Office of Regulatory Management

Economic Review Form

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Revisions to CH 900 in response to SB 187 (2022 GA session)
Date this document prepared	06/08/2023
Regulatory Stage (including Issuance of Guidance Documents)	Issuance of Guidance Document- **Accelerated Release of Nonpoint Source Nutrient Credits for Stream Restoration Projects**

<u>Cost Benefit Analysis</u>

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

In 2005, the state legislature created the Chesapeake Bay Watershed Nutrient Credit Exchange Program to allow Virginia's point and nonpoint sources of nutrient pollution in the Chesapeake Bay watershed to meet required nutrient reductions through trading (VA Code § 62.1-44.19:14 et seq). The regulatory amendment to incorporate SB187 into the Nonpoint Source Nutrient Trading Program for an accelerated credit release for stream restoration projects was signed by the Governor on April 11, 2022. Enactment clause 2 of SB187 states "the provisions of this act shall become effective 30 days after the Department of Environmental Quality issues guidance regarding the implementation of this act." This guidance document and associated regulatory amendment has been developed to implement Chapter 526 of the 2022 Acts of Assembly.

Criteria were developed to accelerate the release of up to 50 percent of the nutrient credits generated by a stream restoration project based on (i) a determination that the level of risk for restoration failure is low, (ii) the provision of additional financial assurance in an amount adequate to cover the cost of project repair or replacement in the event of failure, and (iii) the experience of the applicant or the applicant's agents who will implement the stream restoration project. To be eligible for an accelerated release, applicants must provide additional documentation to demonstrate that they meet the conditions. Choosing to apply for an accelerated credit release is a voluntary decision made by the applicant and does not change the number of credits released under each project. All determinations will be made by DEQ. This guidance does not supersede the existing application requirements described 9VAC25-900-120.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct Costs: Bank sponsors may need to fund financial assurance mechanism up front instead of over time, which is typical but not required under the status quo.

Indirect Costs: An increase in participation and earlier release of credits, may result in an increase of available credits in the marketplace and a lower the value of nutrient credits in the marketplace, potentially lowering profits made by bank sponsors.

Direct Benefits: Bank sponsors will receive credit certification earlier from stream restoration projects and may be able to sell the credits sooner than they can under the status quo.

Indirect Benefits: An early release schedule is likely to encourage participation in the nonpoint nutrient trading program by allowing a quicker return on a bank sponsor's investment. An increase in participation, and earlier release of credits, may result in an increase of available credits in the marketplace and a lower cost for credit purchasers (e.g., developers, homeowners, localities, VDOT, etc.).</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>(a) The timing of the financial assurances due may shift to be funded upfront instead of over</td><td>(b) The total amount of credits generated will remain the same but</td></tr>
</table>

	time as is typical, but not required, under the status quo.	will be available for sale earlier than under the status quo.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	The actual benefit of being able to sell credits sooner will vary depending on the price of credits at the time they are sold, which is variable and not shared with DEQ. The actual cost of funding the financial assurance mechanism up front instead of over time depends on the amount of interest the money could earn if invested elsewhere, which is variable and not shared with DEQ. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral. The introduction of an accelerated release schedule for stream projects may increase program staff time evaluating criteria provided by the bank sponsor to determine whether they are eligible for an accelerated credit release at the time of application. However, an accelerated credit release schedule could result in a reduction of staff time after nutrient bank approval allocated to drafting release letters for subsequent monitoring years since the bulk of credits will be released upfront. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.	
(5) Information Sources		

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	N/A	N/A
(3) Net Monetized Benefit	N/A	

(4) Other Costs & Benefits (Non-Monetized)	Staff will continue to evaluate stream releases on an annual basis over at least a 4-year period as outlined in the current release schedule, which may result in more time dedicated to issuing credit release letters for stream projects. No further requirements to evaluate additional criteria of those applying for an accelerated credit release may reduce staff time reviewing applicants' eligibility upfront. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.
(5) Information Sources	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.	
(4) Assistance	N/A	
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Issuance of this guidance has no anticipated impacts on families.	
(4) Information Sources		

<u>Impacts on Small Businesses</u>

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Bank sponsors may need to fund financial assurance mechanism up front instead of over time, which is typical but not required under the status quo. Indirect Costs: An increase in participation and earlier release of credits, may result in an increase of available credits in the marketplace and a lower the value of nutrient credits in the marketplace, potentially lowering profits made by bank sponsors. Direct Benefits: Bank sponsors will receive credit certification earlier from stream restoration projects and may be able to sell the credits sooner than they can under the status quo. Indirect Benefits: An early release schedule is likely to encourage participation in the nonpoint nutrient trading program by allowing a quicker return on a bank sponsor's investment. An increase in participation, and earlier release of credits, may result in an increase of available credits in the marketplace and a lower cost for credit purchasers (e.g., developers, homeowners, localities, VDOT, etc.).	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) The timing of the financial assurances due may shift to be funded upfront instead of over time	(b) The total amount of credits generated will remain the same but

	as is typical, but not required, under the status quo.	will be available for sale earlier than under the status quo.
(3) Other Costs & Benefits (Non-Monetized)	The actual benefit of being able to sell credits sooner will vary depending on the price of credits at the time they are sold, which is variable and not shared with DEQ. The actual cost of funding the financial assurance mechanism up front instead of over time depends on the amount of interest the money could earn if invested elsewhere, which is variable and not shared with DEQ. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.	
(4) Alternatives	N/A	
(5) Information Sources		

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

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The new guidance document developed in response to Chapter 526 of the 2022 Acts of Assembly is 4 pages in length.