed. Additionally, the proposed regulation notes that a portion of the TN WLA may be made available for a future treatment plant capacity constructed at the Proctor’s Creek WWTP. This provision was included in recognition of an existing agreement between Dominion and Chesterfield County in which the county retained a right of first refusal if Dominion were to ever sell any of their WLA • Moved 28,937 lbs/yr of TN WLA from Dominion to the Falling Creek WWTP in recognition of a previous trade agreement which accommodated a rerating of the Falling Creek WWTP design flow. • Deleted WLAs for the Chickahominy WWTP in New Kent
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			<p>County. This facility has gone offline and the existing WLAs were not included in the water quality model runs used to establish chlorophyll-a based WLAs.</p> <ul style="list-style-type: none"> • Updated numerous facility names
720-70.C Rappahannock Basin	N/A	TN and TP waste load allocations for the protection of Chesapeake Bay	<ul style="list-style-type: none"> • Updated numerous facility names • Assigned “Unallocated Reserve WLA” to the Nutrient Offset Fund. • Increased the TP WLA assigned to the Massaponax WWTF by 183 lbs. This change corrects an error created in a previous rulemaking when a temporary WLA trade to the Rush River WWTP was inadvertently treated as a permanent WLA transfer.
720-120.C York Basin	N/A	TN and TP waste load allocations for the protection of Chesapeake Bay	<ul style="list-style-type: none"> • Transferred TN and TP WLAs from the former Plains Marketing L.P. Yorktown refinery to the DEQ held Nutrient Offset Fund. The refinery facility which was originally granted these WLAs has permanently closed and no longer generates significant nutrient loads. This allocation is being moved to the Nutrient Offset Fund in accordance with § 62.1-44.19:14.D and will be made available for future economic development. • Updated numerous facility names

Table 1b: Changes to Existing VAC Chapter 9VAC25-820 – The intent and rationale for the following changes are to implement the amendments to 9VAC25-720 outlined above in a cost effective manner. The likely impacts are increased costs to one industrial facility and six municipal treatment facilities subject to proposed chlorophyll-a based TP WLAs as well as seven facilities subject to ENRC upgrades as required by HB 2129 adopted in Special Session I of the 2021 Virginia General Assembly.

Note: Amendments to 9VAC25-820 were approved by the State Water Control Board on June 29, 2021 to reissue the general permit for another five year term. These amendments and the new permit term are effective January 1, 2022. The changes below reflect the changes to the version of 9VAC25-820 that is effective January 1, 2022.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
820-40	820-40.A and B	Requires submittal of an annual compliance plan update in accordance with Part I D of the general permit.	New provisions in 820-40.A require facilities subject to reduced WLAs to submit compliance plans by February 1, 2023 including capital projects and schedules necessary to achieve compliance.

			<p>Facilities subject to the ENRC Program must meet compliance dates established in HB 2129 and included in 9VAC25-720 60 and 9VAC25-720-120.</p> <p>Facilities subject to reduced chlorophyll-a based TP WLAs must meet WLAs as soon as possible but no later than January 1, 2026. Facilities not requiring additional capital projects are required to meet a compliance date of January 1, 2023.</p> <p>Compliance plans may be submitted individually or through the Virginia Nutrient Credit Exchange Association and may rely on the exchange of point source credits with other facilities but not the acquisition of credits from the Nutrient Offset Fund. The new provisions in 820-40.A are consistent with compliance plan requirements in previous versions of the general permit as well as Article 4.02 of the State Water Control Law.</p> <p>Current requirement for annual compliance plan update moved to 820-40.B.</p>
820-70.I.C	820-70.I.C.1, 2 and 3	Establishes a January 1, 2023 compliance date for significant dischargers in the James River Basin to meet aggregate discharged TN and TP WLAs.	<p>820-70.I.C.1 establishes schedule of compliance requirements consistent with the compliance plan requirements included in 820-40.A.</p> <p>Facilities subject to the ENRC Program must meet compliance dates established in HB 2129 and included in 9VAC25-720 60 and 9VAC25-720-120. Facilities subject to reduced chlorophyll-a based TP WLAs must meet WLAs as soon as possible but no later than January 1, 2026. Facilities not requiring additional capital projects are required to meet a compliance date of January 1, 2023.</p> <p>820-70-I.C.2 requires the Board to reevaluate the schedules of compliance in 820-7-.I.C.1 following submittal of the compliance plans and compliance plan updates required by 820-40 taking into account the factors in <u>§ 62.1-44.19:14 C 2</u> of the Code of Virginia. If warranted the Board shall adjust the</p>

