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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-40
VAC Chapter title(s)	Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed
Date this document prepared	November 18, 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**.

Acronyms and Definitions

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

No acronyms were used in this document.

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 or 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.

Section 62.1-44.15 (10) of the Code of Virginia authorizes the State Water Control Board "to adopt regulations necessary to enforce the general water quality management programs of the Board." Section 62.1-44.15 (14) allows the board to "To establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter".

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. The State Water Control Board has adopted this regulation to control the discharge of

nutrients from point source discharges affecting water that have been designated “nutrient enriched waters” in the Water Quality Standards (9VAC25-260) regulation.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

One alternative considered was the repeal of this regulation. This alternative was rejected since repealing this regulation would remove requirements related to the proper treatment of wastewater that are protective of water quality standards for wildlife uses (including fish and shellfish), and recreational uses. Repealing this regulation would not assist with the removal of pollutants contributing to the adverse impacts on large portions of the Chesapeake Bay and its tidal rivers, which are included in the list of impaired waters under §303(d) of the Clean Water Act and §62.1-44.19:5 of the Code of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed to assist with the periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation is effective and continues to be needed and is being retained.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. This regulation controls nutrient discharges from point sources in the Chesapeake Bay watershed as part of the Commonwealth's comprehensive initiative to restore water quality and habitat in the Chesapeake Bay watershed.

No public comments were received during the periodic review.

The regulation provides for the control of discharges of nutrients from point source discharges affecting waters that have been designated "nutrient enriched waters" in the Water Quality Standards (9VAC25-260). Portions of the regulation may be viewed as complex due to the technical requirements included in the regulation; however, this regulation is clearly written and easily understandable by the users of the regulation.

This regulation does not duplicate, or conflict with federal or state law or regulation but is one regulation that works together with other regulations to protect water quality in the Commonwealth.

The State Water Control Board last amended this regulation in 2006. Over the course of time, the cost to remove pollutants typically decreases with advancements in technology.

Outside of the Chesapeake Bay watershed, this regulation requires that facilities discharging 1 million gallons per day or more to designated "nutrient Enriched waters" meet a monthly average total phosphorus effluent limit of 2.0 mg/l. Within the Chesapeake Bay watershed, the regulation does not require nutrient removal of any existing discharger. Dischargers that install nutrient removal technology are subject to annual average nutrient limits that match the technology installed. New and expanding discharges within the Chesapeake Bay watershed are subject to minimum nutrient treatment technologies depending on the size of the potential nutrient load. The more advanced "state-of-the-art" treatment technology is applicable to the largest new or expanding facilities. Smaller new or expanding facilities must install less expensive "biological nutrient removal" technology. The smallest category of new or expanding facilities (40,000 gallons per day or the equivalent nutrient load from an industrial facility) have no minimum technology requirements at all. The regulation also includes an exclusion for dischargers that are able to demonstrate that the specified standard is not technically or economically feasible for the facility. These provisions are drafted to minimize any impact on small businesses while still meeting the Commonwealth's water quality goals.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the family or family stability.