			<p>schedule by modification or reissuance of the general permit</p> <p>820-70.I.C.3 establishes that facilities subject to chlorophyll-a based TP WLAs will have individual compliance dates based on their respective compliance plans and may be earlier than January 1, 2026. Facilities not requiring capital upgrades that waive their compliance schedule in accordance with 820-40 A 2 b will have an individual compliance date of January 1, 2023. Facilities that receive a Certificate to Operate for their capital projects prior to 2025 will have an individual compliance date of January 1 of the calendar year following issuance of the Certificate to Operate.</p> <p>The new provisions in 820-70.I.C.1 - 3 are consistent with schedule of compliance requirements in previous versions of the general permit as well as Article 4.02 of the State Water Control Law.</p> <p>The current January 1, 2023 compliance date for significant dischargers in the James River Basin to meet aggregate discharged TN and TP WLAs is superseded by the individual chlorophyll-a based TP WLAs in the corresponding amendments to 9VAC25-720-60 and are removed from the regulation.</p>
820-80	820-80.A and B	<p>Facilities Subject to Reduced Individual Total Nitrogen and Total Phosphorus Waste load Allocations.</p> <p>This section previously included a list of significant facilities in the James River Basin along with reduced TN and TP WLAs necessary to meet water quality criteria for dissolved oxygen. These WLAs were implemented in accordance with Appendix X to EPA's 2010 Chesapeake Bay TMDL.</p>	<p>Upon the January 1, 2022 effective date of the proposed amendments to the watershed general permit (9VAC25-820), all of the previous schedules of compliance for dissolved oxygen-based WLAs will have been completed. Upon adoption of the proposed amendments to the Water Quality Management Planning Regulation (9VAC25-720), all of the dissolved oxygen-based WLAs previously listed in Section 80 will have been incorporated in 9VAC25-720 or replaced been replaced by new chlorophyll-a based WLAs in 9VVAC25-720. The WLAs previously listed in Section 80 have been deleted and replaced by lists of facilities subject to the ENRC Program WLAs (Section</p>

			80.A) and chlorophyll-a based WLAs (Section 80.B). Section 80 now serves as a reference to determine which facilities are subject to the compliance plan requirements in 9VAC25-820-40.A and the schedule of compliance requirements in Part I.C. of the general permit (9VAC25-820-70).
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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.

DEQ has evaluated a range of alternative regulatory methods to accomplish the objectives of applicable law while minimizing impact on small business.

The TP WLA reductions to meet water quality criteria for chlorophyll-a are the minimum reductions required to meet water quality criteria. The agency evaluated numerous reduction alternatives and selected the alternative that impacted the fewest facilities and no small businesses. This alternative is expected to maximize the return on the Commonwealth’s investment in partially funding nutrient removal upgrades at eligible POTWs under the Water Quality Improvement Fund program.

One small business is subject to reduced WLAs. The business was mistakenly granted WLAs in excess of their design capacity when WLAs were originally established in 2005 and has historically relied of the purchase of nutrient credits. The impact of the regulation will be that the facility would have to purchase additional nutrient credits unless treatment plant performance is improved. The WLAs for two additional small businesses are being transferred to the Nutrient Offset Fund. Both businesses held WLAs that were originally granted for industries that previously occupied the properties. Both industries closed well over ten years ago. The properties do not currently include operations in need of the discharge allocations and the transfer of the WLAs to the Nutrient Offset Fund is not expected to adversely impact the small businesses.

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 regulatory amendments are not expected to 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; or 3) strengthen or erode the marital commitment. The amendments may result in increased sewer rates in some jurisdictions which could result in a minor decrease in disposable family income.